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MINISTRY OF INTERNAL AFFAIR

REPORT

ON THE NEEDS ASSESSMENT FOR REGULATING POLICE APPREHENSION AND AREST

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Descrierea CIP a Camerei Naționale a Cărții

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This report does not necessarily reflect the views of the Soros Foundation-Moldova.

LIST OF ABBREVIATIONS

ECHR	European Convention on Human Rights
CC	Contravention Code
CC	Criminal Code
CPC	Criminal Procedure Code
CPT	European Committee for the Prevention of Torture and Degrading Treatment
ECtHR	European Court of Human Rights
DBP	Department of Border Police
DCT	Department of Carabinieri Troops
UDHR	Universal Declaration of Human Rights
DCI	Department of Criminal Investigation
SFM	Soros Foundation Moldova
GD	Government Decision
PDI	Pre-trial Detention Isolator
GPI	General Police Inspectorate
MIA	Ministry of Internal Affairs
MoJ	Ministry of Justice
OMIA	Order of the Minister of Internal Affairs
NGO	Non-governmental organizations
SOP	Standard Operating Procedures
RM	Republic of Moldova
EU	European Union

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FOREWORD

The Ministry of Internal Affairs (MIA) is currently undergoing an extensive process of transformation that touches upon its whole activity, as well as on individual segments of the activity. The initiated reforms aim at the modernization and development of legislative, organizational and functional aspects, as well as at horizontal and vertical development of the areas of activity managed by the institution. The police plan of activities shows the most obvious progressive dynamic, at the same time displaying its most striking sensitivities.

In essence, we aim at increasing the quality of public service and the degree of satisfaction of the population with the professional performance of the MIA staff. We are therefore interested, to the highest degree, in repositioning the institution within the society, by reshaping the philosophy that inspires us, as well as the manner of accomplishing our tasks and prospective missions, and, respectively, the type of relation with members of the community.

Thus, referring to the area of public order and security, we welcome the proposed shift of emphasis from the concept of ***„force"*** to the concept of ***„police services"***, which is specific to modern law enforcement bodies. The attempt is not to influence public perception through theory and forced humanization of the perceived image of law enforcers, but to genuinely open towards the community.

According to our vision, it is time we gave due respect to the citizens. We need to specifically serve the taxpayers who pay for their own safety and to focus, honestly, on defending the rights and freedoms of people. At the same time, it is necessary to move the repressive dimension that is frequently associated with the function of state general police to a secondary place, and to cultivate more actively the public utility of the MIA as supporter and protector of the society and people.

Reconfiguring the social role of the MIA is part of the strategy on strengthening the rule of law and on the democratization of public institutions. This ensures that administration is effectively serving the direct beneficiary - the person, with his/her specific security needs, with rights and freedoms guaranteed by the Constitution/ laws and protected, inclusively, by the MIA.

In order to develop its capacities, the MIA is cultivating partnerships with the civil society on subjects that meet the most diverse of needs. In our opinion, the institutional reform is not an end in and of itself, but rather the means to the common, general good that we have already mentioned. Therefore, it requires that representatives of the society are not only mere, critical beneficiaries, but are also active participants in debating topics of common interest, engage and directly support the resolution of existing problems.

This focus has allowed, among other things, the signing in March 2016 of the Cooperation Agreement between the Soros Foundation-Moldova (SFM), the MIA, and the General Police Inspectorate (GPI), respectively. The agreement addresses joint

actions aimed at assimilating the best international practices related to pre-trial detention, and ensuring observance of fundamental rights and freedoms, increasing the accountability and transparency of police activity at the criminal investigation stage.

As an important activity under this Agreement, the current draft fits perfectly within the logic of cross-community topics, covering broad social and institutional interests, because the problematic of apprehension/arrest by police has specific connotations, raises controversies and can be treated from the perspectives of the actors involved, which may often vary.

However, regardless of the view, the approach must lie in the so-called ***aurea mediocritas*** area, which is the area of moderation and balance. Thus, irrespective of circumstances, persons subjected to police actions have rights that must be respected without deviations. Symmetrically, the police must have strong legal protection that enables them to exercise their powers without fear, as long as they act within the limits of the law. Therefore, the law must equally protect the rights of detained/arrested citizens and the rights of police officers – citizens who serve the community.

Shortcomings in the regulation and implementation in this field (also identified during the analysis) have determined problems both internally – to the persons and police officers involved in apprehension/arrest actions - and internationally, because of the lawsuits lost by the Republic of Moldova at the European Court of Human Rights (ECtHR).

From our point of view, the analysis carried out within the MIA - SFM project has fully proved its usefulness. Shortcomings were identified and relevant recommendations were formulated, whose implementation will lead to normalization of the situation and capacity building of the MIA in the respective field, and the final winners are, of course, institutions and society as a whole.

Therefore, this type of positive civil society cooperation is precisely what we want and encourage. It produced concrete results and helped us effectively identify the current limits, and objectively project future actions.

We consider, therefore, that the project has achieved its purpose and we are looking forward for its continuation through implementation, together with our partner – the SFM, of the practical segment of recommendations, i.e. commencing normative amendments, covering regulatory gaps and developing necessary standard operating procedures.

Minister of Internal Affairs,
Alexandru Jizdan

EXECUTIVE SUMMARY

The MIA of the Republic of Moldova (RM) is undergoing a significant transformation process with respect to various aspects of the institution's work. Within the overall reform process, attention is significantly focused on the police, a fact that resulted in drafting the Strategy of development of this institution. In addition to other operational aspects, normative and practical developments in the field of police apprehension/arrest are of special importance. Events in this category are quickly gaining visibility, have significant social impact, and are a cause for concern within the community.

Apprehension, as a form of procedural constriction, falls into the category of procedures that generate the most complex and sensitive responsibilities for the police. In the absence of detailed internal regulations and proper staff training, apprehension can lead to flagrant violations of human rights. As a result, the positive impact of efforts aimed at improving society's perception of the police is substantially reduced. The quality of carrying out operations related to apprehension is also among the main indicators of measuring the extent to which reforms give tangible results, rendering the relationship between individuals and the police predictable.

In light of the above-mentioned, under the the Cooperation Agreement between MIA, GPI and SFM signed in March 2016, the Joint Action Plan oversaw a "*needs assessment of the legislative, regulatory framework and de facto practice, as well as the needs related to internal regulations within MIA and of its subordinated institutions regulating directly or indirectly the institution of apprehension/arrest by police, including apprehension on the street, bodily examination and temporary detention.*"

The purpose of the authors of this analysis, jointly with the MIA, GPI and SFM was to identify systemic problems of apprehension/arrest by the police, and to formulate recommendations compatible with the standards, experience and best European and international practices in this field.

On the one hand, the recommendations focus on eliminating regulatory shortcomings, particularly those in the secondary level regulations of the MIA. On the other hand, a number of proposals aim at the amendment of practices that currently include and perpetuate operational errors, endangering both the rights and security of detained persons, as well as the professional dignity of police officers.

In order to achieve this purpose, the authors had to study, evaluate, interpret and present an integrated assessment of the current regulatory framework on apprehension and police arrest, to identify its shortcomings and problems, and the necessary amendments and/or additions.

It was equally important to achieve the practical interest of an analytical analysis, i.e. understanding and describing the practices used by police during arrest and apprehension. The following aspects were taken into consideration: the source of practices, what conditions foster non-compliance with the legal provisions, as well as the type of problems they generate for the detained/arrested persons and for police officers.

Finally, as a general issue, the solutions aimed at correcting the system, in order to ensure respect towards human rights and freedoms; protection of detained/arrested persons and of police officers; raising public awareness and transparency in this field.

The Analysis Report spans over four chapters, in order to formulate the findings, conclusions and recommendations, in the following sequence:

Chapter 1 provides a number of international standards, including practices of some EU countries in the analyzed field, along with relevant conclusions. Furthermore, this chapter provides examples of ECtHR case law concerning the RM.

Chapter 2 provides an analysis of the national regulatory framework related to apprehension/arrest by the police, identification of problems and specific conclusions.

Chapter 3 provides an analysis of the rights of detained persons (review of the rights, identification of problems related to their observance, and specific conclusions).

Chapter 4 provides an analysis of the current MIA pre-trial detention system and the functionality of pre-trial detention isolators - PDI (the functioning of the system, status quo and specific conclusions).

For a more accurate description of the situation in this field, the experts have resorted to extensive examples, comparisons, detailed descriptions and frequent references to the analyzed documents, followed by critical comments. As such, the nature of the resulting Report is concurrently analytical and practical, as it balances the theoretical, as well as the applied facets of the issue.

The analysis carried out represented viable and useful exercise of cooperation between the MIA and the GPI as public institutions, on the one hand, and the SFM as a non-governmental entity, on the other hand. The common interest of learning the real situation in the field, and its reflection in this Report that analyzed the data collected, secured the synergy necessary for organization and the optimal conditions for carrying out the project activities. This allowed to elaborate realistic and applicable recommendations in a relatively short period. It is also possible to conclude that the relevance and accuracy of the conclusions, and respectively of the recommendations, generate positive prerequisites for opening new directions of cooperation between the MIA and the SFM, with a great potential for social benefit.

We cannot disregard the extensive participation of representatives of the MIA and GPI in the analysis, the openness and professionalism of police officers, and thereupon, the project team members would like to thank them respectfully.

In terms of the methodology, data was collected from various sources, by assessing the high-level regulatory framework and the internal framework of the MIA, through interviews, focus groups and a questionnaire that covered 300 police officers. In addition, documentation visits to the police units in the north, center and south of the country were organized, where interviews, focus groups with criminal investigators, investigative officers and territorial police officers were conducted. The data collected underwent qualitative and quantitative analisys.

After processing the collected data, 23 punctual conclusions were divided into categories of specific problems and 89 correlative recommendations were elaborated, which are centrally set forth in the **Annex no. 1** of the Analysis Report.

Analytical analysis also generated some general conclusions that are set forth below.

First, the national regulatory criminal procedure and contravention framework applicable to the institution of apprehension/arrest by police includes provisions that are necessary for managing specific issues (with the limitations that were formulated in the Analysis Report). It follows, therefore, that the key remaining issues regarding apprehension/arrest by police rest not with the legislation, but with direct implementation of this legislation.

Second, the analysis revealed that the main source of continuous violations of the legislation, including of the rights of detained persons, as well as institutional problems, respectively the risks faced by police officers on a daily basis, resides mainly in the shortcomings of the internal regulatory framework of the MIA.

Thus, the out-dated internal rules and lack of standard operating procedures (SOPs) specific to apprehension/arrest by police provide only limited and sometimes contradictory solutions to the challenges in the field. There is therefore room for amateurism, as well as resolution of situations based on non-uniform customs and impulsive action.

Therefore, over time, procedural errors have accumulated and generated practices that favoured violations of the rights of detained/arrested persons and admitted abuses by police officers. Procedural errors have also occurred because of contradictory instructions, interference in the course of actions by heads of institutions, problems of integrity and management of human resources, as well as shortcomings in the process of police training.

As a result, there were cases where the police violated the rights of detained/arrested persons, cases for which the European Court of Human Rights (ECtHR) ordered the Republic of Moldova to pay damages.

In this context, we would like to mention the results of the questionnaires filled out by police officers, most of whom have a correct understanding of the limits of the regulatory, organizational and functional framework, the problems generated by the absence of SOPs, as well as the shortcomings of individual and systemic training.

The degree to which the police deem their professional status underestimated, along with their awareness of lax legal protection the current legislation offers, is enlightening. This fact imposes necessary corrections on behalf of the MIA.

Third, the analysis has also revealed that international norms and case law are broader and more detailed in regulating the interaction with detained persons within the police headquarters. The following aspects are however less discussed: management by police of the first contact with persons in the street/other places, the decision to apprehend, bringing the person to the police office, escorting in various situations, as well as other related practical and operational aspects. Operational details are usually subject to internal institutional regulations.

Shortcomings similar to the type of shortcomings mentioned in relation to the international practice are also typical to the regulatory system in the MIA. Therefore, it is necessary to review the internal regulatory framework of the MIA and the utility of developing SOPs, to correlate them stronger to positive experiences and international

best practices, striving to cover all scenarios and circumstances typical to the apprehension/police arrest cycle.

Fourth, it was revealed that a certain degree of indulgence towards violations committed by police in cases of apprehension still exists, and decisive measures were had not been taken even in situations of obvious of human rights violations. At the same time, it came out that it is imperative to strengthen internal discipline and order, as well as accountability both at the level of management and operative staff.

It is necessary to develop mechanisms of internal communication, of informing the staff about existing regulations, evolutions in the regulatory framework, as well as to generalize the use of the lessons-learned system. Issuing technical guidance clarifications that would ensure unification of the practice in the field is also useful. Optimizing operational coordination, as well as field support and control are also a priority.

Last, a conclusion has been reached that it is necessary and useful to expand partnerships with civil society on issues related to observance of human rights. Henceforth, the MIA should unconditionally request support of entities specialized in this field. In addition, it is necessary to develop cooperation with the local public administration, as well as the capacity to disseminate relevant information on apprehension/police arrest in the society.

By their repetition and similarity, the shortcomings identified during this analysis proved the systemic nature of some problems and require, therefore, understanding of the causes, precise identification of the effects and formulation of solutions for global remedy of the shortcomings.

Recommendations formulated within the Needs Assessment, that aimed at ensuring observance of the rights of detained persons and development of institutional framework relevant for apprehension/arrest by police, focused on the following areas: amendments to the national regulatory and internal MIA framework, regular review and update of the respective framework; capitalizing on the experience and best international practices by assimilation into the internal system; review of police practices related to apprehension/arrest by police; introducing the system of lessons-learned based on ECtHR case-law and local situations; development of inter-institutional cooperation, internal and external communication and partnerships with civil society, as well as development of professional capacities of police officers through specific training and raising the level of integrity.

The need to implement the mechanism of standardizing activity and to elaborate at least 12 SOPs has been expressly identified. The necessary number of SOPs per area of interest shall be completed by the MIA/departments.

METHODOLOGY USED

In order to achieve the purpose of the project, terms of reference were developed, a working group was created, experts were assigned individual tasks, institutional and reference national normative framework was analyzed, and individual interviews and focus groups were conducted. Data collected was compared qualitatively and quantitatively, and served as the basis for formulating recommendations and conclusions.

Analysis covered the following issues:

- legislative/normative framework, the system of competences in apprehension (limits, gaps, duplications, legal vacuum), current procedures applicable to the apprehension/arrest by police;
- existing practices within the MIA and the judiciary system in Moldova on apprehension/police arrest, and shortcomings in the training of personnel in this field;
- regulatory and standardization needs of the activity, identification of the alternatives for development of the system of drafting/implementation of SOPs;
- level of public awareness about the aspects of apprehension/arrest by police and identification of actions for ensuring transparency;
- framework for monitoring, control, systemic adjustment of the processes in the field of apprehension/police arrest.

a) Collecting, studying and systematizing relevant documents (legislation, departmental and inter-departmental internal regulations)

The following documents were analyzed: laws, government decisions, orders, instructions, guidelines, internal regulations, job descriptions, etc. necessary for understanding the situation, for elaborating the Analysis Report and formulating recommendations for adjusting internal regulations and normative framework regulating directly or indirectly the institution of apprehension and related to the observance of the rights and procedural guarantees.

b) Organizing field visits, data collection by conducting interviews, focus groups and questionnaires

The methodology of the analysis ensured combination of data collection from various bibliographic sources with documentation, interviews and focus groups within MIA, Police units, Border Police and Carabinieri (gendarmerie-type troops), as well as by using questionnaires.

Three field visits to Police subdivisions in the north, center and south regions of the country were conducted. Interviews/focus groups were conducted with the following structures/persons:

- the MIA (Deputy Minister responsible for public order and security; MIA Secretary of State; General Directorate for analysis, monitoring and evaluation of policies; General Legal Directorate; Operational Steering and Inspection Service; Internal Protection and Anticorruption Service);
- the GPI; National Patrol Inspectorate; National Investigation Inspectorate; Chisinau municipality Police Department and three local inspectorates of district police);
- Department of Border Police (DBP);
- Department of Carabinieri Troops (DCT).

Questioning was conducted in order to find out the opinion of practitioners on issues related to apprehension/arrest by police, set by the developed instrument and targeted three categories of personnel, with tasks related to apprehension/arrest by police: criminal investigators, investigation officers and local police officers.

According to the sampling carried out with the support of CBS-AXA in Chisinau, staff from 10 local police inspectorates was questioned (3 in the north; 2 in the center; 3 in Chişinău and 2 in the south). On average, 30 police officers from each targeted local police inspectorate were interviewed (12 criminal investigators, 9 investigative officers and 9 local police officers in each inspectorate).

FIGURE 1. INTERVIEWED TARGET GROUP

CRITERIA	AGE RANGE (years)	NUMBER OF PERSONS	PERCENTAGE
Age of the respondent	20-25	77	25,7%
	26-30	113	37,7%
	31-35	66	22%
	36-40	27	9%
	Over 40	11	3,7%
	Non-responses	6	2%
Seniority in the field	1-3	123	41%
	4-9	99	33%
	10-15	46	15,3%
	Over 15	22	7,3
	Non-responses	10	3,3%
TOTAL	-	300	-

The demographic module of the questionnaire included only two criteria: ***age of the respondent*** and ***seniority in the field*** (Figure 1). No other data was required in order to tackle any possible susceptibilities and encourage anonymous responses.

Target group analysis revealed that, in terms of the ***age of the respondents***, the majority, i.e. 85%, are less than 36 years old, and the greatest share is within the age range of 26 to 30 years old. This situation is explained by the fact that the majority of personnel questioned are young people; and the target group is relatively homogeneous in terms of the ***age of the respondents***.

Questioning has benefited from the fact that the target group has shown a relatively high degree of uniformity, due to the fact that respondents belong to the same professional category, largely to the same generation and carry out identical/similar activities (regulatory, organizational and functional framework, organizational culture etc.), have equivalent training and, largely, comparable professional experience.

This represents a clear organizational advantage in the medium and long terms, because highly effective formative interventions may be exercised on this professional and age category, as young people are also more open to change.

From the perspective of ***seniority in the field,*** the situation is correlative to the situation of the ***age of the respondents***. Thus, most respondents have seniority in the field of up to 9 years (74%), and the majority of them have reduced experience, of 1-3 years (41%).

The data collected through questionnaires has been statistically processed by the CBS-AXA in Chisinau. Diagrams corresponding to close-ended questions, as well as comments/suggestions of the respondents to the open questions have been used as examples and in support of certain findings within the analysis.

It should be noted that a significant number of non-responses was registered, which varied, depending on the question, between 7-36%.

From our point of view, the high share of non-responses can be explained by deficiencies in internal communication, lack of practice in interviewing/consulting employees, reluctance of the officers to respond for fear of being identified and subjected to further pressure, or even lack of interest in professional issues.

Regardless of the motivation, the conclusion is that this situation is worrisome and should be taken into consideration in the process of organizing/conducting future similar activities, for consultation and involvement of employees in decision-making process, as well as for their education to foster openness, involvement, expression and assuming their own opinions.

c) Systematization, interpretation and analysis of data collected after studying specific bibliography, from interviews and focus groups

Integration of collected information, analysis of statistical data, editing the findings, formulation of conclusions and recommendations were carried out jointly by the team members, as well as through personal contributions to the draft Analysis Report.

d) Elaboration of Analysis Report

In order to ensure the quality level of the analytical analysis, three successive versions of the Analysis Report were developed: initial draft analysis; intermediate version and the final version, which was presented to the SFM and, subsequently, to the MIA and the GPI.

01

INTERNATIONAL STANDARDS AND PRACTICE OF SOME EU COUNTRIES ON APPREHENSION

1.1. GENERAL RIGHTS OF THE APREHENDED/ARRESTED PERSON PROVIDED BY INTERNATIONAL AND COMMUNITY STANDARDS

Community and international standards provide general rights of detained/arrested person, instituted in order to guarantee a fair trial, ensure the right to liberty, and the right not to be subjected to torture and inhuman or degrading treatment. Therefore, the international community agreed on the need to establish a set of standards to guide procedural actions in the field of apprehension/ arrest by police. This imposes obligations also for the authorities of RM.

International regulations related to the rights of persons detained by the police are briefly listed in this section in order to outline the reference framework of the field. Given that the international instruments applicable to apprehension/arrest were examined in detail in many other papers, this Analysis Report has not insisted on the substance of these aspects.

General rights provided by international standards are the following: ***a)*** *the right to information;* ***b)*** *the right to defense;* ***c)*** *the right to a translator/interpreter;* ***d)*** *the right to silence;* ***e)*** *the right to healthcare;* ***f)*** *the right to notify relatives or other persons about apprehension;* ***g)*** *the right not to be subjected to ill-treatment;* ***h)*** *the right to complain.*

a) The right of detained person to information is regulated in the following documents:

- International Convention on the Rights of the Child;
- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Directive 2012/13/EU of the European Parliament and of the Council of 22.05.2012 on the right to information in criminal proceedings[1] establishes minimum rules of information about the rights and the charges brought[2].

b) The right of detained person to defense is regulated in the following documents:

- International Covenant on Civil and Political Rights;
- International Convention on the Rights of the Child;
- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Directive 2013/48/UE of the European Parliament and the Council of 22.10.2013[3].

c) The right of detained person to a translator/ interpreter is regulated in the following documents:

- International Covenant on Civil and Political Rights;
- European Convention for the Protection of Human Rights and Fundamental Freedoms;

[1] Published in the Official Journal of the EU, part I, L 142/1 of 01.06.2012 and available on the address: **http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A32012L0013**.

[2] Directives of the European Parliament and of the Council are mandatory and must be implemented within the time limit set. EU Member States are entitled to choose independently the form and the manner of implementation. RM is not an EU Member State, however in the context of accession policy, RM has undertaken obligation to harmonize its domestic legislation to the international treaties, to which it is party, to the generally accepted principles and norms of international law, including to the acquis communautaire (see Art. 4 para. (1) of the Law on legislative acts and GD on the harmonization of the Moldovan legislation with the Community law, no. 1345 of 24.11.2006. Therefore, Directives of the European Parliament and Council become enforceable also for the national authorities.

[3] On the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, published in Official Journal of the EU, part I, L 294/1 of 06.11.2013 and available at the address: **http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A32013L0048**

- Directive 2010/64/UE of the European Parliament and of the Council of 20.11.2010 on the right to interpretation and translation in criminal proceedings[4].

d) The right of detained person to silence (the right not to self-incriminate) is regulated in the following documents:

- International Covenant on Civil and Political Rights;
- International Convention on the Rights of the Child.

e) The right of detained person to healthcare is regulated in the following documents:

- International Covenant of 16.12.1966 on Economic, Social and Cultural Rights;
- International Convention of 20.11.89 on the Rights of the Child;
- European Convention for the Protection of Human Rights and Fundamental Freedoms.

f) The right of detained person to notify relatives or other persons about apprehension is regulated in the following documents:

- EU Charter of fundamental rights;
- Directive of the European Parliament and of the Council No. 2012/13/UE of 22.05.2012 on the right to information in criminal proceedings.

g) The right of detained person not to be subjected to ill-treatment and the right to submit complaints is regulated in the following documents:

- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights;
- International Convention of 20.11.1989 on the Rights of the Child;
- Convention of 10.12.1984 against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment;
- European Convention for the Protection of Human Rights and Fundamental Freedoms.

Based on the analysis of above-listed standards, the general rights refer to an ***already detained person***. As a matter of principle, international standards are tracing the general framework to which states must align. Therefore, there are no international standards regarding, for example, the moment when the detained person may contact his/her family and by whose telephone. Particular aspects, as well as normative and space/time regulation of benchmarks that outline the practice in the field, remain at the discretion of each state-member.

[4] Published in Official Journal of the EU, part I, L 280/1 of 26.10.2010 and available at the address: **http://eur-lex.europa.eu/legal-content/ro/TXT/PDF/?uri=CELEX:32010L0064&rid=1.**

Therefore, international standards do not provide details and solve neither institutional competences nor operational and technical modalities that need to be used. The latter should be regulated at the level of entities whose competence is specifically related to apprehension of persons, MIA in case of RM.

Case-law suggests that international standards have the appropriate level of generality. However, they have not been implemented with sufficient details in the internal rules of MIA, and, therefore, it is necessary to analyse specifically the international procedural experience and adapt to the local needs the techniques with proven efficacy by running them in other jurisdictions.

Analysis has revealed that adequate internal regulation of the issues related to apprehension/arrest by police, by taking over the experience and relevant international and European best practices can positively change the situation in the field and significantly reduce the number and severity of human rights violations.

1.2. EUROPEAN PRACTICE IN THE FIELD OF APPREHENSION/ARREST BY POLICE

Essentially, apprehension, as a form of coercion, is regulated in the legislation of the majority of states. In EU states, a person is deprived of freedom with or without warrant, in operational circumstances or for enforcement of court judgments, according to largely similar regulations.

There are, however, differences regarding: *a) the grounds for deprivation of liberty; b) the competence to order apprehension; c) duration of apprehension d) conditions and duration of bringing detained persons to the Police office*.

Under the above-mentioned aspects, the following findings resulted from the analysis of available data related to the European practices in the field of apprehension/arrest by police:

a) On the grounds for deprivation of liberty

The following are the grounds for deprivation of liberty: ***flagrante delicto and imminent danger.*** Besides these two grounds, in order to apprehend a person, police officers must necessarily possess some clues - which vary from country to country, from **„*reasonable*"** to **„*serious*"** or **„*solid*"** - that a person has committed or will commit a criminal offense. In Sweden, however, police needs to have an order from the prosecutor in order to apprehend/arrest a person without warrant and only for 12 hours.

b) On the competence to order apprehension

In the EU countries, the competence to apprehend/arrest a person without warrant belongs to the Police (Gendarmerie or Carabinieri, from case to case). This competence is exercised based on rules that may substantially differ from country to country.

For example, in ***Sweden***, police cannot arrest/apprehend a person without authorization from the prosecutor. In ***France***, police have 24 hours to inform the prosecutor about apprehension. In ***England*** and ***Wales***, the police may, based on internal decisions, deprive people of their liberty for up to 36 hours.

c) On the duration of apprehension

In the EU Member States, duration of police apprehension is between 24 and 96 hours:

- In ***Finland***, the time-limit is „*the third day at noontime*", which is calculated from the first moment of contact between suspects and police officers.
- In ***Estonia***, apprehension lasts for 72 hours (the same as in RM) and in ***Italy,*** 96 hours.

d) On the conditions and duration of bringing detained persons to the police office:

- In ***France***, police can keep a person for maximum 4 hours, afterwards the person is either released or placed in *garde a vue* (apprehension)[5].

- In the ***Netherlands***, apprehension is ordered for 6 hours, with the possibility of its extension for another 6 hours. It should be noted that the period between 12 p.m. and 9 a.m. is not included here. On the other hand, the person is immediately informed about the right not to answer questions unrelated to his/her identity. After the expiry of 6 or 12 hours, the person is either released or brought under arrest based on the order of the prosecutor or a senior police officer[6].

- In ***Slovenia***, police may take to police office persons found at the place where a crime was committed or persons who are believed to be able to provide necessary information for investigation. Maximum duration is 6 hours. In case police considers that it is not possible to carry out preliminary investigation (identity, alibi etc.) within 6 hours, when this deadline expires, police shall hand out to the respective person a written decision on his/her deprivation of liberty for a maximum of 48 hours. This decision may be appealed to the court[7].

- In ***England and Wales*** there is a special measure called *street bail*, which means that the person who does not want to disclose his/her identity (British people do not have identity cards) is set free in exchange for bail and some other conditions (usually obligation to come to the police at the date and time set). The bail certainly does not work in all situations and, as a rule, does not replace bringing the person to the police; however it is an alternative to the initial deprivation of liberty.

In case of apprehension/arrest, application of preventive measure of maximum 24 hours is decided by the officer responsible for arrest (*custody officer*), who has nothing to do with the investigation of the case. The detained person is immediately informed about his/her rights (to consult a lawyer, to announce the family, to remain silent, etc.). Apprehension can be extended first time by 12 hours based on the order of a senior police officer, and twice by 36 hours and, respectively, by 24 hours, based on a decision of a court of magistrates (kind of assessors who take decisions in minor cases, without jury).

Therefore, this measure may last in total - 96 hours. However, there are some alternatives to the arrest at this stage - classic bans to leave the country/city, to visit certain places or people, which are more and more frequently replaced by electronic bracelets.

- In ***Hungary***, police have authority to arrest people for a short-period of 8 hours with one extension of 4 hours. This measure can be applied in the following cases: enforcement of the arrest warrant issued by the competent authorities; escaping from detention; suspicion of committing a crime. Hungarian police have the legal right to use force in the process of implementation of this measure. The person arrested for a short-period of time must be informed about the duration and the ground of arrest and should be provided the possibility to notify the family about his/her situation. However, if the police consider that informing the family could jeopardize investigation, this right may not be granted. Also, the

[5] Apprehension procedure is the following: within 24 hours, police must inform the prosecutor; within another 24 hours, prosecutor must approve apprehension, and afterwards the case is sent to a judge for freedoms and detention who may issue arrest warrant. If detained person is suspected of terrorism, drugs, organized crime, murder (acts committed by two or more persons), apprehension can reach 96 hours, plus 20 hours exclusively for the police. Recent amendments on the presence of the defender and the right to remain silent are described above.

[6] Apprehension procedure is the following: arrest may last up to three days and may be extended by the prosecutor only once for another 3 days. After 3 or 6 days, the prosecutor has 15 hours to bring the person before the court. If the judge issues arrest warrant, the person is immediately transferred to a pre-trial detention facility. The person can remain in police custody for a period not exceeding 10 days, if the prison does not have available places.

[7] Within 48 hours of apprehension, the person must be brought to the investigative judge who can order the release or pre-trial detention of the person for a period not exceeding one month. In the second case, the presence of the lawyer becomes mandatory and the arrested person is informed about the right to remain silent and the right to take knowledge and make copies of the materials of the case file. The 2008 Report of the Committee for the Prevention of Torture highlights complaints on cases of ill-treatment applied by Slovenian police both during preliminary investigation and later on.

person will be assisted by a lawyer; however police can also interrogate the person in the absence of a lawyer[8].

- In ***Romania***, according to art. 31 of the Law no. 218/2002 on the organization and functioning of Romanian Police, in the process of carrying out their statutory duties, police officers are exercising public authority and have the following main rights and obligations: a) to legitimize and establish the identity of persons who violate laws or when there are indications that they are preparing or committing an illegal act; b) to bring to the Police office the persons who, by their behaviour, jeopardize the lives of people, public order or other social values, as well as persons suspected of committing offenses, whose identity could not be established under conditions of the law; in cases of failure to comply with the police orders.

According to the data presented above, apprehension in the EU member states is used in various forms as a measure of deprivation of liberty. There are countries where apprehension is under police competence and requires only internal decisions. In other countries, authorization of the prosecutor is required.

There are also differences in the duration of the apprehension measure, which varies from 24 to 96 hours. Depending on the country, the initial term may be extended by internal decision of police or by prosecutors.

The periods of time for taking detained persons to the police are also regulated and vary between 4 and 96 hours. Depending on the country, initial terms may be extended by a decision of the police officer who holds such powers, or of the prosecutor or magistrate.

Following the analysis of the EU Member States practices, taking/stopping a person for police interrogation is the least regulated of all forms of deprivation of liberty.

This issue is currently not sufficiently regulated, although in the process of taking the person to the police, there is risk that the person will be forced - physically and/or mentally - to give information to the police.

In general, taking the person to the police and the actions taken prior to apprehension/arrest without warrant are not regulated by law, but are subject to internal SOPs. Although SOPs are generally not considered classified documents, they represent instruments of police tactics of ***internal use*** and, as a result, public access is restricted. For this reason, Analysis Report does not make specific reference to the content of such instruments.

[8] After short-term arrest, police officers may decide to apprehend the person for 72 hours (in this case the prosecutor must be informed within 24 hours) or this decision may be taken by a prosecutor or by a local court, but only if there are real chances that the court will issue arrest warrant after expiry of this term.

Following the comparative analysis of how international and community norms on the general rights of detained/arrested persons are reflected in the national legislation, it resulted that there are no significant problems in this regard in Moldova. Therefore, legislative framework is generally well regulated (as we have already mentioned).

Similarly to some EU Member States, shortcomings in the comprehensive internal regulation at the level of MIA and GPI of the full range of situations/operations related to apprehension/arrest by police were also noticed in Moldova. This includes both situations that occur prior to the apprehension, as well as during and after apprehension. Acute shortage of SOPs to establish uniform, consistent and predictable rules was also revealed.

This marks, in fact, the major difference between the current approach of MIA of RM and the advanced international experience, characterized by the existence of developed systems of SOPs.

The above-mentioned practices applied in the EU Member States provide image of various solutions aimed at regulating the problematic of apprehension. They can provide an extensive source of inspiration for the development of the respective field in the RM, and for modelling and modernizing the necessary regulatory and operational framework.

1.3. ECtHR CASE-LAW RELATED TO RM

Analysis of ECtHR case-law focused on the violation/failure of Moldovan authorities to observe the procedures of apprehension/arrest, in the period of 2014-2016. Considering that on average ECtHR is examining an application within 4-5 years, decisions de facto refer to violations by Moldovan authorities of the right to liberty in the period 2007-2012. Also, since the national provisions on apprehension were last amended in 2016, it is worth examining the most recent cases[9].

The analysis targeted particularly cases involving illegal deprivation of liberty, keeping the person under pre-trial detention based on insufficient and abstract grounds, as well as the failure to observe the right not be subjected to ill-treatment. These situations express typical and severe violations of the rights of individuals and are based on cas-

[9] Art. 11 para. (6) of the CPC was amended based on the Law No. 100 of 26.05.16
Art. 64 para. (2), p.2) of the CPC was amended based on the Law No. 39 of 29.05.14
Art. 165 para. (1) of the CPC was amended based on the Law No. 100 of 26.05.16
Art. 166 para. (1), p.5) of the CPC was introduced through the Law No. 100 of 26.05.16
Art. 1711 of the CPC was introduced through the Law No. 100 of 26.05.16
Art. 173 para. (4) in the wording of the Law No. 100 of 26.05.16

es that emerged simultaneously from regulatory gaps and inconsistent practices of the police officers.

The following findings resulted from the analysis of ECtHR case-law against RM, outlined in Annex No. 2:

- Between 2014-2016, Moldova was repeatedly convicted for violation of Art. 3 of the ECHR, because of ill-treatment of detained persons by the police (cases Caracet, Cazanbaev, Doroşeva, Bulgaru, Gavriliţa, Buhaniuc against RM). Out of 12 cases included in the **Annex No. 2**, police was found guilty for violations of human rights in at least 8 cases.

- RM was convicted for ill-treatment of persons by police officers during apprehension, and it was stated that any physical force, not imposed by the behavior of the detained person, demeans human dignity and represents, in principle, violation of the right guaranteed by Article 3 of the Convention (see cases: Caracet, Cazanbaev against RM).

- ECtHR has repeatedly found that the national authorities have completely ignored or have not tried seriously and promptly to investigate complaints of the applicants on ill-treatment or threats of ill-treatment. Therefore, violation of Art. 3 of the Convention was also found in this respect (see cases: Caracet, Doroşeva, Gavriliţă, Bulgaru, Bughaniuc against RM).

- Only for the period 01.01.2014-31.10.2016, RM was ordered to pay **114.607 euro** (101.000 euro for moral damages; 13.607 euro for legal costs and expenses) to the applicants who addressed the ECtHR in respect of violation of the right to liberty (cases on apprehension/ arrest or ill-treatment while in police custody).

- The impact (including financial) of possible convictions of RM by the ECtHR for violations of the right to liberty (and the related rights) by the Moldovan authorities in the period 2013 - 2016 cannot be estimated. It also cannot be estimated for the future, in the situation where observance of human rights will not improve.

- Some of the most pressing issues arising from the ECtHR case-law also include the lack at the national level of accountability of the state authorities or police officers for violations that led to convictions of the Republic of Moldova. Usually, guilty police officers were not sanctioned, and no investigation or only superficial investigation was conducted.

- This attitude did not deter the abusive behavior of police officers; it favored the perception of their own infallibility and perpetuated certain elements of organizational culture, where violence and toughness are considered as ***„authentic"*** professional and ethical values.

1.4. CONCLUSIONS

a) The national legal framework regulating the rights and freedoms of detained/arrested person was considerably amended over the last decade. As a result, it generally corresponds to the European and international standards. However, the international practice of detailed regulation of specific activities of police through SOP was not assimilated yet, the fact that leads to violations of the rights of detained/arrested persons and improvisations on behalf of the staff.

b) RM has been repeatedly condemned by the ECtHR for ill-treatment of detained persons by police and for other violations of their rights. Following the convictions by the ECtHR, Moldova has paid substantial damages. However, no accountability of police and state authorities was established, the fact that led to new human rights violations.

02

ANALYSIS OF THE REGULATORY FRAMEWORK AND PRACTICES ON APPREHENSION/ARREST BY POLICE

Analysis of the regulatory framework related to apprehension/arrest by police includes analysis of legislative framework and internal normative framework of MIA.

2.1. NATIONAL LEGAL FRAMEWORK ON APPREHENSION/ARREST BY POLICE

Legislation of RM distinguishes two procedural types of apprehension:

- apprehension as coercive criminal procedural action;
- apprehension as coercive administrative procedural action.

From the whole range of legal norms regulating apprehension, in this Report we have analyzed only aspects related to the rights of detained persons. Analysis of the legal framework revealed that the Criminal Procedure Code (CPC) and the Contravention Code (CC) include necessary provisions regarding the grounds for apprehension; procedural terms; police duties to ensuring the rights of detained persons and their interrogation; competence of the criminal investigative bodies and official examining bodies.

2.1.1. ASPECTS OF THE NATIONAL LEGAL FRAMEWORK ON APPREHENSION/ARREST BY POLICE

Apprehension as coercive criminal procedural action is regulated by art. 165 of Title V of the CPC and represents deprivation of a person's liberty for a short period of time, however, not longer than 72 hours.

a) The grounds for apprehension

The person suspected of committing a crime can be detained by the criminal investigative body under the provisions of CPC, if there is reasonable suspicion that the person committed the crime for which the law provides for punishment by imprisonment for more than one year[10], as well as in other situations expressly provided by the law.

b) Procedural terms

Detained person shall be brought as soon as possible since his/her detention before the investigative judge who shall examine the issue of his/her arrest or release.

The criminal investigative body shall, within three hours since deprivation of liberty, prepare the transcript of detention[11]. Within three hours since apprehension, the person who issued the transcript shall notify the prosecutor in writing about apprehension.

Within one hour since apprehension, the criminal investigative body shall request the Territorial Office of the National Legal Aid Council or other authorized persons to appoint an *ex oficio* attorney in order to immediately provide the necessary legal assistance.

[10] According to the provisions of art. 166 para. (4) of CPC, an adult may be detained based on the grounds specified in para. (1) prior to the registration of the crime in the manner duly set forth in the law. The crime shall be registered immediately, however, not later than three hours after the detained person is brought to the criminal investigative body. If the act for which the person was detained is not duly registered, he/she shall be immediately released, except for the cases set forth in Art. 273. para. (1) point (2) of the CPC.

[11] Where the following data shall be included: the grounds, the reasons for and the place, year, month, date and hour of detention, physical condition of the detainee, complaints concerning health issues, what clothes he/she was wearing (description of his/her clothes), explanations, objections, requests of the detained persons, request to have access to medical examination, including with their own resources, the action committed by the respective person, the results of bodily search, as well as data and hour of preparing transcript.

c) Police duties in ensuring the rights of detained persons:

- a detainee shall be immediately informed about the grounds for his/her detention only in the presence of a selected defense counsel or a court - appointed attorney providing urgent legal assistance;
- the criminal investigative body shall ensure that there is a place where the detainee and his/her defense counsel can communicate confidentially before his/her first interrogation;
- if a juvenile is detained, the person conducting the criminal investigation shall immediately notify the prosecutor and the parents of the juvenile or the persons replacing them;
- a detainee shall be interrogated in line with the provisions of the CPC, if he/she consents to be interrogated.
- the apprehension body shall have the right to subject the detainee to a bodily search.

d) Interrogation of the suspect/accused

The suspect/accused shall be interrogated immediately upon his/her detention, provided that he/she agreed to be interrogated, and only in the presence of a defense counsel or an attorney providing the state guaranteed legal assistance[12].

e) Competence of the criminal investigative body and official examining body upon apprehension

Based on the CPC provisions that establish the duties of the criminal investigative bodies and official examining bodies, ***de jure*** apprehension, as coercive procedural measure, may be carried out by the prosecutor and criminal investigators.

Under the provisions of the CPC, ***de facto*** apprehension (which represents physical apprehension of the person) can be carried out by the official examining body (Police, Border Police). In this case, confirming documents, material evidence and the detainee must be immediately handed over to the criminal investigative body or the prosecutor, but no later than within 3 hours after his/her ***de facto*** apprehension.

f) Pre-trial detention

The criminal investigative body from MIA does not have competence to decide on the pre-trial detention. Moreover, according to CPC provisions, issues related to application of preventive measures represent an exclusive competence of the court. Criminal investigative body may propose to the prosecutor the selection, extension, change and revocation of the preventive measure, release of the detained suspect before authorization of arrest by the court.

Since police has no competence in respect of pre-trial detention, this issue was not addressed in terms of criminal procedure. Therefore, the analysis focused only on the current system of pre-trial detention and the functioning of PDIs, as detailed in Chapter IV of the current Analysis Report.

APPREHENSION AS COERCIVE ADMINISTRATIVE PROCEDURAL ACTION

According to art. 433 para. (1) of the CC, apprehension represents limiting the liberty of an individual for a short period of time.

a) Scope of application

According to the CC, the individual's liberty and safety are inviolable. A person liable for an administrative offence may be detained or subject to coercion only in exceptional cases and as established by the CC, and must be treated with respect for human dignity.

b) Procedural terms

Detention of a person for an administrative offence shall not exceed 3 hours, with exceptions provided by the CC. A person suspected of committing an administrative offence for which the sanction is administrative arrest can be detained until the examination of the administrative case, but for no more than 24 hours. The prosecutor shall be immediately informed about the detention.

The term for administrative arrest shall flow from the moment detention begins. A detained person shall be released if: a) the plausible reasons for suspecting that he/she committed an administrative offence have not been confirmed; b) the term of detention has expired; c) there are no grounds for further depriving the person of his/her liberty.

In case of detaining a person suspect of committing an administrative offence, CC provides that the administrative case shall be tried urgently and with priority.

c) Competence of the official examining body during apprehension

Within administrative proceedings, official examining body is entitled to apply apprehension as coercive procedural measure.

[12] The interrogation of a tired suspect, and during nighttime shall be prohibited unless the person requests an interrogation in an urgent case, which shall be justified in the transcript of the interrogation.

d) Interrogation of the person detained under contravention law

According to the provisions of the CC, the person against whom administrative proceedings were initiated has the right to be interrogated in the presence of the defense counsel, if he/she accepts or requests to be interrogated.

Transcript of interrogation is prepared in accordance with the provisions of the CC[13].

2.1.2. GENERAL PROBLEMS OF THE NATIONAL LEGAL FRAMEWORK ON APPREHENSION/ ARREST BY POLICE

Generally speaking, analysis of the criminal law, criminal procedure and contravention law related to apprehension revealed that some specific norms do not correspond to the predictability criteria and are not sufficiently clear. Therefore, in addition to the fact that there are confusions and the law enforcement process is jeopardized, there are serious impediments in the process of combating crimes. Moreover, violations of the human rights and freedoms can be generated by the lack of reliable guarantees against abuses by persons responsible for law enforcement.

This situation is confirmed by respondents' answers to the questionnaire used within the analysis (Chart 1).

Data from Chart 1 suggest that the level of satisfaction of the professionals in the field with the specific legislation in force ranges as follows: for applicability between 49% (Law No. 218/2012) and 75% (Law No. 190/1997); for relevance between 49,2% (Constitution) and 68,3% (Law No. 190/1997); for completeness between 65,6% (Law No. 59/2012) and 77% (Law No. 190/1997). It follows that the level of satisfaction with the applicability, relevance and completeness of the specific legislation is below 70%, which means that there are considerable shortcomings and improvement of the regulatory framework is necessary.

Analysis of data from Chart 2 provides relevant conclusions concerning the percentage of applicability, completeness and relevance of the legislation applicable to the criminal officers.

[13] Provisions of the Criminal Procedure Code on the means and methods for determining evidence shall be applied similarly to the contravention proceedings, with the exceptions stipulated in the CC.

CHART 1. THE EXTENT TO WHICH SPECIFIC LEGISLATION IS, IN GENERAL, CONSIDERED RELEVANT, APPLICABLE, COMPLETE

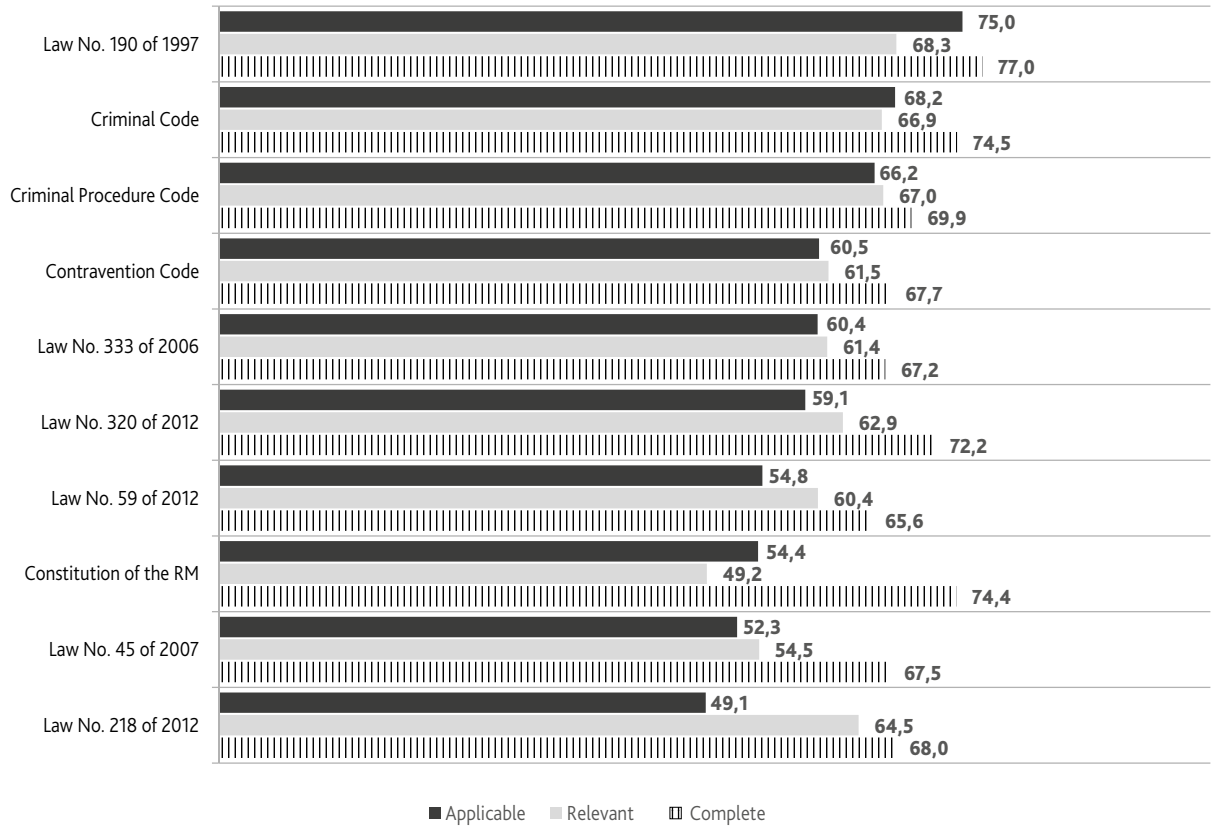
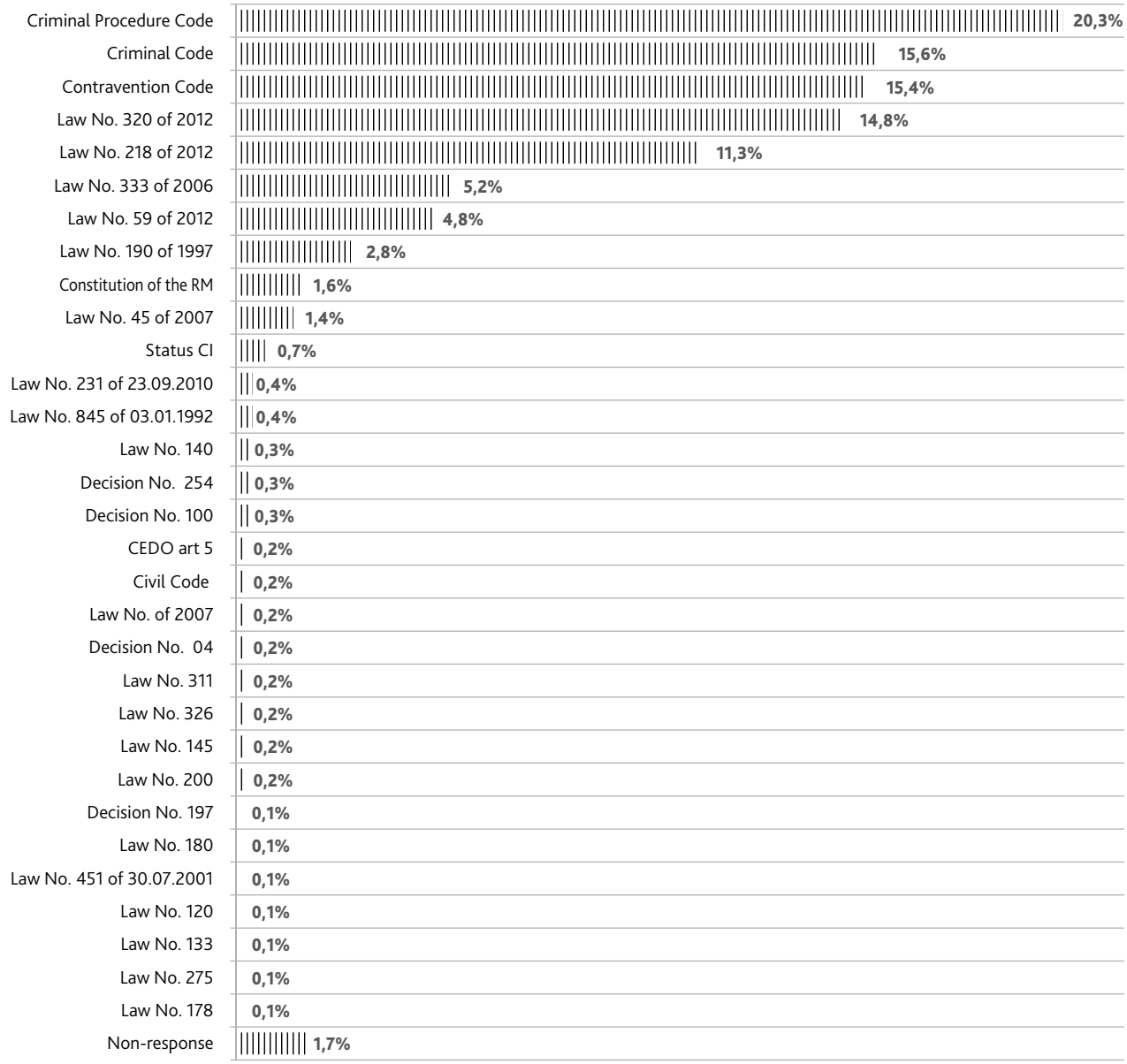


CHART 2. PERCENTAGE OF APPLICABILITY, COMPLETENESS AND RELEVANCE OF THE LEGISLATION APPLICABLE TO THE CRIMINAL OFFICERS



According to Chart 2, the following acts are considered priority acts in terms of completeness, relevance and applicability, with percentages above 11%: CPC; CrC; CC; Law No. 320/2012 and Law No. 218/2012. It is interesting to note that the status of the criminal investigator is of interest in proportion of only 0,7%, because it is probably considered inherent to the professional criteria.

Data from Charts 1 and 2 are largely confirmed by legislative problems/gaps identified within the analysis.

In addition to the regulations specific to apprehension, police officers have also added other laws and internal normative acts, when responding to the questionnaire, thus suggesting that there are even more problematic provisions. Therefore, it is necessary to assess the overall normative framework regulating MIA activity and introduce the necessary adjustments.

Respondents have expressed sufficiently conclusive views in respect to the inappropriateness of the legal regulations and their effects:

"Legislation we apply has many shortcomings, because in many cases, legal provisions are formulated in the benefit of the offender, at the same time, these shortcomings lead to multiple or diverse crimes committed by the same persons."

„Internal orders of MIA and GPI, even GD, regulating police activity have 0% value for the court and the prosecutor's office. The basic principles listed in CPC cannot be adequately ensured."

„Upon the request of the appointed attorney, there are cases when he/she is intentionally late in order for the 3 hours-term to expire."

„It is necessary to introduce amendments to the CPC in respect of the term for apprehension of a suspect of up to 3 hours from the moment of his/her deprivation of liberty. In many cases, the term from the de facto apprehension until de jure apprehension is not realistic, is too short, and this is explained by different circumstances, such as distance from the place of de facto apprehension to the police inspectorate, where the criminal investigative body has territorial jurisdiction etc. Within up to 3 hours after apprehension, the person who prepared the transcript shall submit to the prosecutor a written communication regarding apprehension, and often this term is exceeded."

„The entire mechanism related to the preventive measure against the accused and defendant (monitoring, modern means of monitoring conditions, etc.), applied based on the decision of the investigative judge in the form of ,,house arrest", is not clearly regulated by the law or by the respective guidelines. Therefore, police force is wasted to ensure this preventive measure and the risk of being compromised is major."

„In case a suspect is apprehended during night, you can stay with him/her until the morning because no one comes."

„The ex officio appointed attorney invited to come informs on the telephone that he/she will come 'tomorrow morning' to countersign the transcript of detention."

„The persons who are not apprehended or arrested according to the procedure for committing certain violations are investigated at large and in most cases, during investigation, they commit other illegal acts."

„The normative framework regulating apprehension and arrest is not complete and requires amendment of a number of normative acts; therefore police is no longer willing to apprehend the person. This encourages the offender to continue committing illegal actions."

„Criminal investigator denies apprehension of the person, because it creates many obligations, including urgent obligations that cannot be delayed and that need to be met within 3 hours and, sometimes, it is physically impossible to meet all of them."

„Basically any apprehension, although carried out with the knowledge of the prosecutor, represents a risk for the criminal investigator to be held criminally liable, and later, this circumstance allows prosecutors to request/compel investigators to carry out various criminal-procedural actions, which he/she is not required and/or competent to carry out (e.g. preparing the indictment, carrying out criminal investigative acts on behalf of the prosecutor when the criminal case is withdrawn for the direct exercise by the prosecutor etc.)."

„Police Inspectorate bears high costs in the process of establishing and sanctioning criminal offenses. It is better to punish a person administratively than to apprehend the person for stealing a telephone worth 500 lei."

„Police Inspectorates and especially local police are not provided with transport means. Thus, after the de facto apprehension, local police officer must independently identify the possibility to transport the offender placed under police custody or the apprehended person based on the order of the criminal investigative body. Thus, in many cases, the term of 3 hours from the moment of de facto apprehension is not observed etc."

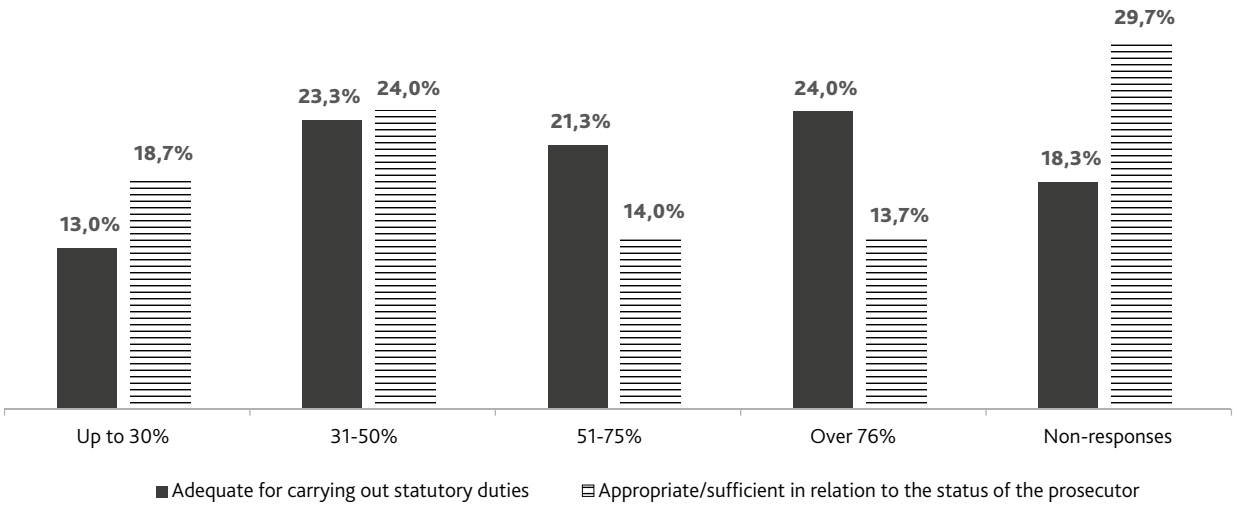
„It is virtually impossible to carry out domicile search, if the owner evades within the administrative proceedings. „Perpetrator" stays home and police knows that he/she is home and does not allow anyone to enter the house, however it is impossible to take any legal actions."

„Individuals address the senior positioned persons who exercise influence on us."

„The person, who committed an offense and was not arrested, often flees abroad."

„Increasing the term of at least 6 hours from de facto to de jure apprehension would allow legal qualification of the act."

CHART 3. PERCENTAGE TO WHICH THE CURRENT STATUS OF THE CRIMINAL INVESTIGATOR/INVESTIGATIVE OFFICER/LOCAL POLICE INSPECTOR IS ADEQUATE FOR CARRYING OUT THE STATUTORY DUTIES AND, RESPECTIVELY, IS APPROPRIATE/SUFFICIENT IN RELATION TO THE STATUS OF THE PROSECUTOR



Opinion concerning the percentage of the respondents who consider that the status of the criminal investigator/ investigative officer/local police inspector is adequate to fulfill the duties and, respectively, appropriate/sufficient in relation to the duties of the prosecutor was requested and processed statistically and globally (Chart 3). Thus, there was no disaggregation of responses based on specialities, considering that the peculiarities of the professional body ensure relatively uniform responses.

Therefore, there was not a very consistent difference between the 36% of the respondents who considered that their professional status was appropriate at the rate of up to 50%, compared to the 45% who consider that their professional status was appropriate at the rate of over 51%. Regarding the extent to which their professional status is adequate/sufficient in relation to the prosecutor's status, the balance is moving towards the group of 42,7% who consider it appropriate/sufficient in the proportion of up to 50% compared to the 27,7% who see it appropriate/sufficient in the proportion over 51%. The non-responses rate is important - 18% in terms of the adequacy of the status and 29,7% on the comparison with the status of the prosecutor.

In summary, satisfaction with the professional status is slightly higher than dissatisfaction, the majority perceive their own status as inadequate and inferior to the status of the prosecutor, and most of those interviewed (up to 1/3 of all the respondents) have not responded.

It is, therefore, necessary to further analyse the aspects of professional status, in order to identify the specific problems and achieve the necessary balance.

In relation to the level of satisfaction with the professional status, the respondents stated the following:

„In the US, the EU, statements of a police officer are equal to 5-10 witnesses. If a police officer reported about a crime, there is no need for witness statements. The word of the police officer has value."

„In most cases, police officers must buy the uniform, as well as all the necessary supplies."

„Police officers must buy everything from their own savings." „Police officers must transport offenders with their own cars".

„The employees are not provided with transport means in order to be able to move to the specific place for apprehension."

„There is an existing practice in the Police where the state does not provide you anything, if you want to work, then you just need to work; the work schedule exists only for the leadership, not for ordinary employees."

„When you complain against working conditions, the answer is 'if you don't like, you are free to leave'."

„Employees (n.n. police officers) with seniority often make mistakes and all other employees are copying them."

„Pensioners from MIA are dismissed in order to attract new personnel with new working habits and practices."

„Raising the professional level of the police collaborators (n.n. police officers)."

From the perspective of this Analysis, it is relevant to analyse the respondents' perception of the extent to which the current organizational framework in the analyzed field is appropriate and relevant (Chart 4), which is correlative to the legal system where it is functioning. Therefore, the fact that less than 2/3 of the employees consider the organizational framework related to apprehension/arrest by police as appropriate and relevant suggests that no actions were undertaken to find out the opinion of the practitioners on the de facto situation in the system and that there are significant structural and functional deficits.

CHART 4. THE EXTENT TO WHICH THE ORGANIZATIONAL FRAMEWORK RELATED TO THE APPREHENSION/ARREST BY POLICE IS CONSIDERED APPROPRIATE AND RELEVANT.

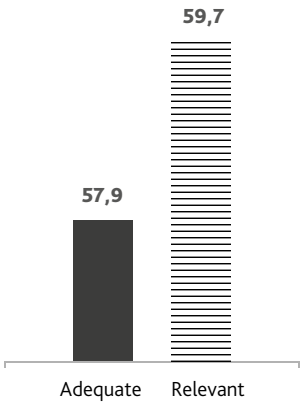
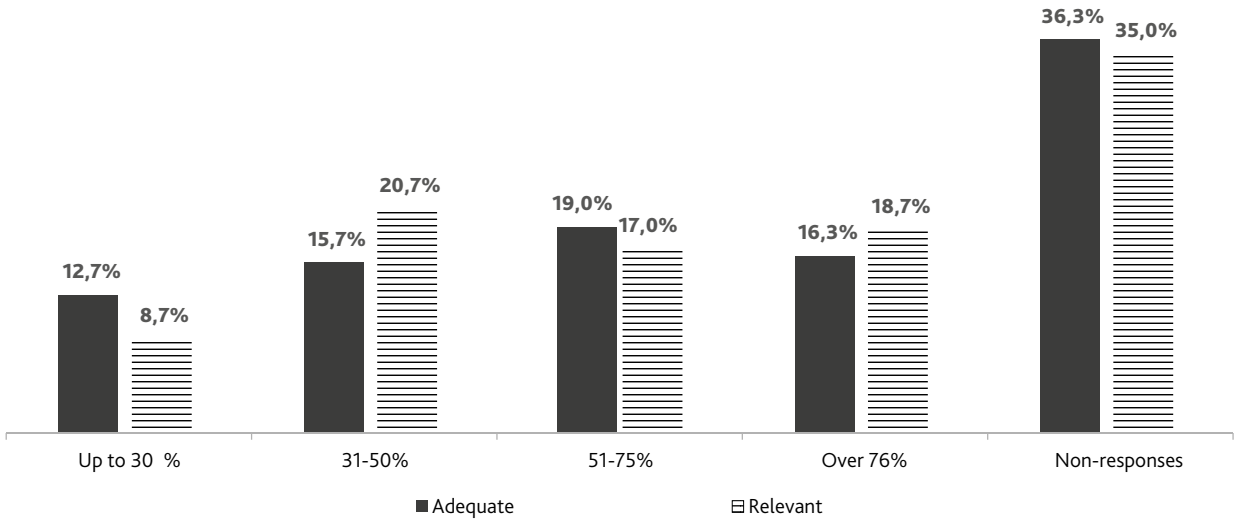


CHART 5. ANALYSING THE PERCEPTION ABOUT THE EXTENT TO WHICH THE ORGANIZATIONAL FRAMEWORK RELATED TO APPREHENSION/ARREST BY POLICE IS CONSIDERED APPROPRIATE AND RELEVANT



Analysing the perception about the extent to which the organizational framework related to apprehension/arrest by police is considered appropriate and relevant, allows formulating the opinion of the respondents (Chart 5).

About 28% of the respondents consider the organizational framework related to apprehension/arrest by police as appropriate and relevant at the rate below 50% and about 35% at the rate above 50%. Only a little over 16% of the respondents consider that adequacy and relevance amounts to over 75%.

The question about organizational framework had the highest percentage of non-responses in the entire questionnaire. This attitude contradicts the average level of the perception about the appropriateness and relevance of the organizational framework.

In other words, employees are not satisfied, but also do not speak about their dissatisfactions.

2.1.3. PROBLEMS OF THE CRIMINAL LEGISLATION REGULATING APPREHENSION/ ARREST BY POLICE

Problems related to the Law No. 320/2012 on police activity and status of police officer (further Law No. 320/2012)

The Law No. 320/2012 provides in art. 10 para. (5) p. 25 that the police officer is authorized to **detain individuals under conditions established by the law**.

Based on p. 13) of the same norm, police officer is entitled to enter freely or forcibly, **as provided by law**, and by using, if necessary, special means, any facility or property for the purposes expressly mentioned by the normative act.

It results, from the above-mentioned rules, that police officers must carry out their duties **only as provided by law**. Following the analysis of the Law no. 320/2012 and of the criminal procedural legislation, it results that the ***de facto*** apprehension procedure is not regulated in cases that cannot be delayed, in cases of apprehension of a person who immediately after committing flagrant offense is hiding from investigation at his/her residence or residence of another person and refuses to surrender to police.

Problems of the CPC

a) CPC does not regulate police actions in cases that cannot be delayed, in order to apprehend a person against whom arrest warrant or imprisonment sentence is issued, who is hiding in buildings with different destinations (situation referred to also in the previous paragraph in relation to the Law 320/2012).

b) There are no criminal procedural regulations indicating how the buildings should be entered freely or forcibly in order to detain convicted persons. We refer here to the enforcement of court judgments on the cancellation of: the conviction with conditional suspension of the execution of punishment; pre-term conditional liberation from punishment; the sentence of acquittal and delivery of the imprisonment sentence.

The absence of the necessary provisions raises the following problems for the police officers:

- The police are forced to act according to the provisions of Art. 37 of the Criminal Code - CrC (Capturing a Criminal), which removes criminal liability for offenses committed in the process of apprehending a person who has committed a crime and surrendering him/her to the law enforcement bodies.

- Police officers fear that they will wrongly interpret and apply the provisions of Art. 37 of the Criminal Code and will be liable for violation of privacy. Therefore, police officers prefer to detain persons in public places, and consider this to be the simplest and safest procedure for them.

In relation to the above-listed aspects, police officers have mentioned the following:

> **„It is necessary to introduce amendments to the CPC in the part related to the forced bringing of a person, because, without authorization of the investigative judge to detain a person (which is accepted only after carrying out a number of bureaucratic procedures: summons, evidence, etc.), and only based on the apprehension order, it is impossible to conduct procedural actions in the suspect's property. Therefore police officers must wait for an opportunity to detain the person outside his/her property."**

- Depending on the circumstances, police officers are using the mechanism provided by art. 125 para. (2) and (4) of the CPC. According to this mechanism, in case of a flagrant crime or in case of circumstances that cannot be postponed, a search, to find a person, may be carried out based on the prosecutor's order without authorization of the investigative judge, or, when necessary, with his/her authorization;

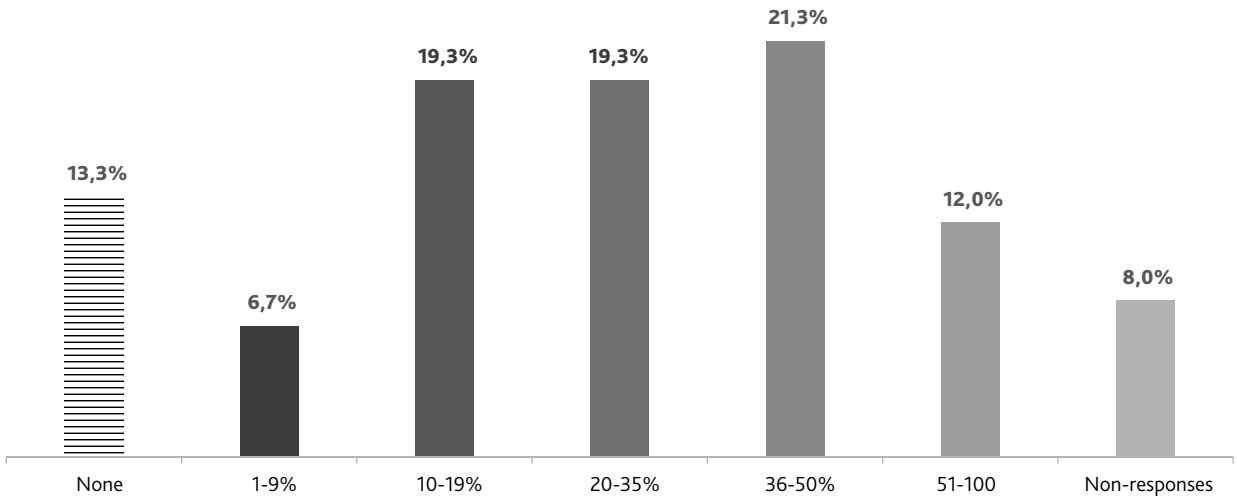
This mechanism, however, has a number of shortcomings:

- can only be applied during criminal investigation stage and only when the person is officially under search and arrest warrant has been issued;
- is difficult to implement because police officer needs to supervise the house without entering it, until the prosecutor or investigative judge issues the respective acts, the fact that reduces the efficiency, especially during night;
- the procedure cannot be applied after imprisonment sentence is issued.
- in order to prosecute and detain the perpetrator in the house, without delay, in case of a flagrant crime, including the person prosecuted against whom arrest warrant or imprisonment sentence were issued, the police officer should not be guided only by the provisions of art. 37 of the Criminal Code.

This norm regulates only the conditions for releasing a person from criminal responsibility for the committed offence in order to detain the perpetrator, but not the procedure prescribing the algorithm of the activities for entering the house and carrying out the ***de facto*** apprehension.

c) the criminal procedure law does not regulate the procedure of executing the apprehension order, the apprehension

CHART 6. TO WHAT EXTENT LEGAL PROTECTION OF POLICE OFFICERS INVOLVED IN ARRESTS/DETENTIONS IS ENSURED



order for charging the person and the apprehension order for detaining the accused person until his/her arrest. Therefore, most criminal investigators and investigative officers have doubts whether these procedural acts enable police officers to enter the residence and ensure their enforcement. It is obvious that under these orders, police officer cannot enter the residence in order to detain the person.

In this context, it is relevant to find out the opinion of the respondents about the extent to which legal protection of police officers involved in arrests/detentions is ensured (Chart 6).

Thus, 80% of the respondents believe that legal protection of police officers is ensured under 50%. Out of them, 13% believe that there is no protection, and about 40% perceive that legal protection is ensured under 20%. These percentages are worrying and express the alarming situation in the field. This perception may explain the attitude of ***"non-combat"*** mentioned above, which means that police officers avoid actions where they may face legal issues.

In relation to the legal protection of police officers, the respondents stated the following:

„Police officers do not benefit of any legal protection, those who plead for it are forced to choose between freedom and self-defense, which, according to the prosecution office, is classified as torture against citizens."

„Suspects/accused persons have many rights comparing to police officers, while the latter have no rights, but only obligations."

„When police officers are insulted or abused, they have no rights, they do not benefit of any legal protection or legal assistance and are not entitled to use physical force or special means (in case of ill-treatment/ violence applied by citizens), and this leads to the '0' authority of police (below any limit)."

„The syndrome of 7 April still persists and, when detaining a person, investigative and local police officers hesitate to apply special means or proportional physical force for the fear of not being subjected to criminal or disciplinary investigation."

„If problems emerge as a result of apprehension, police officers enjoy no protection, and leadership of the institution usually tells them 'Go and clarify the situation yourself'.

„The state must intensify the protection measures of police officers and their family members."

„When using physical force, special means and firearms, police officers must carry video, audio, legalized equipment (means)."

„Once special means, physical force, weapons are applied, police officers have more headaches, reporting, etc., and they are still guilty."

„Police officers almost never apply firearms, even in cases of extreme necessity. Police officers are afraid to pull the gun from the holster because of our legislation, and because after using weapons, they will need to spend the whole day at the prosecution office."

„According to the Law on the status of the criminal investigator, it is prohibited to use OUP in the activities for maintaining public order, however, please show me at least one police station where this rule is observed ???"

„Actions of police officer are presumed to be legal neither by the citizens nor by prosecutors and courts."

„Police officers do not benefit of any legal assistance, not to mention qualified legal assistance. After analysing the case-law resulting from the disputes between MIA and citizens, and between MIA and ex-employees, most of court decisions are issued against MIA. Probably there is no one to provide legal assistance to MIA employees (n.n. guards) who are involved in legal proceedings for their actions/documents/procedures carried out in the process of exercising their responsibilities and for the implementation and application of the laws and normative acts."

„You always come with the polls, questions, please tell me when the views of the practitioners, and not of those who „make reforms" in office but have not worked a day in the territory, will be taken into account."

„The vast majority of local officers exercise their duties without wearing a weapon, which they receive from the Inspectorate only for the night service. Vigilance and the quality of actions is directly determined also by this fact."

„The Law on the application of physical force, special means and firearms (218 of 10.19.2012) is not properly enforced by the police. There is no departmental framework for law enforcement, no instructions are elaborated, no appropriate training is conducted, and professional training, carried out in inspectorates on a weekly basis, is largely limited to football and volleyball."

„At the workplace and when on duty, police officers are maltreated, are called with uncensored words, are threatened with physical violence and have their uniform damaged."

„I have detained a person during night and I brought him to PI with my personal car, I asked for an attorney, who was not present at work. I had to beg him to come and he came at 01:00. I left home at 03.00 a.m. and I had to come to work at 08.00 a.m."

„Personally, I was called with uncensored words and physically assaulted during detention. My supervisors did not pay attention to this fact, but only to the apprehension procedure."

„The police officer was beaten, and his office car was overturned."

„In mun. Chişinău, in 1998, sect. Râşcani, a police officer was killed with his own weapon."

„The person was detained at night without witnesses. During apprehension he had intentionally hit his head over the door of the service car. Police employees were subsequently sanctioned because their reports were not credible."

„Police employee was hit by car – court sentence provided 160 hours of unpaid community service (sentence from Taraclia court, 2016)."

d) Art. 166 para. (3) of the CPC provides that detention of a suspect may be ordered if there are reasonable grounds to believe that he/she will evade a criminal investigation, prevent the finding of the truth or will commit other crimes.

Considering that this norm is equivocal, a number of opinions were formulated in the criminal investigation practice, such as:

- some practitioners argue that detention of the suspect may be ordered even if there is no ground (risk) referred to in Art. 166 para. (3) of the CPC, if legal conditions are met and if there is at least one ground for detention listed in Art. 166 para. (1) of the CPC, therefore it is not necessary to meet all conditions cumulatively;

- other practitioners, on the contrary, argue that detention of the suspect may be ordered only when all grounds provided by Art. 166 para. (1) and para. (3) of the CPC are met cumulatively, considering that they are closely linked and should be applied only cumulatively.

e) CPC operates with two concepts of detention – ***de facto***[14] and ***de jure***[15]. Legal provisions are not clear about the time when the right to information of the detained person should be observed.

CPC[16] provides that apprehended or arrested person shall be immediately informed about his/her rights and the grounds of apprehension or arrest, about the circumstances of the case, as well as legal qualification of the act for which he/she is suspected or accused, in the language he/she understands, in the presence of a selected defense

[14] Art. 274 para. (4) of CPC

[15] Art. 166-167 of CPC

[16] Art. 64 para. (5); art. para. (2) p. 11), art. 66 para. (2) p.1) of CPC

counsel or attorney who provides the state guaranteed legal assistance.

Considering that this norm has equivocal content, a number of opinions were formulated in the criminal investigation practice, such as:

- some criminal investigators consider that ***de facto*** apprehended persons should be informed about the grounds of apprehension and some minimum rights immediately after their physical apprehension, especially when criminal investigation actions are conducted immediately after apprehension;

- other practitioners consider that the apprehended person should not be informed immediately during the ***de facto*** apprehension, at the place of ***de facto*** apprehension, about the grounds of apprehension and the minimum rights, because this procedure is regulated for the ***de jure*** apprehension, i.e. at the stage of preparing the transcript of detention at the headquarters of the criminal investigative body.

f) Art. 166 para. (4) of the CPC provides that the person shall be released immediately, except as provided by Art. 273 para. (1) p. 2) of the Code, if the crime was registered after three hours from the moment of bringing the detained person to the criminal investigative body. The problem is that Art. 273 para. (1) of the CPC is not clear, and those who apply the law are confused.

g) CPC provides that the person suspected of committing a crime for which the law provides for imprisonment of more than one year, when there is reasonable suspicion that he/she committed this crime, can be detained based on a transcript of detention or order of detention. However, it is not specified in which cases transcript of detention and order of detention shall be prepared. Thus, during the detention of the suspect, some criminal investigators prepare only transcript of detention, while others prepare, simultaneously, transcript and order of detention.

h) CPC provides that the criminal investigator is responsible to instruct the police or other competent authorities on detention. The law however does not establish in which circumstances the criminal investigator can issue instructions and what rights they confer to the Police. It should be borne in mind that the provision of detention of the person is not regulated in the CPC as a procedural act.

i) Criminal investigators cannot execute the provision of the CPC stipulating that the person who prepared the transcript of detention must submit a respective written communication to the prosecutor, within up to 3 hours after detention.

Written communications cannot be sent to the prosecutor, especially at nights or on days off, because secretariat of Police and Prosecutor's office is not working. Thus, criminal investigators are initially limited only to informing the prosecutor by phone about the detention.

Art. 64 para. (2) p. 12), and, respectively, art. 66 para. (2) p. 13) of the CPC provides that suspect/accused shall notify one of his/her relatives or any other person about the place of his/her detention *through the criminal investigative body*. On the contrary, Art. 173 para. (1) of CPC, provides that *„the person who issued the transcript of detention shall immediately, but not later than within six hours, provide the detainee with the possibility to notify one of his/her close relatives or any other person suggested by the detainee about the place of his/her detention…".*

j) CPC provides that, should a person be detained by an official examining body, the transcript on the crime, the material sources of evidence and the detained person shall be sent to the criminal investigative body or to the prosecutor immediately or no later than within three hours after the person was ***de facto*** detained.

Therefore, if the detainee is brought to the criminal investigative body after 2 hours or close to the expiry of 3 hours after the ***de facto*** apprehension, the criminal investigative body will not be able to physically enforce the provisions of CPC indicating that the transcript of detention must be prepared within up to 3 hours from the moment of depriving the person of the liberty.

However, CPC stipulates that, within one hour after detention of a person (meaning ***de facto*** apprehension), the criminal investigative body shall request the Regional Office of the National Council for the State Guaranteed Legal Assistance to appoint an attorney to provide urgent legal assistance.

k) The legislation does not provide for ***„preventive bodily check action"*** during the ***de facto*** detention of the person suspected, accused or convicted for committing a crime. The so-called bodily check during the ***de facto*** detention is carried out arbitrarily by the majority of police officers to ensure that the detainee has no objects or weapons that would pose threat to their own or others' safety. Police officers are entitled to carry out preventive bodily check only in respect of persons participating in public assemblies or in other places where the access with weapons, hazardous goods or substances and their baggage is banned and in respect of persons who are unconscious and whose identity, as well as identity of their baggage needs to be checked[17].

[17] Art. 25 para. (5) p. 5), 6) of the Law no. 320/2012 on the activity of police and the status of police officer

Thus, police officers are disadvantaged comparing to the DCT, who is entitled to check the goods carried by persons:

- suspected of committing crimes;

- who have committed crimes and try to leave from the scene of crime or who do not have identity papers and are suspected of committing crimes;

- who have committed crimes against protected targets[18].

2.1.4. PROBLEMS OF THE NATIONAL CONTRAVENTION LEGISLATION REGULATING APPREHENSION/ARREST BY POLICE

a) According to the CC, apprehension of a person for an administrative offence shall not exceed 3 hours, with exception of cases provided by the same Code. At the same time, CC stipulates that a person suspected of committing an administrative offence for which the sanction is arrest can be detained until the examination of the case but for no more than 24 hours.

Thus, if the offender does not have ID (the person is undocumented), within the term set for apprehension, official examiner cannot draw up the transcript of the administrative offence, because, according to the CC, transcript of the administrative offence shall necessarily include the full name, address, occupation and ID details of the offender. Also, according to the legal provisions, the failure to include the data and facts indicated in the CC in the transcript of the administrative offence leads to its nullity.

b) Although the CC empowers official examiner to apply apprehension, this coercive measure however cannot be applied by any official examiner of the authority competent to resolve administrative cases. According to Art. 433 para. (2) CC, apprehension shall be ordered by: Police, Border Police (in cases of violation of the border regime or of the state border crossing point regime) and the Customs Service (for administrative offences under its competence).

c) According to the CC, a person who does not speak the state language shall be entitled to take knowledge of all the documents and materials in the case and to speak before the authority competent to resolve the case through an *interpreter.* At the same time, CC also establishes that the procedural acts of the authority competent to resolve the administrative case shall be handed over to the person against whom the administrative offence proceedings were initiated and shall be *translated* in the language that he/she speaks as established by the Contravention Code. Therefore, it is not clear for the official examiner when the ***interpreter*** and when the ***translator*** should be provided.

d) Art. 433 para. (1) of the CC provides that detention shall be applied in cases of: flagrant administrative offences for which the Code stipulates administrative arrest; the impossibility of identifying the person against whom administrative proceedings are initiated if all measures of identification have been exhausted; in case of administrative offences warranting expulsion.

On the other hand, it results from Art. 435 para. (4) that the authority competent to examine administrative cases may detain persons who committed administrative offences and who are not sanctioned with administrative arrest. Because of these contradictions, official examiners have serious problems in the application of the law.

Police officers voiced the following opinions in relation to the contravention legislation:

„Administrative file is excessively bureaucratic and difficult to manage (amendments to the law are required)."

„It is necessary to amend the CC in order to increase the number of cases where administrative arrest may be applied (situation from the old version of the law). This will also increase the accountability of the perpetrators."

„Administrative transcript is not sufficiently developed. It needs to be reviewed, as there is one template both for road traffic administrative offences, as well as for other categories of administrative offences examined by the local police officer."

„Contravention Code needs to be amended in respect of the amount of the fines. For some violations, fines are too low and, when paid within 72 hours, they seem derisory and do not ensure proportionality of the punishment with the seriousness of the offence."

„There are situations when the detained person intentionally does not want to disclose his/her identity and does not have any identity documents. In these situations, there is risk that the term of 3 hours for detention will not be met. The official examiner, local police officer must be properly equipped with means of identification in order to facilitate case management according to the legal norms."

[18] Letter d) Art. 13 of the Law on Carabineri troops

2.1.5. CONCLUSIONS

a) Police officers questioned within this analysis concluded that there are deficiencies regarding the relevance, applicability and completeness of legislation related to the apprehension/arrest by police. It follows, accordingly, that the police have difficulties in implementing the regulatory framework, which creates the risk of improper exercise of their duties and the failure to observe the rights of detained persons.

b) There is a high level of dissatisfaction among the criminal investigators/investigative officers/local police inspectors with their own professional status, in comparison to the status of prosecutors, as well as in terms of the legal protection of police officers involved in arrest/apprehension of persons. As a result, problems of the status and inadequate legal protection generate deficiencies in carrying out their functional duties, as well as frustrations that may affect the quality of public service.

c) The Law 320/2012 provides that police officers are authorized to detain individuals as regulated by law and to enter any premises or property in order to fulfil their statutory duties in the manner established by the law. The legislation, however, does not establish the de facto apprehension procedure for all possible generic situations. As a result, the rights of persons are violated by the police, and the police officers are forced themselves to commit illegalities.

d) Certain criminal norms governing apprehension do not correspond to the principles of clarity and predictability. In regulating apprehension, CPC has a number of ambiguities, regulatory shortcomings, contradictions and repetitions of the same norms from different legal perspective. For these reasons, there are confusions in terms of interpretation and application of the law, the practice is not uniform and the rights of detained persons are violated. Also, police officers are forced to commit themselves illegalities or avoid exercising their duties due to the risk of violating the law, the fact that affects the quality of public service and the authority of justice.

e) CC includes certain ambiguous norms, the fact that might potentially lead to violations of the rights of persons and to irregular actions by police officers.

2.2. INTERNAL NORMATIVE FRAMEWORK OF MIA REGULATING APPREHENSION/ARREST BY POLICE

2.2.1. ASPECTS OF INTERNAL NORMATIVE FRAMEWORK OF MIA REGULATING APPREHENSION/ARREST BY POLICE

National legal framework is not intended to cover or to substitute internal regulations of MIA, which are necessary for detailing the current activity of police officers responsible for apprehension of persons. It is, therefore, necessary for MIA to elaborate a robust body of internal regulations to ensure the necessary quality of activities related to apprehension/arrest by police.

In the process of analysing the internal normative framework of MIA, documentation effort of experts was focused on the practical aspects and with direct implications on the observance of the rights of individuals and the current policing activity.

The following four categories of problems, mentioned above in the Analysis Report, were described as less regulated both at the international level and by MIA in the RM:

- the procedure of apprehension of persons and management of apprehension, which means the conceptual and action management of the cycle of operations subsumed to the apprehension process; observance of the rights of detained persons at this stage;

- the actual procedure of transporting detained persons and transportation management, which means regulation/carrying out of specific activities; observance at this stage of the rights of detained persons; solving various situations that may arise during transportation (related to transported persons and police officers); organization and functioning of escorts; mobility means used and their arrangement;

- the actual procedure of placing persons in PDIs, which includes the procedure of bringing persons to police; delivery-reception of persons; healthcare; ensuring the rights of detained persons at this stage;

- the actual procedure of detention and management of detention, which means ensuring security of PDIs, of apprehended/detained persons and police officers; observing the rights of apprehended/detained persons at this stage; escorting outside PDI; administrative management of the detention facilities; sanitary conditions; feeding; accommodation; PDI logistics.

By using a suggestive analogy, internal regulations of MIA must be precise, detailed and relevant, similarly to the protocols used in hospital management. A clarification how-

ever needs to be made here, if the joint effort in medical institutions aims at ensuring the health of people, in case of detention in PDIs, the interests are often contradictory and can result in conflicts.

As a general matter, analysis of the internal normative framework of MIA regulating the issues of apprehension/arrest by police revealed acute shortage of internal documents (orders, dispositions, instructions, regulations, guidelines, SOPs etc.) to practically guide the police officers exercising various tasks in the process of apprehension of persons.

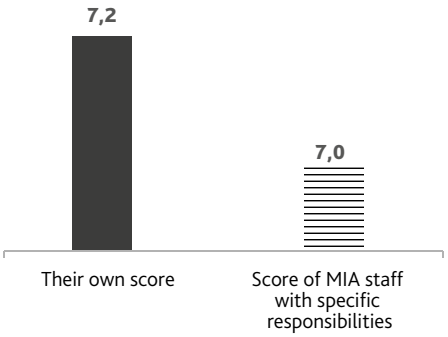
As a result, police applies criminal procedure legislation and related legislation without any methodological and procedural support which should be provided by the internal rules of MIA.

This aspect represents the most significant legal and operational deficiency, which is probably among the most important reasons for violation of the rights of detained persons and of the procedural errors committed by police officers.

The issues related to ***professional training*** can be added to the issues of inconsistent internal regulation of apprehension/arrest by police. They are closely related to the regulatory framework – if there are no sufficient, clear and detailed rules, professional qualification of the staff will not exceed their degree of accuracy and detailing (we did not take into consideration here the deficit of initial training within MIA).

Besides, the interviewed staff assessed its own professional qualification at the score of 7,20 and qualification of MIA staff with specific responsibilities in the field of apprehension/arrest by police at the score of 7,00 (Chart 7).

CHART 7. ASSESSMENT OF THEIR OWN PROFESSIONAL QUALIFICATION AND ASSESSMENT OF PROFESSIONAL QUALIFICATION OF MIA STAFF WITH SPECIFIC RESPONSIBILITIES IN THE FIELD OF APPREHENSION/ARREST BY POLICE

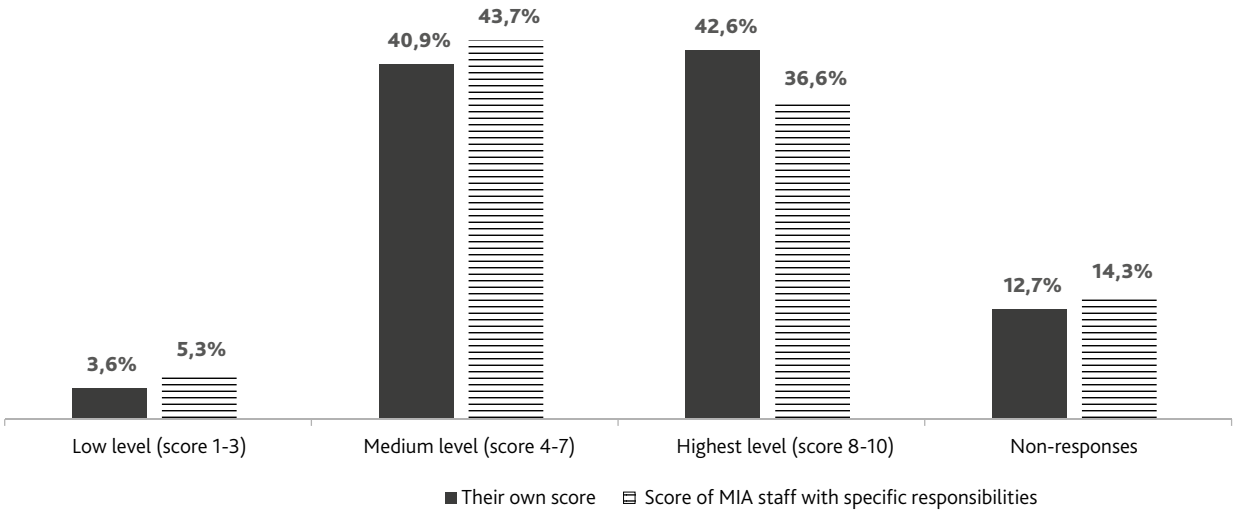


Non-responses are estimated at 12,7%-14,3%, a percentage that can express either difficulties of self-evaluation, lack of interest or improper assessment of the need for professional qualification.

3,6% of the respondents assessed their level of professional qualification as low and 5,3% rated similarly the whole system (Chart 8).

40,9% of the respondents assessed their level of professional qualification as mediocre (score from 4 to 7) and the level of professional qualification of all staff with specific responsibilities in the field of apprehension/arrest by police – with a slightly higher percentage.

CHART 8. ASSESSMENT BY THE STAFF OF ITS OWN LEVEL OF PROFESSIONAL QUALIFICATION AND PROFESSIONAL QUALIFICATION OF THE STAFF WITH SPECIFIC RESPONSIBILITIES IN THE FIELD OF APPREHENSION/ARREST BY POLICE



Internal regulations of MIA in the field of apprehension/arrest by police (by the date of adoption) are the following:

a) Joint Order of MIA and the Ministry of Health no. 17/20/2002 on approval of Guidelines on providing medical, sanitary and anti-epidemic assistance to the detained and arrested persons in PDI.

b) Order of the Minister of Internal Affairs (OMIA) No. 5/2004 on approval of Regulations of police service for guarding and escorting detained and arrested persons; Instructions on the working regime of PDIs within police commissariats; Regulation on internal order within PDI of the police commissariats.

c) OMIA no. 223/2012 on approval of Instructions on activity of PDI of MIA.

d) Instructions on organization of criminal investigative activity within GPI of MIA, approved by the Order of the GPI no. 138/2013

e) Regulation on the procedure of identification, recording and reporting of alleged cases of torture, inhuman or degrading treatment, approved by the interdepartmental Order no. 572/408/1589/639-O/1331/2013.

The Order was signed by the Prosecutor General Office, Ministry of Justice (MoJ), MIA, Customs Service, National Anti-Corruption Center and the Ministry of Health in order to implement provisions of art. 3 of the ECHR; recommendations of the UN Committee against Torture; CPC of RM; Enforcement Code of RM).

f) OMIA no. 311/2015 on approval of the Regulation on professional intervention of the employees with special status from MIA.

2.2.2. PROBLEMS OF INTERNAL NORMATIVE FRAMEWORK OF MIA REGULATING APPREHENSION/ARREST BY POLICE

After analysing internal normative framework of MIA regulating apprehension/arrest by police, the following problems were identified:

a) As it has already been mentioned, internal normative framework of MIA regulating the initial moment of apprehension and ensuring consistent management of the apprehension process is almost non-existent. OMIA regulates apprehension, as an activity by itself, only indirectly and tangentially. As a result, norms apply based on interpretation and analogy, the fact that raises many legal and practical problems for the police officers who have responsibilities in this field.

There are also aspects of police tactics and procedural aspects that are not regulated or are regulated only superficially and that depend on the knowledge, experience, conscientiousness and decency of individual police officers. Such aspects include: how to conduct inspection of documents; how to carry out handcuffing in different situations and in a manner not causing suffering; whether to carry out body search and how; what should be done when there are several persons to be detained; how to take a person to the police office; how to solve various incidents, such as sudden medical problems and various needs of persons taken to the police; how the rights of persons are ensured at this stage; how the security of police officers is ensured; how to proceed in case when there is no possibility to communicate in the language known by persons and policemen; in what position the person should be taken to the police office, on foot and by transport; how the person is transported when police has no transport means available etc.

b) OMIA no. 5/2004 regulates key aspects of police service for guarding and escorting detained and arrested persons, sets out the working program and internal order of PDIs that belong to the police commissariats.

OMIA no. 223/2012 on approval of Instructions on the activity of PDI within MIA brought a number of additional provisions. According to the practitioners, it is necessary to elaborate one single comprehensive normative act in this field that would generate elaboration of SOP.

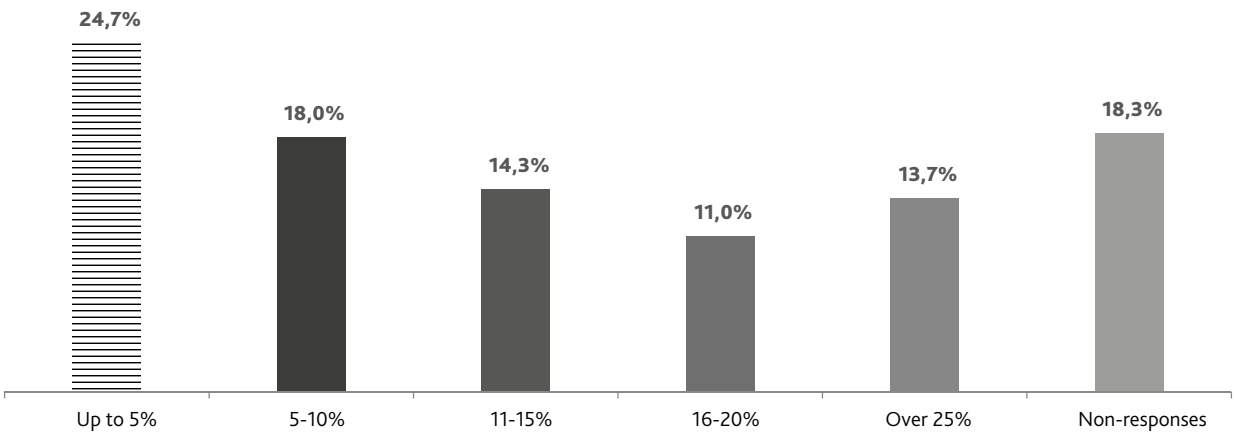
The two normative acts mentioned above are conceptually outdated and do not regulate in details the activity of the police. Apparently the two normative acts do not regulate simple details, such as: the differentiated responsibilities of police officers standing in front and behind the escorted detainee or the number of female police officers who need to be included in escort vis-a-vis the number of escorted women. Also, it is necessary to regulate such details as the walking on the stairs: whether it should be carried out along the wall or at the external edge of the stairs. **And** such examples may continue.

Normative acts also do not regulate how police officers should act in special situations, particularly during escort, transport and at the court, such as: in case of a stroke/heart attack of a detainee; in case of unexpected physiological needs; in case of an attempt of some individuals to pull out the transported person from the MIA vehicles or court premises etc.

Regulatory and operational shortcomings also exist in respect of management of detention, issues that were described in detail in the chapter dedicated to the analysis of specific problems.

Therefore, there is certainly an acute shortage of operational regulations and documents on police ethics in the field of apprehension/arrest, as well as observance of the rights of persons subjected to these measures.

CHART 9. PERCENTAGE OF USING PRACTICES IRREGULAR TO THE ANALYZED FIELD IN THE OPINION OF POLICE OFFICERS



The absence of details within the internal normative framework on apprehension/arrest by police often obliges police officers to work based on inherited practices and precedents, and not based on strict internal regulations.

As a result, there are subjective interpretations, and violations of human rights occur both during apprehension, as well as subsequently. Also, police officers continue to commit unintentional operational errors.

This finding is also supported by the assessment of police officers of the extent to which irregular practices are used (Chart 9). Thus, 42% of the respondents consider that practices used are irregular in the percentage of up to 10%.

A similar number of police officers confirmed that irregular practices are used in the percentage over 11%. At the same time, 13,7% of the respondents considered that the share of irregular practices is over 25%, which can be considered worrying. It is, therefore, necessary to introduce measures of precise identification and urgently remove all the shortcomings.

Respondents stated the following in relation to the internal normative framework of MIA:

„It would be necessary to develop a unified regulation for GPI of MIA, which should be ample and concrete, should include specific procedures of police activity, with detailed description of the operation."

„De-bureaucratisation of the operative investigation activity."

„I would exclude the unclear terms from the regulation, to include only the expressly regulated procedure, which could not be misinterpreted by the initiators of internal investigation, prosecution, court."

c) It is necessary to also point out that the orders, instructions, etc. are regulating ***what needs to be done*** and not ***how*** various activities ***should be carried out*** in technical terms, in details, based on systematized and algorithm-based successive operations. This requires elaboration of SOPs, as formalized instruments that should include methods used on a regularly basis for carrying out current activities and resolving situations specific to apprehension/arrest by police.

Discussions with experts showed that the concept of SOPs is not clearly understood, and there is confusion of SOPs with instructions/orders regulating various operational aspects. It is, therefore, considered that the existence of orders/instructions/methodologies is sufficient for carrying out the activity. This is explained by the lack of the practice of detailed regulation of activities in the algorithmic system specific to SOP, which leaves room for subjectivity in carrying out the duties of police officers, affecting thus their quality and predictability. The problem is very sensitive, given the particular aspects of apprehension/arrest by police, which require highly professional approach to cases.

In MIA, the process of SOP elaboration is at an early stage, requiring extensive and rapid development and support (including external) for standardization across all segments of the activity - administrative, operational and technical.

The problem of generalizing the system of elaboration and implementation of SOP does not exclusively belong to the departments, because standardization requires unitary approach at the ministerial level. We consider that it is necessary to elaborate inter-departmental and even inter-institutional SOP. It is necessary, therefore, to establish ministerial standardization structures, with correspondents at the departmental level, to establish uniform methodology for developing SOPs and initiate the process of elaborating standardized instruments.

In early 2016, the GPI has initiated the process of regulating its fields of activity by SOP, however the list of topics did not include apprehension/arrest by police.

2.2.3. CONCLUSIONS

a) Internal regulatory framework on apprehension/arrest by police is outdated and incomplete. As a result, police officers frequently work according to the inherited practices and precedents and not based on strict internal regulations. Therefore, there are subjective interpretations, inconsistent practices are used and violations of human rights occur both during apprehension and subsequently.

b) There is no SOP on apprehension/arrest by police. For this reason, the tasks are not carried out based on algorithm, there is room for subjectivity in carrying out the tasks, the quality and predictability of activities is affected, and there is room for possible violations of the rights and inconsistent actions of police officers.

03

ANALYSIS OF THE OBSERVANCE OF THE RIGHTS OF DETAINED PERSONS

3.1. THE RIGHTS OF DETAINED PERSONS REFLECTED IN THE NATIONAL LEGISLATION

CPC and CC, as well as international and European legislation, distinguish a number of basic rights of persons subjected to apprehension as coercive procedural measure.

These 8 rights are the following:

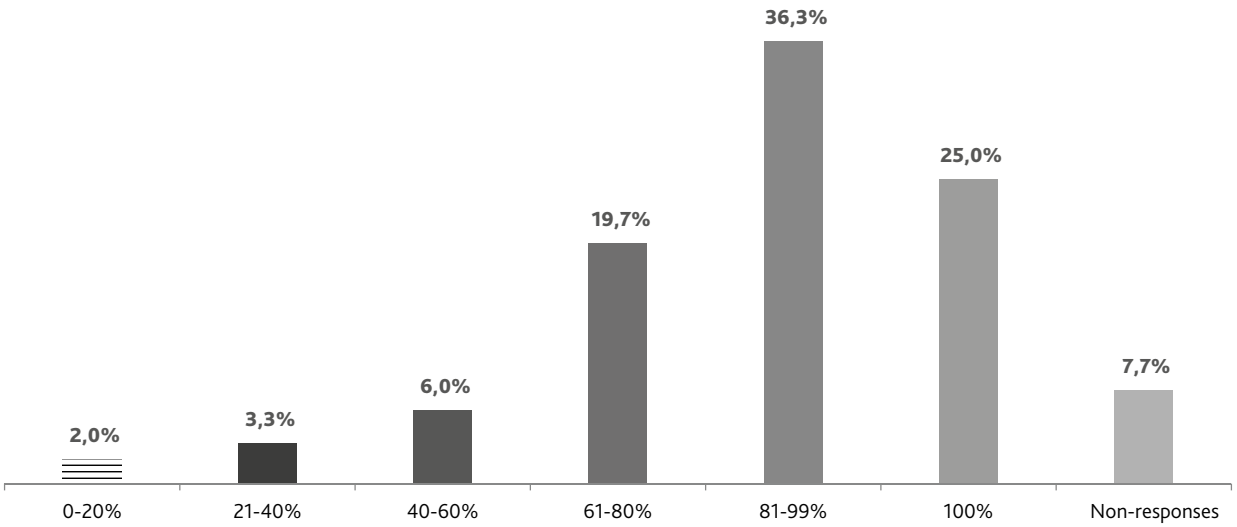
a) the right to information;

b) the right to defense;
c) the right to translator/interpreter;
d) the right to silence (the right not to self-incriminate);
e) the right to health care;
f) the right to notify relatives and other persons about apprehension;
g) the right not to be subjected to ill-treatment;
h) the right to submit complaints.

Responses to the questionnaire used within the study provided relevant data on the perception of police officers about the extent to which human rights of detained persons are observed (Chart 10).

It is noticeable that perception is predominantly positive. Thus, 81% of the respondents consider that the rights of detained persons are observed in percentage of over 60%, and 25% see them fully observed. This assessment, which is inconsistent with the actual reality (convictions of RM by the ECtHR and 598 complaints against police officers filed by persons detained only in 2015) expresses that there is

CHART 10. PERCENTAGE OF ENSURING OBSERVANCE OF HUMAN RIGHTS OF PERSONS DETAINED BY THE POLICE



either serious error of perception or exaggerated ***institutional patriotism***. About 11% of the respondents assessed, however, that the rights are observed in the proportion of up to 60% and other 20% - between 61-80%. As a result, 1/3 of the respondents have correct understanding of the fact that there are still significant shortcomings in the observance of the rights of detained persons.

a) Right to information

According to the provisions of the CPC, the criminal investigative body shall, within three hours from the moment a person is deprived of his/her liberty, prepare the transcript of every case of detention of persons suspected of committing a crime, where the data provided by law should be indicated.

According to the provisions of the CC, the person subjected to administrative proceedings enjoys, overall, the general rights of the detained person.

b) Right to defense

Art. 26 of the Constitution of the RM regulates and guarantees the right to defense.

CPC provides the right of suspect/accused/defendant to be assisted or, as the case may be, represented by a defense counsel of their choice or by an attorney providing state guaranteed legal assistance. The criminal investigative body and the court must ensure the right of the suspect/accused/defendant to professional legal assistance by a defense counsel of their choice or by an attorney providing state guaranteed legal assistance, who shall be independent of these bodies.

Based on the provisions of CPC, reasons of apprehension shall be immediately communicated to the detained person only in the presence of the defense counsel of their choice or an attorney providing state guaranteed legal assistance. The criminal investigative body shall also ensure that there is a place where the detainee and his/her defense counsel can communicate confidentially before the first interrogation.

According to the CC, during administrative proceedings, the parties shall have the right to be assisted by a defense counsel (attorney), and, within maximum 3 hours from the moment of detention, persons suspected of committing an offence sanctioned with administrative arrest who do not have a defense attorney of their choice shall be assigned an attorney providing state guaranteed legal assistance.

c) The right to translator/interpreter

CPC, in Title I, Chapter II, art. 16 para. (1), regulates general principles of criminal proceedings, including the obligation to conduct criminal proceedings in the state language.

The respective norm also establishes that a person who does not speak the state language has the right to examine all the documentation and materials of the case and to speak before the criminal investigative body and the court through an interpreter. The procedural acts of the criminal investigative body and the court shall be handed over, according to the same Article, to the suspect/accused/defendant, and be translated in the native language or other language he/she speaks.

The obligation to immediately inform the person detained based on administrative offence about the reasons for apprehension in a language which he/she understands, also results from the provisions of CC.

d) The right to silence (right not to self-incriminate)

Legislator has regulated this fundamental principle in art. 21 of the CPC: „*Freedom not to testify against himself/herself*".

Immediately after apprehension or after having been informed of the ordinance on recognition as a suspect or decision about application of preventive measures, the criminal investigative body must hand over in writing information about person's rights, including the right to remain silent and not to testify against himself/herself.

Provisions similar to those listed above are included also in the CC.

e) Right to health care

According to the provisions of the CPC, the accused or the defendant shall have the right:

- to submit requests, including requests for independent health care;

- to have access, immediately after apprehension or after having been informed about the decision on application of preventive measure, to independent medical examination and assistance, including paid by himself/herself.

Under the provisions of the CPC, if during apprehension, the police officer conducting criminal investigation identifies injuries on the body of the detained person, he/she shall inform without delay the prosecutor, who will immediately order forensic examination or, where appropriate, forensic expertise in order to establish the origin and the nature of injury/injuries.

According to the provisions of the Law on application of physical force, special means and firearms, in all cases where application of physical force, special means or use of firearms cannot be avoided, MIA personnel must immediately provide emergency health care to the victims and take measures to respectively inform their relatives as soon as possible.

Under the provisions of the CPC, administration of the detention institution, where detained/arrested persons are placed, must provide access of detainees to independent medical examination and assistance.

f) The right to notify relatives or other persons about apprehension

According to the provisions of the CPC, the suspect/accused persons are entitled to immediately announce their relatives or any other persons at their choice about the fact of apprehension or arrest and the place of detention, through the criminal investigative body.

The person who prepared the transcript of detention shall immediately, or not later than within six hours, provide detainees with the possibility to notify one of their close relatives or any other person at their choice of the place of their detention, or he/she shall notify them by himself/herself.

Based on the CC provisions, the detained person shall be given the possibility to notify without delay two persons of his/her choice about his/her detention.

g) The right not to be subjected to ill-treatment and the right to submit complaints

Art. 24 of the Constitution of RM guarantees every individual the right to life and physical and mental integrity and establishes that no one may be subjected to torture or to any cruel, inhuman or degrading punishment or treatment.

According to the Criminal Code and the CC, no person can be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. Detained person may not be subjected to violence, threats or methods that would affect his/her ability to make decisions or to express his/her views.

Moreover, Criminal Code incriminates torture, inhuman or degrading treatment.

Based on the provisions of the CPC, a victim has the right to have his/her complaint on the treatment subjected to be immediately registered in the duly prescribed manner, to be settled by a criminal investigative body and to be notified about the results of the settlement.

According to the provisions of the CPC, criminal investigative body must receive for examination complaints or denunciations about crimes committed, prepared or in the course of preparation even if the case is not within its competence.

3.2. PROBLEMS RELATED TO OBSERVANCE OF THE RIGHTS OF DETAINED PERSONS

Following the analysis of police practices from the perspective of the national, community and international legislation, the following problems have been identified.

Perception by the respondents of the percentage of observance by police of the rights of detained persons, by categories, is relevant in this context, because it confirms the problems that emerged within this analysis.

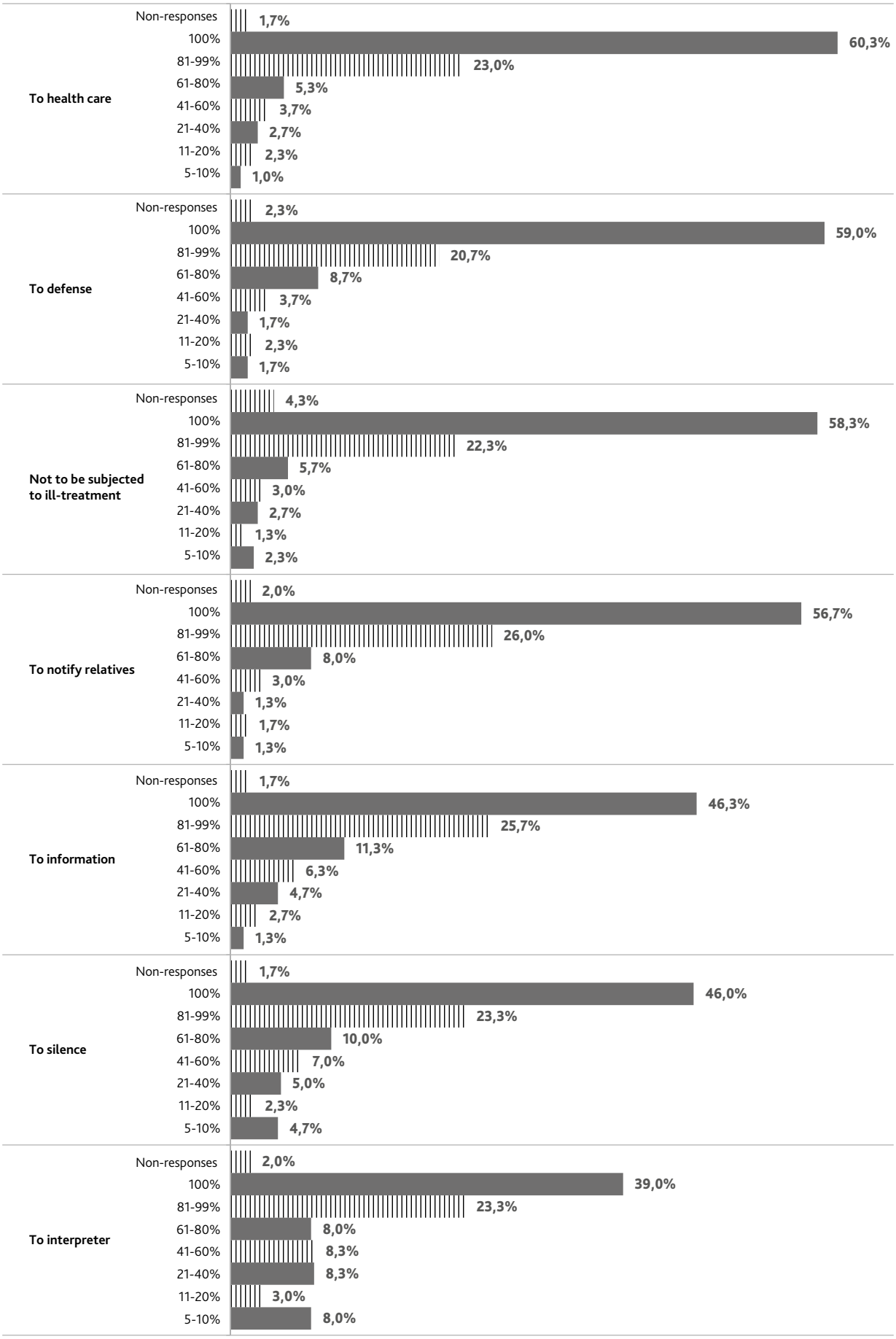
Analysis of data from the Chart shows that, based on the respondents' opinion, the rights have been divided in 2 "***blocks***" - better observed and less observed rights – which are delimitated quite precisely in the graphical representation. The following rights were included in the category of less observed rights: the right to information, the right to silence and the right to translation.

The right to silence was considered, however, as the least observed. In this case, 27,6% of the respondents assessed that the right to silence is observed at the proportion of up to 60%.

The percentage in the case of 3 less observed rights is comparable. About 70% of the respondents considered that the percentage of observance was up to 80%.

Questioned police officers assessed that the right to healthcare is best observed. 83,3% assessed that this right is observed in the percentage of over 80%, perception that comes, however, contrary to the reality of how police is ensured with medical personnel and facilities. It can be assumed, however, that the respondents referred to the fact that police does not obstruct the access of detained persons to the national network of public health or to the health care paid by them.

CHART 11. PERCENTAGE OF OBSERVING THE RIGHTS OF DETAINED PERSONS BY POLICE



3.2.1. ENSURING THE RIGHT TO INFORMATION

The main problems related to ensuring the right to information are as follows:

a) Analysis of the practice in the field revealed that criminal investigators ensure the right to information of the detained person only at the stage of ***de jure*** apprehension, i.e. when the transcript of apprehension is drawn up.

During the seminars organized in the period 2014-2016 by SFM[19] in collaboration with the GPI, some criminal investigators and local police officers indicated that during ***de facto*** apprehension they were not informing the suspect about the reasons and grounds for apprehension, including about the right to remain silent, invoking as justification the reason ***"not to prejudice the finding of truth"***.

b) Observing the criminal investigation activity has also revealed that in most cases, activity of the criminal investigators is limited to handing over written information about the rights of the suspect/detained person or to reading their rights, however they fail to give explanations about these rights to the detained person in a simple and accessible language.

Conditions are thus created for continuous conviction of the Republic of Moldova by the ECtHR for the failure to observe provisions of art. 5 para. (2) of the ECHR, which states that everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

c) In order to ensure the full exercise of the right of detained person to information, the criminal investigative body should observe this right not only at the stage of preparing the transcript of detention.

The detained person must be informed at least about his/her minimum rights (Miranda) immediately after the ***de facto*** apprehension.

The problem is that there are practitioners who ignore or do not interpret correctly procedural norms. They believe that the person must be informed about the grounds, the reasons of apprehension and about his/her rights during the ***de jure*** apprehension, i.e. when the transcript of detention is already drawn up.

This practice however contradicts the CPC, which expressly provides that the suspect has the right to be informed about these rights **immediately after apprehension** and does not specify the ***de facto*** apprehension or ***de jure*** apprehension. Thus, it is obvious that the exercise of minimum rights (Miranda) must be ensured as soon as the person has been ***de facto*** apprehended (physically), especially in case of flagrant crimes and in case of the need to carry out criminal investigation measures (body search, search of the house or search on site).

Violations of the law referred above also occur because some police officers consider that ***de facto*** apprehension is separate from ***de jure*** apprehension, despite the fact that apprehension is an unitary action with several phases (the first ***de facto*** apprehension (physical), then ***de jure*** apprehension, which is finalized by drawing up the transcript of detention, where also the exact time of ***de facto*** apprehension must be indicated).

Therefore, if apprehension is an unitary procedural action, then implementation of the rights of suspect (offender), at least the minimum ones (Miranda), must be ensured from the moment of ***de facto*** apprehension, and this is an indispensable legal requirement.

The letter of rights approved by the OMIA no. 192/2016 does not include basic information about any possibility, under national law, to challenge the legality of arrest, to review the detention or to ask for provisional release.

As a result, it does not comply with the provisions of the Directive 2012/13/EU of the European Parliament and of the Council of 22.05.2012 on the right to information within criminal proceedings and the purpose of adequately informing detained persons is therefore not fully implemented.

3.2.2. ENSURING THE RIGHT TO DEFENSE

The main problems related to ensuring the right to defense are as follows:

a) Contrary to the International Covenant on Civil and Political Rights, MIA has the practice of apprehending persons suspected of committing crimes, and there are no procedures that would allow objective evaluation of the situations and avoiding unjustified apprehension of persons. As a result, this might lead to abuses on behalf of the criminal investigative bodies from MIA and violations of the rights of detained persons.

b) The existing legislative acts include sufficient mechanisms to ensure the right of detained persons to defense. However, there are still impediments in criminal investigation practice that endanger the observance of this right.

Usually, detained persons are informed about their right to legal assistance by a defense counsel, under confidentiality conditions and throughout the whole proceedings, including until the beginning of the first interrogation as a suspect, only when transcript of detention is drawn up.

[19] On the topic: *„Integrating observance of the rights of persons at the stage of apprehension in the professional activity of police officers."* Within 11 seminars, 220 police officers were trained (heads of criminal investigative departments, criminal investigators, heads of investigation sections, criminal investigative officers, heads of public order sections, local police officers).

The person should be informed about the right to defense at the moment of ***de facto*** apprehension, which is immediately after physical apprehension of the person, especially when the person is detained for flagrant crime and criminal investigation actions are planned to be carried out.

c) During body or domicile search (including of transport means), the apprehended person who committed flagrant crime is not explained, in accordance with the CPC, the right to request defense counsel, with the discontinuation of the procedural action of up to 2 hours.

In case of apprehending the person for committing flagrant crime, this norm cannot be applied by the police officers simply because, although it suspends the search for up to 2 hours, the term of 3 hours established by the CPC, when the criminal investigative body must draw up the transcript of detention, continues to flow, otherwise the ***de facto*** apprehended person will have to be released.

Thus, there is a genuine paradox. On the one hand, the legislature provides the possibility of suspending the search for up to 2 hours. On the other hand, the legislature establishes the obligation of the criminal investigative body to draw up the transcript of detention within up to 3 hours from the moment of deprivation of liberty or release of the person. In these circumstances, in order to meet the procedural deadline of 3 hours established for drawing up the transcript of detention (which is not regulated in other criminal procedure legislation), the criminal investigative body must continue the body search or the search of transport means, even if the person requires presence of defense counsel. The reason lies in the intention to draw up the transcript of detention within the legal term, when there is reasonable suspicion that a crime was committed and the grounds and reasons for apprehension are met.

d) According to the CPC, the criminal investigative body is not entitled to recommend a particular defense counsel to the detained person. Despite this interdiction, there are criminal investigators who recommend detained persons to benefit from legal assistance of lawyers considered ***"persons of trust"*** for the criminal investigative body[20].

e) There are cases where criminal investigators do not take into account the fact that they restrict the right to defense by limiting the duration of confidential meetings of the detainee with the defense counsel and providing only up to 10 minutes for confidential meetings[21].

f) The right to defense is also affected by the irresponsible attitude of some attorneys who do not respond to police invitation, although they are included in the schedule for providing emergency legal assistance, especially at night, on holidays or on non-working days.

g) There are attorneys included in the schedule who, although initially confirm availability to provide urgent legal assistance, do not come to the criminal investigative body within 1 and a half hour from the moment of having been invited, and, on the contrary come after expiry of 3 hours, when the transcript of detention has already been drawn up.

Some defense councils of their choice are acting in the same manner and, although they are informed in time, they do not fulfil their obligation to come to the criminal investigative body within 3 hours from the moment the person is deprived of his/her liberty, when the criminal investigative body must draw up the transcript of ***de jure*** apprehension. It can be presumed that defense counsels are using this method in order to release their clients.

There is also a category of defense counsels who come to the criminal investigative body after the 3 hours term for drawing up the transcript of detention, and who sign the procedural act thus confirming their participation at the apprehension.

h) There are situations where, in order to ensure observance of the right of apprehended persons to defense, criminal investigators need to personally pay for taxi services of the lawyers in order to ensure their presence during the ***de jure*** apprehension. In addition, police officers, particularly during night, are using transport means from work and their personal transport means to ensure the presence of lawyers during apprehension.

i) The right to defense is also affected by the fact that, in the absence of confidential meeting rooms in most police inspectorates, detained persons cannot benefit of legal assistance in optimal conditions. Defense counsels and their clients have to discuss in the offices of criminal investigators, in hallways or in police guard units. Because of the inherent presence of investigative officers or police officers responsible for escort, detained persons and defense counsels are suspicious that they are listened.

j) The right of detained persons to defense is also violated by informal questioning, where no procedural acts are drawn up, especially by the investigative officers, local police officers or press officers, in relation to the offence committed, without actually communicating to the person his/her right to defense and to confidential meetings with the defense counsel before the first hearing as a suspect/accused.

k) According to the CPC, the criminal investigative body must request, within 1 hour after apprehension, appointment of attorney providing urgent legal assistance from the territorial office of the National Council for State Guaranteed Legal Assistance or other persons authorized by him/her.

[20] Data was accumulated within informal discussions with criminal investigators who participated in seminars on the topic: "Integrating observance of the rights of persons at the stage of apprehension in the professional activity of police officers", organized during 2014-2016 by SFM.

[21] Information was received within informal discussions with lawyers-trainers at the seminars mentioned-above.

The request to appoint an attorney shall be submitted in writing, including by fax or phone. Practical implementation of this norm, especially on-site, in case of apprehension in flagrant, is however troublesome. Interviewed police officers suggested extending the duration of this action to 6 hours.

Most police officers have no electronic means of communication provided by office and need to use their personal phones to request appointment of attorney by the territorial office, thereby incurring expenses that are not subsequently reimbursed.

l) Official examining agents are unable to meet the procedural deadline set by the CC. Thus, within maximum 3 hours after apprehension, the person liable to sanction of administrative arrest who has no defense counsel must be appointed an attorney who provides state guaranteed legal assistance, as established by law.

Defense counsels/attorneys refuse to come during night and on weekends, arguing that this is their time off or ask to be transported to police office and back by using police resources. The process is therefore ineffective both for the detained person, as well as for the police and some territorial offices of the National Council for State Guaranteed Legal Assistance.

3.2.3. ENSURING THE RIGHT TO TRANSLATOR/ INTERPRETER

The main problems related to ensuring the right to translator/interpreter are as follows:

a) Contrary to provisions of Art. 2, para. (4) of the Directive 2010/64/EU of the European Parliament and of the Council of 20.10.2010, GPI has no mechanism to verify the knowledge of the language of the proceedings by the suspect/accused person. For this reason, there are violations of the right to interpretation and translation within criminal proceedings, abuses by police are possible and the carrying out of criminal/administrative proceedings is endangered.

b) The criminal investigative sections of the Police Inspectorates from district Centru, Rascani, Botanica, mun. Chisinau, Balti, Anenii Noi, Stefan Voda, Causeni, Bender, Ialoveni, Soroca, Floresti, Cahul, Dubasari, Basarabeasca, Vulcanesti, Comrat, Taraclia, Ciadar Lunga and UTA Gagauzia, include 1-2 positions for translators/interpreters exclusively from Russian to Romanian or vice versa. Other 26 criminal investigative sectios have no positions of translators/interpreters.

Police translators are involved in the criminal proceedings in order to carry out translations/interpretations mostly from Romanian into Russian or vice versa. Because they are employed by the Police, parties in the proceedings are suspicious about the quality of their work.

The presence of translators within the criminal investigative sections contravenes to the provisions of the CPC. The interpreter/translator cannot participate within criminal proceedings if he/she has working relations with one of the parties or as specialist/expert. For example, if the criminal investigation is carried out by the head of criminal investigative section or his/her deputy, the translator, who is also his/her subordinate, automatically has working relations with them.

c) Translators from criminal investigative sections of Police do not have the respective authorizations. As a result, starting from 27.05.2017, they will no longer be able to participate in the criminal proceedings, because only authorized interpreters and/or translators will be able to carry out their duties at the Superior Council of Magistracy, MoJ, prosecution bodies, criminal investigative bodies, courts, notaries, lawyers and bailiffs[22].

d) There are translators from the criminal investigative sections who do not have sufficient knowledge of the legal terminology. Therefore, they are frequently helped in interpretation by police investigators, the fact that, as mentioned, does not correspond to the criminal procedure norms.

e) According to the extract from the State Register of interpreters and translators, updated on 18.07.2016, there are 478 authorized interpreters and translators in the RM. Out of them, for English language - 221; Russian - 202; French - 138; Italian - 67; Spanish - 38; German - 36; Arabic - 13; Ukrainian, Turkish - 10; Greek, Portuguese - 9; Bulgarian - 5; Polish - 4; Swedish, Croatian, Serbian, Hebrew, Japanese and Korean - 1 each, for sign language – 16[23].

According to the data presented, most interpreters/translators are authorized for the most common languages (English, French, German, Spanish, Portuguese, Russian, etc.). Therefore, translators for oriental languages/for languages of countries which are increasingly becoming countries of destination for different people (migrants) are missing.

According to the CPC, the criminal investigative body or official examining body must draw up the transcript of detention within 3 hours after deprivation of liberty. Because of the absence of translation capacities, police is often unable to explain the grounds, the reasons for apprehension and the action/inaction for which the detained person is

[22] Art. II para. (3), (4) of the Law amending and supplementing the Law No. 264-XVI of 11.12.2008 on authorization and payment of interpreters and translators engaged by the Superior Council of Magistracy, MoJ, prosecutors, criminal investigative bodies, courts, notaries, lawyers and bailiffs, No. 157 of 05.11.2015

[23] **http://www.justice.gov.md/public/files/file/persoane_autorizate/traducatori/Extras_din_registrul_de_stat_al_interpretilor_si_traducatorilor_actualizat_la_18072016.pdf**

suspected in the accessible language (especially Oriental or rarely spoken language).

There are also no authorized translators/interpreters in some districts of the country, because most of them are placed in mun. Chisinau. Their transportation to other localities, especially during night, is difficult to secure, and in most cases is impossible.

f) Although there are authorized translators/interpreters and specialized bodies responsible for their authorization, police officers cannot have timely access to their services, especially in cases of apprehension in flagrant or at night. As a result, often the services of translators are sought who, although authorized, do not have contractual relations with the Police and are not included in their roster.

g) Lack of sufficient financial resources of police for paying translation/interpretation services and for ensuring transportation of interpreters/translators obliges police officers to pay for these services from their own resources that are not subsequently reimbursed. Sometimes, these services are also covered by the prosecutors.

h) Because no contracts are concluded between police inspectorates and individuals/legal persons providing services in this area, police officers do not have information about available translators/interpreters that can be used. Also, MoJ has no official information about the authorized translators/interpreters working in the territory, and namely about the languages spoken by them and their availability.

i) Police officers are often transferring responsibility of hiring translators to the detained suspect/accused/defendant, who also need to pay for these services.

j) There is no normative act regulating the mechanism of ensuring the presence of the translator/interpreter during apprehension, upon the request of the criminal investigative body or the official examining body, especially at night and in emergency situations. The authorized interpreter/translator shall personally decide whether to accept the proposal of the criminal investigative body to participate in the criminal proceedings or not. Thus, in case of refusal, police officers have to contact another translator/interpreter and procedural actions are delayed and run out of time.

There is no centralized working schedule, as in the case of territorial offices providing emergency legal assistance, which would allow contacting translators/interpreters, especially during night.

k) There are cases when criminal investigators, representatives of official examining bodies and official examiners personally provide translation/interpretation. In this way, provisions of the CPC are violated, stating that the judge, prosecutor, person conducting the criminal investigation, defense counsel, legal representatives, court secretary, expert, witness shall have no right to undertake the obligations of the interpreter/translator, even if they speak and understand the languages and signs that need to be translated.

l) The criminal investigative body has no mechanism in place to ensure the presence of interpreter during apprehension of the person who committed flagrant crime, especially when criminal investigative measures are conducted with the participation of the detained person who does not speak Romanian language immediately after the ***de facto*** apprehension. Police officers do not know whom to contact to invite a translator/interpreter.

m) Because of the vagueness of Art. 379 of the CC, official examining agents have difficulties in conducting specific proceedings. Para. (2) of the above-mentioned Article stipulates that a person who does not know or does not speak the state language shall be entitled to take knowldge of all the documents and materials of the case and to speak before the authority competent to settle the case through an interpreter. At the same time, para. (4) of the same article stipulates that the procedural acts of the authority competent to settle the case shall be handed over to the person against whom the case was opened and shall be translated into the language that he/she speaks as established by the CC.

3.2.4. ENSURING THE RIGHT TO SILENCE (THE RIGHT NOT TO SELF-INCRIMINATE)

The main problems related to ensuring the right to silence (the right not to self-incriminate) are as follows:

a) In relation to the observance of this right at the stage of ***de facto*** apprehension, it should be noted that investigative officers, local police officers or even some criminal investigators avoid to immediately explain the right to silence to the detainee after his/her physical apprehension.

On the contrary, in the absence of defense counsel and without ensuring the right to confidential meetings, police officers are conducting undocumented talks with the detainees, asking questions about the circumstances of committing the crime.

b) The right to silence is ignored by the investigative officers or local police officers, including in cases when they unofficially invite persons they suspect of committing crimes to the police office and when they carry out the so-called informal inquiries where they ask questions. Until the first interrogation as a suspect, informal inquiries are carried out also by the press officers of the police, and after that, audio-video recordings are broadcasted in the media.

c) There are police officers who do not observe the persons' right to silence and who are trying in various ways to compel them to testify and recognize suspicion or guilt[24].

One of the methods used to force a person to make statements and to recognize the suspicion or crime committed is to threaten the person with apprehension or pre-trial detention.

During interviews conducted within the needs assessment, investigative officers and local police officers admitted that they avoid informing the detained person about the right to silence, because they fear the risk of not being able to obtain important information about the circumstances of the offense.

3.2.5. ENSURING THE RIGHT TO HEALTH CARE

The main problems related to ensuring the right to health care are as follows:

a) Position of medical assistant exists in most PDIs subordinated to Police. However, during nights or days off, medical assistants are not present at work. As a result, persons apprehended during night or on days off cannot be subjected to medical examination immediately when entering or exiting the PDI, as well as on request, and therefore it is not possible to ensure compliance with the provisions of the Enforcement Code.

From the interviews conducted with the criminal investigators, investigative officers and local police inspectors, it resulted that detained person with visible bodily injuries are not admitted to the PDI of the Police Directorate in mun. Chisinau without the certificate of medical examination issued by the doctors of the Emergency Hospital in mun. Chisinau.

b) The detained person is transported for medical examination or for health care, on case by case basis, by ambulance, by service or private cars of the investigative officers, without reimbursement of the costs. Because of the lack of special vehicles for transporting detained persons to the medical institutions and back, there are risks both for the detained persons, as well as for police officers and medical personnel.

c) Interviewed officers mentioned that in the process of drawing up transcript of detention, the detained suspect/accused is informed, among others, about the right to health care.

[24] According to statistics of the General Prosecutor office, 18 complaints were filed in 2015, including one complaint filed by a minor who was allegedly forced to testify.

3.2.6. ENSURING THE RIGHT TO NOTIFY RELATIVES OR OTHER PERSONS ABOUT APPREHENSION

The main problems related to ensuring the right to notify relatives or other persons about apprehension are as follows:

a) The practice of implementation of the right of detained person to notify relatives or other persons about apprehension is non-uniform. In most cases, this right is exercised after the transcript of detention is drawn up, and is recorded by the criminal investigator in a separate protocol. Other criminal investigators provide the opportunity to the detained person to notify their relatives or other persons about apprehension after the transcript on apprehension is drawn up and the respective note is made in the transcript.

Lack of a uniform practice contravenes to the CPC, and therefore this right needs to be exercised not before, but immediately after the transcript of detention is drawn up, but not later than within 6 hours.

b) The right to notify relatives or other persons about apprehension is, very often, exercised by using personal phones of police officers.

„During interviews, one criminal investigator said that suspects were usually using his personal phone to announce about apprehension. „After I was groundlessly denounced by relatives of a suspect that I had asked for a bribe, I currently suggest suspects to notify their relatives about apprehension by the lawyer's phone."

„The right to make a call is always observed; however there are no (landline, mobile) telephones in police inspectorates to ensure this right to the detained person. Often, this right is guaranteed by providing the possibility to the detainee to use the mobile phone of the criminal investigative body. The same situation exists in cases when it is necessary to invite an interpreter or ex officio lawyer."

„In cases when detainees have violent/aggressive behaviour and are using uncensored language, I refuse to give them my personal mobile phone in order to ensure their right to make a call, because phone number is registered and there is risk for me to be later contacted by strangers who have different requests (meetings, talks with detained person outside the first call, threating message/calls, etc.). Therefore, I try to ensure the right to phone call via landlines. However, this method is not effective given that landlines have been less and less used lately. I would like to also stress that it is not possible to call mobile phone number by the landline."

Most criminal investigators use their own phones for carrying out their duties, because many police inspectorates have no landlines or work telephones to access mobile networks.

c) There are cases when relatives of the accused person or other persons are not immediately informed about apprehension, as required by law, but after several hours, although this possibility exists immediately after the transcript of detention is drawn up.

There is no uniform practice of informing relatives or other persons about apprehension, because procedural legislation is confusing also in this regard. Thus, some police officers personally announce relatives of the detained person about apprehension, while others offer this possibility to the detained person.

3.2.7. ENSURING THE RIGHT NOT TO BE SUBJECTED TO ILL-TREATMENT AND THE RIGHT TO SUBMIT COMPLAINTS

The main problems related to the right not to be subjected to ill-treatment and the right to submit complaints are as follows:

a) Despite the fact that the ECtHR has repeatedly condemned RM for ill-treatment, analysis has shown that violations by police officers of the right of detained persons not to be subjected to ill-treatment still occur. Statistical data from 2015[25] are relevant in this respect. This data revealed that during the reporting period, 598 complaints were filed by the suspect/accused/convicted/offenders/injured parties or witnesses. Complaints referred to 18 cases of alleged constraints to make statements and 580 cases of alleged acts of torture, inhuman or degrading treatment regulated by the Criminal Code.

Therefore, alleged victims complained that 17 police officers (3 criminal investigators, 10 investigative officers, 2 patrol inspectors and 2 other police officers) forced them to make statements. Another 504 policemen allegedly used torture, inhuman or degrading treatment (17 criminal investigators, 244 investigative officers, 91 patrol inspectors, 153 other policemen).

128 of the alleged victims declared that violence was applied as punishment for committing criminal/administrative acts or alleged acts; 124 declared that violence was applied in order to obtain information or confession; 64 – in order to intimidate or discriminate; 117 – in order to show police authority/importance and 165 referred to the excessive use of force during apprehension.

[25] Note of the Department for Combating Torture at the General Prosecutor's Office on the activity of the prosecutors responsible for investigating cases of torture and ill-treatment from the territorial and specialized prosecutor's offices for 2015.

By the type of violence, 4 persons alleged as method of inhuman or degrading treatment – the deprivation of the right to move; 330 persons - denounced hands or foot whipping; 64 – alleged violence after immobilization; 55 – alleged violence with the use of special means, the use of weapons (tools, other adapted objects, sticks, water bottles, books); 86 – alleged threats or other forms of psychological/sexual abuse; 12 – alleged inhuman and degrading conditions of detention.

According to the statements of the alleged victims, 21 cases of violation of the right not to be subjected to ill-treatment occurred in PDIs; 126 inside the police inspectorates; 62 inside the police offices, premises or other police facilities; 45 - at the home of the victim or denouncer and 273 - in the street or other public place.

On the basis of complaints or denunciations filed in 2015, prosecutors opened 81 criminal cases. 19 criminal cases were referred to the court and 84 were dismissed. Decision not to initiate criminal investigation was taken in the case of 484 complaints and denunciations.

In 2014, courts delivered 11 sentences in relation to 19 persons, including 7 conviction sentences against 12 police officers for committing offenses provided by Article 1661 (Torture, inhuman or degrading treatment) of the Criminal Code. Based on the provisions of the Criminal Code (Torture), first instance courts delivered 6 sentences against 10 defendants[26].

The failure to observe the rights of detained persons has various reasons. According to the respondents, the main reasons for the failure to observe the rights of detained persons are the following (Chart 12):

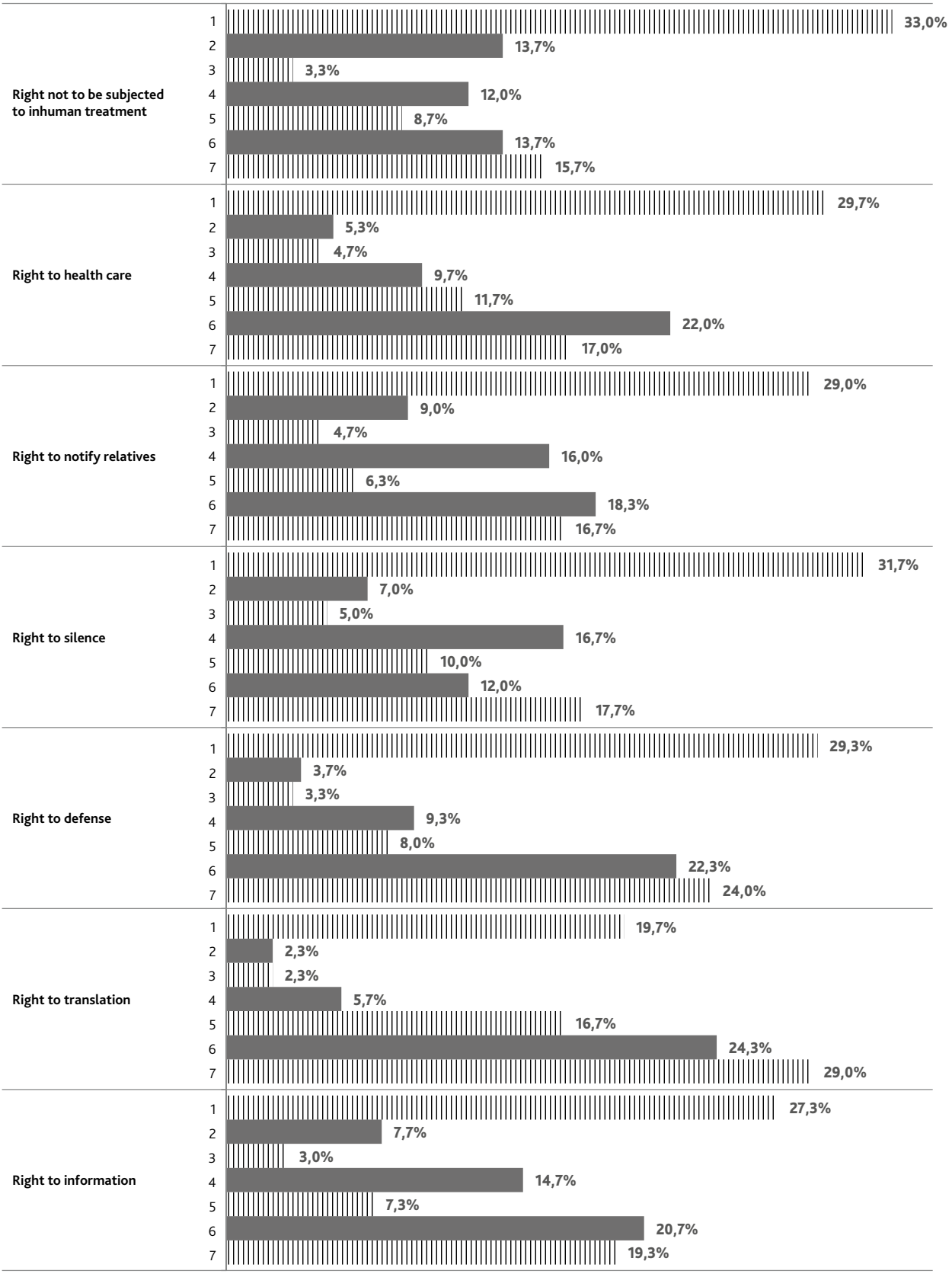
- shortcomings of the regulatory framework;
- lack of training;
- orders of the superiors;
- absence of SOP;
- habits (irregular practices);
- lack of discipline.

These reasons equally represent major areas of institutional intervention in order to resolve the problems of observance of the rights of detained persons.

Clearly, respondents consider that the main reasons of the failure to observe the rights of detained persons result from the shortcomings in the normative framework and the absence of SOP, with the maximum of 53% in case of the right to translation, including lack of training in the field. Surprisingly, habits (irregular practices) have quite a high percentage - 7-16%. It should be borne in mind that habits are ***composite*** reasons, and they are extensions of the shortcomings in the legislation, of the lack of training, of the orders of the superiors and lack of discipline.

[26] http://procuratura.md/file/raport.2014.final1.14.pdf

CHART 12. THE MAIN REASONS FOR THE FAILURE TO OBSERVE THE RIGHTS OF DETAINED PERSONS



1 Non-responses
2 Lack of discipline
3 Orders of the superiors
4 Habits (irregular practices)
5 Lack of training
6 Absence of Standing Operation Procedures
7 Shortcomings of the regulatory framework

The lack of training scored – 6,3-16,7%, which expresses shortcomings of the training system in the field. The percentage of 3-5% of cases generated by the orders of superiors should not be ignored either, and this aspect should be connected to the discipline problems.

Therefore, there is a ***system of complementary reasons*** of the failure to observe the rights of detained persons, which requires a methodical approach for their resolution, from the integration perspective at the level of all specific competences.

The impressive percentage of non-responses should also not be overlooked in this case.

3.3. IRREGULAR PRACTICES OF MIA ON THE OBSERVANCE OF THE RIGHTS OF DETAINED PERSONS

The following problems were revealed following the analysis of the practices inconsistent with the national or international legislation:

a) There are cases where the reasonableness of the suspicion, which should serve as the basis for apprehension in order to protect the person against arbitrary arrest and detention, is not taken into consideration.

According to the statistics of the General Prosecutor's Office, in 2015 and in 10 months of 2016, 7 and, respectively, 12 accused persons (apprehended by the criminal investigative bodies of MIA and then arrested) were discharged and acquitted, because their actions did not meet the elements of the crime. It can be concluded that reasonable suspicion of committing a crime did not work in these cases.

Moreover, during interviews, some criminal investigators mentioned that there are superiors who give indications about apprehension of a suspect, even if there are no grounds or reasons (risks) for apprehension provided by the CPC.

Existence of this problem was also found by the ECtHR in the case Stepuleac v. Moldova. In this case, ECtHR found that there was no reasonable suspicion that the applicant committed a crime at the moment of his apprehension by the police. The Court determined that one of the two alleged victims, whose statements served as the basis of apprehension, has not signed any complaint and had no claims against the applicant. The other victim declared that he had claims against two other persons, and that he also included the applicant's name at the suggestion of the criminal investigator.[27]

[27] **http://justice.md/file/ECHR_judgments/Moldova/STEPULEAC%20(ro).pdf**

b) During interviews conducted with the investigative officers and local police officers, they admitted that there are cases when they bring or invite persons to the police office for interview. Police officers also said that these persons are allowed to leave only after completing the interview.

These actions could be treated as irregular detentions, because police officers are not entitled to restrict the freedom of persons and conduct interviews which are not allowed by law, even if these persons follow the orders of police officers or come to the police office.

c) According to another practice, which is inconsistent with the national legislation and the ECtHR case-law, some criminal investigators continue to apprehend persons without having reasonable grounds to believe that the person will avoid criminal investigation, will prevent the finding of the truth or will commit other crimes. In most cases, police officers are simply paraphrasing the risks regulated by the CPC in the transcript of detention, without assessing the actual circumstances.

d) The practice of police officers not to indicate the actual time of ***de facto*** apprehension in the transcript of ***de jure*** apprehension is not consistent with the legal provisions, especially when the term of 3 hours for drawing up the transcript of detention (***de jure***), set by law from the moment of depriving the suspect of the liberty, has elapsed. An investigator was convicted in the past for such illegalities[28].

e) Deviations from the legislation in force and from the ECtHR case-law also occur because of application of physical force by police during ***de facto*** apprehension. These observations show that in most cases police officers apply the same tactic of apprehension (the person is forcibly put on the ground and handcuffed) for all categories of persons (suspect, accused, defendant), regardless of whether detained person has posed any resistance during apprehension.

In fact, TV programs abound in images showing huge discrepancy between the nature of presented facts and constantly harsh police behavior.

In case Sochichiu v. Moldova, the Court ruled that the use of violence (a blow to the head), the brutal and disrespect-

[28] By decision of 25 June 2014, in the case no. 1ra-1092/14, the Criminal Board of the Supreme Court of Justice dismissed the appeal on points of law of the defendant PV against the decision of Donduşeni Court of 25 April 2013 and the decision of the Criminal Board of the Balti Court of Appeal of 26 February 2014 on the ground that it did not meet the legal requirements concerning the content of appeal on points of law and was clearly unfounded. Thus, based on the sentence of the Donduşeni Court of 25 April 2013, defendant PV was convicted on the basis of Art. 328 para. (1) of the Criminal Code to a fine of 300 conventional units, which represents 6000 lei, with deprivation of the right to hold certain official positions for 2 years. The first instance court found that the defendant, contrary to the criminal procedure requirements, did not draw up the transcript of detention within 3 hours from the moment of apprehension of D.G. Thus, on 23.10.2010, D. G was illegally deprived of freedom for a period of 8 hours, i.e. from 02.00 until 10.00 o'clock.

ful methods (pressing foot on the head) were not justified, and remained persuaded that other less harmful methods and techniques were available. In the Court's view, such behaviour is degrading and humiliating. [29]

f) In many cases, police intervention forces have the practice of handcuffing apprehended persons in an abusive and disproportionate manner, even if they follow police orders, do not resist and do not pose serious threat to the police.

In the case Costiniu v. Romania[30], the ECtHR noted that the use of handcuffs should be limited to exceptional circumstances and not exceed what is absolutely necessary, thus placing the principle of proportionality at the core of the matter.

g) Arbitrary practices include, among others, cooperation of police with mass-media who is invited to the flagrant apprehension to make reports or sharing police records with mass-media. In the case Popov v. Bulgaria, ECtHR noted that sharing the images of arrest, recorded by communication service of the Ministry of Interiors of Bulgaria, without the consent of the applicant, represents interference with the right to his image, which is integral part of the concept of private life protected by art. 8 of the ECHR[31].

It should be noted, without exception, that the reasons of the above-mentioned irregular practices include: lack of SOP, of internal, precise and explicit regulations of MIA, shortcomings in the staff training, as well as inadequate organizational culture.

3.4. CONCLUSIONS

a) The practice of ensuring the right to information of the detained persons is irregular. Clear and easily understood explanations are not provided, and individuals are not immediately informed of their rights after *de facto* apprehension. Because apprehension is not viewed as unitary procedural action, and there are no necessary SOPs, information is not provided in an appropriate manner and premises are created for violation of this right and violation of the law by the police.

b) Relevant mechanisms have been instituted by the legislation to ensure the right to defense. However, problems still persist because of the ambiguity of certain norms and procedural deadlines that cannot be met, of the failure to timely ensure the presence of defenders, including their transportation. In addition to the absence of internal rules and SOP, these situations admit inconsistent practices, jeopardize the right to defense of detained persons, allow police abuses and induce integrity risks.

c) Due to the shortcomings in the legislation, the reduced number of authorized interpreters/translators, especially in the regions and for some particular languages, ensuring the right of detained persons to understand procedural documents in the language they speak and to benefit of a fair trial is problematic. It is also difficult for the police to respect this right, because organizational and financial conditions are lacking. At the same time, it is not correct for the police to translate/interpret, as it generates suspicion, limits the rights of persons and makes police officers violate legal provisions.

d) In certain circumstances, for allegedly operative reasons, detained persons are not informed about the right to silence. Therefore, in the absence of specific SOP, police abuses as well as intentional violations occur, which negatively affect the detained persons.

e) The right of detained persons to health care in police custody cannot be properly resolved due to the lack of specialized personnel, equipment, transport means and necessary resources. As a result, the health of detained persons is jeopardized and there are premises for serious events/incidents to occur in the Police premises.

f) Because of the lack of SOP, the practice of ensuring the right of detained persons to notify their relatives/ other persons is inconsistent. As a result, the rights of detained persons are violated, police funds are used improperly and there are risks for police integrity.

g) Although the Republic of Moldova has been repeatedly convicted by the ECtHR for application of ill-treatment by police, these practices still continue. Inhuman and degrading treatment, including torture, still occurs on a large scale.

As a result, observance of the rights of detained persons is jeopardized, public confidence in the police is damaged and the full observance of the rule of law principles is not ensured yet.

h) In their current activity, police makes use of practices that are inconsistent with the national legislation and international law in respet of the reasonableness of the suspicion, questioning persons, their apprehension in the absence of evidence, filling in data in the transcript of detention, the use of physical force and relations with mass-media. As a result, police officers violate the rights of persons, as well as their own job responsibilities.

[29] http://agent.gov.md/wp-content/uploads/2015/04/SOCHI-CHIU-RO.pdf

[30] http://webcache.googleusercontent.com/search?q=cache:A64R-HK9DE68J:www.csm1909.ro/csm/linkuri/25_04_2013__55604_ro.doc+&cd=2&hl=ru&ct=clnk.

[31] http://www.luju.ro/international/ECHR/poate-pricepe-si-lulutza-ECHR-a-condamnat-bulgaria-pentru-ca-organele-de-ancheta-au-dat-presei-filmarea-scenei-incatusarii-unui-demnitar-pe-langa-violarea-dreptului-la-imagine-curtea-a-constatat-ca-fostului-secretar-general-al-ministerului-de-finante-tenc?print=1.

04

ANALYSIS OF THE CURRENT MIA SYSTEM OF DETAINING PERSONS IN PRE-TRIAL DETENTION AND THE FUNCTIONING OF THE PRE-TRIAL DETENTION ISOLATORS

4.1. REGULATING THE FUNCTIONING OF THE SYSTEM OF DETAINING PERSONS IN PRE-TRIAL DETENTION AND PDI

The normative acts related to detaining persons in pre-trial detention and the functioning of PDIs are listed in the References attached to this Analysis Report.

The issue of taking over the pre-trial detention institutions by the MoJ from MIA was initiated in 1998. Some of the reasons were: findings of the representatives of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning precarious conditions of detention in the PDIs placed under the police inspectorates and recommendation to transfer detention of persons under pre-trial arrest under full responsibility of the MoJ.

During 2001 visit, the CPT reiterated its recommendation formulated to the Moldovan authorities to resume in the shortest time possible the full transfer to the MoJ of the responsibility to detain accused persons. The CPT delegation noted that PDI under MIA will never be able to provide appropriate conditions of detention to persons placed in temporary detention for prolonged periods of time, i.e. for several months.[32]

In order to execute CPT recommendations, the transfer of PDIs from MIA to MoJ was regulated by the Parliament Decision no. 415-XV/2003 on approval of the *National Action Plan on Human Rights for 2004-2008*.

[32] Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the Government of the Republic of Moldova on the visit to the Republic of Moldova carried out in the period 10-22 June 2001.

For this reason, as well as in order to execute provisions of the Enforcement Code, in 2005 an inter-ministerial Working Group was established by a joint order of MIA and MoJ for examining the mechanism of transferring PDIs from MIA to MoJ. The Working Group concluded that at that time it was impossible to transfer PDIs to the MoJ and proposed building ***Houses of Arrest***. For lack of funds, they were not built.

Subsequently, in order to execute recommendations of CPT, the Council of Europe and the ECtHR, Enforcement Code was supplemented with art. 175[1]. Therefore, PDIs of MIA were intended solely for criminal apprehension of persons as procedural coercive measure for the duration not exceeding 72 hours for adults and 24 hours for minors, except militaries, who are apprehended in garrisons or at the military body of the garrison.

The Government Decision (GD) no. 609/2006 on approval of the minimum daily feeding norms of detainees established that the daily norm is 15 lei and that three meals a day are provided. The following provisions of the CC are also applicable to the nutrition of the detainees "*detained person shall be ensured at a minimum the conditions provided by the Enforcement Code for individuals subjected to pre-trial detention*".

Monitoring PDIs is ensured by the GPI jointly with representatives of the Helsinki Committee for Human Rights of Moldova, Institute for Human Rights of Moldova and other non-governmental organizations.

In order to implement the activities included in the *Action Plan of the National Tuberculosis Control Programme for 2011-2015* (GD no. 1171/2010), GPI is carrying out control activities in the PDIs.

4.2. PROBLEMS OF THE SYSTEM OF DETAINING PERSONS IN PRE-TRIAL DETENTION AND THE FUNCTIONING OF PDIs

Following the analysis of the pre-trial detention system and the functioning of PDIs, the following problems were revealed:

a) Recommendations formulated in 1998 and in 2001 by the CPT concerning the full transfer of pre-trial detention facilities under the responsibility of MoJ have not been implemented.

PDIs from MIA were not transferred to MoJ, as stipulated by the Parliament Decision no. 415-XV/2003 on approval of the *National Action Plan on Human Rights for 2004-2008*.

Proposal to build ***Houses of Arrest,*** formulated by the inter-ministerial Working Group that examined the procedure of transferring PDIs from MIA to MoJ, was also not implemented.

b) The procedure of escorting detainees and execution of pre-trial detention measures is insufficiently regulated. There are a large number of persons placed under pre-trial detention, the fact that causes difficulties to the PDIs.

Police officers mentioned the following concerning this aspect:

> **„Detained persons are subjected to pressure in order to recognize their guilt."**
>
> **"There cases when a person who has no connection with the criminal case is arrested only because he/she was passing by the place where criminal offense was committed or was talking with the offender on the phone."**

Considering that some procedural activities are settled only at the court, PDIs must organize frequent transportation of detained persons. There is no computerized system for summoning detainees and no possibilities for video-conferencing, which could reduce the need of detained persons to be transported to the court trials.

c) Territorial police inspectorates have sent numerous requests to the GPI concerning refusal of Police, for objective reasons, to bring already sentenced persons to the first instance courts, Courts of Appeal, Supreme Court of Justice. There are also problems in relation to escorting detainees, because authorities ordering the transfer of arrested persons do not comply with the provisions of the GD no. 1119/2004 on certain issues related to the activity of the penitentiary system.

Territorial Police Inspectorates face obstacles in escorting the convicted persons from the penitentiary institutions subordinated to the MoJ to the courts and Courts of Appeal.

d) There are also non-uniform practices related to bringing persons placed under pre-trial detention to the court. There are also judges who, at the request of prosecutors, admit requests for extending arrest and order continuous detention of persons in PDIs. This however contradicts the provisions of the Enforcement Code, which provides that persons subjected to preventive measure shall be detained in penitentiary institutions.

As a result, although after the expiry of 72-hours apprehension detained persons, according to the procedure, must be released or placed under pre-trial detention in penitentiary institutions, in reality very often they continue to be detained in PDIs for long periods of time. Such situations, although illegal, are admitted in principle based on the grounds that the number of escorts decreases and, respectively, expenses for escorting the persons deprived of their liberty from pre-trial detention facilities of the MoJ to the authorities who ordered bringing them are also decreasing.

As a result, GPI bears unplanned financial costs for escorting and detention of sentenced persons and persons placed under pre-trial detention.

In court premises, the waiting rooms for persons under pre-trial arrest are insufficient, the fact that causes discomfort for them and difficulties in guarding these persons.

e) There are no institutional arrangements between the authorities that a) regulate bringing persons to the court premises; b) ensure their detention and c) ensure enforcement of the orders to bring detainees. Thus, no account is taken of the place where arrested persons are detained; the itinerary of planned escorts; actual capacities of enforcing the orders of bringing the arrested persons. There are no inter-institutional methodologies and SOP (including some eventual instructions from the Supreme Court of Justice) to optimize the activity in this field (transport and escorting detained/apprehended persons).

As a result, an effective network of transferring detainees is lacking, duplications happen, there is waste of forces and means.

Below, there is a typical example that illustrates lack of inter-institutional coordination and elucidates the de facto situation.

The person is detained in Penitentiary no. 5 in Cahul. Chisinau Court of Appeal orders the Hincesti Police Inspectorate to bring the detainee for judicial actions. Police escort service needs to travel on the itinerary Hincesti - Cahul - Chisinau - Hincesti, which is about 400 km in total. If there was an inter-institutional co-operation, the arrested person could be transferred with the special wagon of the Penitentiary no. 5 in Cadul to Penitentiary No. 13 Chisinau, where he would be escorted to the court by Police car only for about 40 km.

Such situations require the setting up of numerous escorts and lead to the inefficient use of staff and means of transport, as well as to police officers having to work overtime. And even in these circumstances, members of escort services can be sanctioned by the courts for the failure to execute the order/decision to forcibly bringing the person, for the delay of executing the decision of forcibly bringing the person or for the failure to notify about the impossibility to execute the respective decision.[33]

f) Not all guarding and escorting services subordinated to PDI have specialized cars for transporting arrested persons. In most cases, cars are in poor condition and are insufficient. The rules of separation of transported persons are not followed and transport means are overcrowded. Transportation is carried out by diverse cars that belong to MIA, which poses danger for detained persons and police officers.

g) Interaction between authorities that order bringing persons for procedural actions and institutions that ensure pre-trial detention of persons is ineffective. Procedural actions that must be carried out by the criminal investigative bodies and the courts in specially arranged facilities within the detention institution are not indicated. Resolving these shortcomings would exclude abuses and violations of the rights during the escort (separating persons to categories; feeding; critical thermal conditions, overcrowding etc.) and would eliminate the unnecessary transportation and personal expenses.

There are high costs for ensuring the presence of persons placed under pre-trial detention at the criminal investigative body and the courts.

h) The PDI system is only partially functional. There are 39 PDIs within territorial subdivisions of the GPI. Due to the failure to observe technical standards and the lack of the minimum conditions of detention, activity of 7 PDIs has been entirely discontinued (INI Balti, Ialoveni, Straseni, Criuleni, Dubasari and Donduşeni). For the same reasons, the activity of 5 PDIs (Anenii Noi, Ocnita, Sangerei, Telenesti and Soldanesti) has been partially discontinued in the period 07.03.2013-01.08.2015, and only 2-3 cells in each PDI were allowed to continue their activity. Temporary detention facilities are generally overcrowded.

The geographical coverage of PDIs is inadequate for the pre-trial detention of persons, for providing necessary services to the criminal investigative bodies and the courts.

Considering the PDI architectural and dislocation plans, there are no suitable facilities within police inspectorates that could be equipped/re-equipped as PDIs, separately from administrative blocks and/or with separate entrances rather than reserve entrances.

Out of 32 operational PDIs, 17 are placed at the ground level, 5 – at the semi- basement level and 10 at the basement level. There is high risk in PDIs located at the semi-basement/basement level to have moisture, mould, mildew, which represent sources of infection. Difficulties in ventilation may produce smells that may affect health of the detainees. The poor condition of the sanitation installations may lead to floods.

All these conditions may cause serious illnesses both among the detained persons, as well as among police officers. There is also risk of contracting TB, because detainees do not declare their illnesses in order to avoid being moved to penitentiaries where they cannot be visited. In fact, there are already cases where police officers, who came in contact with apprehended/detained persons, got infected with TB.

Not all PDIs have toilets and sinks in the rooms for apprehended/detained persons. It is necessary to specify that "*Dependence on the availability and willingness of supervisors to meet physiological needs of the persons deprived of their liberty represents degrading treatment*."[34]

There are difficulties in employing female staff within PDIs for each shift. There are no generalized optical/acoustic signalling systems from detention cells to the office of the head of the shift.

[33] Manual of Judges for criminal cases/Mihai Poalelungi, Igor Dolea, Tatiana Vizdoaga [et al.]; coord. ed .: Mihai Poalelungi [et al.]. Ed. I. - Ch. S. n. 2013 (Î.S. F.E.-P. «Tipografia Centrală»). - P.221. (Based on Art. 201 para. (4) p.2) of the CPC, by its decision, the Criminal Board of the Chisinau Court of Appeal of 22.11.2011 has applied judicial fine to C.P., Commander of the Escort Battalion of the Directorate for guarding, supervision and escort troops, in the amount of 25 conventional units for committing illegality during criminal proceedings related to prisoners: C.P., S.M., B.A. and others, manifested by the fact that "... *on 22.11.2011, the convicted persons indicated above were escorted to the Court of Appeal, with great delay, at 11.20 and brought to the courtroom at 11:30*", therefore for the failure to execute the order of the appeal court to escort in time the arrested defendants for the court trial).

[34] **http://www.valerianstan.ro/files/Ghid%20practic%20pentru%20monitorizarea%20locurilor%20de%20detentie%20(martie%202008).pdf 27.11.2016)**

Conditions of detention, of feeding and transport cause dissatisfaction of the detainees. In situation of overcrowding, the detention conditions, regulated in internal documents, cannot be met.

i) Territorial police inspectorates, to whom PDIs are subordinated, face difficulties in ensuring living conditions of detainees. There are problems in ensuring daily feeding norms of detainees. Considering the increase of prices in the subsequent years, GD no. 609/2006 on approval of the minimum daily feeding norms of detainees and providing detergents no longer corresponds to the current situation.

Although GPI has allocated financial resources for PDI management, the increase in the number of apprehended and detained persons in specialized institutions was not estimated. It was not possible to evaluate the costs necessary for strengthening the promotion, observance and protection of human rights by allocating financial resources to ensure general minimum standards for feeding detainees, including detainees with special needs (with tuberculosis, minors, invalids of I, II grade, pregnant women, breastfeeding mothers).

There are cases when persons detained in Police Inspectorates, persons arrested/escorted to police inspectorates, are not fed in a centralized and organized manner. This issue is left at the discretion of police officers, who frequently need to buy food and water for the detainees from their own resources or from resources of relatives of detained persons.

Therefore, some accused persons refuse to participate in criminal investigative actions within Police Inspectorates, because they are not fed according to legal regulations[35].

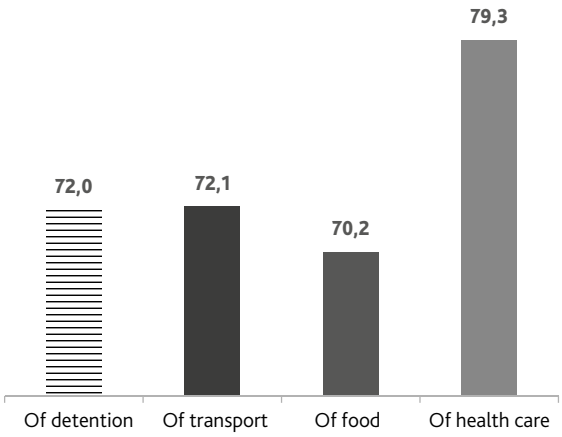
Police officers mentioned the following concerning these aspects:

> **„Even if feeding of detainees placed in police custody is regulated by legal norms, in some cases of apprehension of the person in another locality and transportation to the Police Inspectorate where criminal investigative body has its headquarters, this right is violated. Most of them are fed by their relatives until their apprehension is formalized."**

Each detainee is responsible to wash his/her dishes. Bed linen is washed in a centralized manner, washing powder is provided by the PDI, and there is no specialized personnel for this purpose. Therefore, necessary hygiene conditions cannot be ensured. Police officers consider that persons detained in PDIs benefit of the necessary conditions only partially (Chart 13). Therefore, the respondents consider that conditions of detention, transport and food are ensured at the level of about 70%, and health care – at the level of 80%.

This fact is explained by the shortcomings already mentioned, and the lack of resources represents the main shortcoming.

CHART 13. THE GENERAL LEVEL OF CONDITIONS PROVIDED TO THE APPREHENDED PERSONS



In respect of the conditions provided to the apprehended persons, the perception of the respondents was relatively proportional (Chart 14). Therefore, about 1/3 of the respondents consider that the right to health care (which proved to be least ensured) is observed in the percentage of up to 70%. Also, 40% of the respondents assessed that food conditions are ensured at the percentage of about 70%, although we have already mentioned that GPI encounters some difficulties in this respect. Surprisingly high is the percentage of the respondents who assessed that conditions in PDIs are ensured at the percentage of 91-100%. Therefore, 36,8% of the respondents assessed that health care is ensured 100%, and 22% assessed that conditions of detention are ensured at the percentage of 100%.

According to the general data of the analysis, there are still important shortcomings in the capacity of PDIs to ensure proper conditions for the detained persons. As a result, although significant percentage of the respondents assessed that these conditions are ensured at the level of 100%, this is based either on the lack of knowledge about the real problem or its exaggeration, which is completely unjustified and unsupported by objective data.

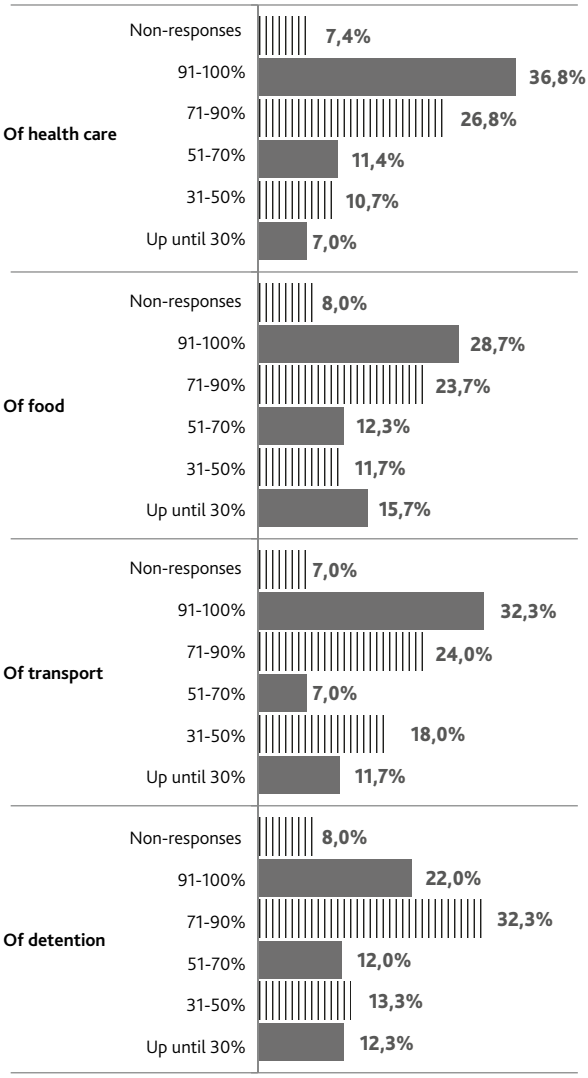
The temptation to present the situation in this manner should be taken seriously in MIA analysis in order to identify the reasons generating it. Therefore, the temptation is to hide the shortcomings and to limit the attempts of resolving the situation and its effect. In essence, present-

[35] Information was provided during interviews conducted with the investigation officers, criminal investigative officers and local police inspectors.

ing the situation as totally positive may generate the risk of perpetuating the non-observance of the conditions that need to be ensured to the detained persons.

Therefore, 7-8% of the respondents have answered questions without probably being aware of the real situation and their responses should not be included in the general picture.

CHART 14. THE LEVEL OF CONDITIONS ENSURED TO THE DETAINED PERSONS (PER CATEGORIES OF CONDITIONS AND PERCENTAGE THRESHOLDS)



d) There are also problems of security conditions, and namely the deficit of equipment for identification of prohibited objects (weapons, knives, electronic devices etc.). Some PDIs have metal detectors; however, it is also necessary to have scanners. There are also no specialists for verification of electronic devices. Not all PDIs have specially equipped spaces with separation devices that would prevent introducing goods, telephones, drugs, money etc. to the PDIs.

4.3. CONCLUSIONS

a) Despite the fact that following the two CPT visits, it was recommended to transfer pre-trial detention institutions from MIA to MoJ, and Moldovan authorities committed to implement this recommendation, it was not implemented until present. The alternative solution of building *Houses of Arrest* was not implemented either. Amendment of the provisions of Art. 175[1] of the Enforcement Code is palliative and resolves the problems of the system only partially. As a result, the conditions of detention in PDI continue to be inadequate, the fact that determines human rights violations and places police in unfavorable situations, which are not entirely imputable to them.

b) Considering that some bureaucratic procedural activities are carried out only in courts, that there is no informational system of summoning persons and no video-conference system, PDIs must organize multiple transportation of the detained persons. This fact determines the improper/inefficient use of MIA personnel and means and creates premises for violation of the human rights.

c) Contrary to the provisions of the Enforcement Code, there are irregular practices of bringing the persons placed under pre-trial detention to the courts and illegal ordering of prolongation of the preventive arrest and, as a result, of detention of persons in PDIs. As a result, legal provisions and human rights are violated, and police is forced to execute non-uniform decisions.

d) There are no inter-institutional arrangements concerning the transport and escorting of the detained/apprehended persons for different purposes. As a result, cooperation is improper, activity is inefficient, there is waste of police force and resources, useless bringing of detained/apprehended persons, as well as violations of the labour legislation in case of police officers.

e) There is shortage in the number and quality of cars for guarding and escorting services that belong to MIA. As a result, violations of the rights of detained/apprehended persons, as well as security risks for police officers may possibly occur.

f) The PDI system is only partially operational, the fact that leads to the difficulties in ensuring normal conditions of detention/apprehension and human rights protection.

REFERENCES

INTERNATIONAL DOCUMENTS

- Universal Declaration of Human Rights
- International Convention of 1989 on the Rights of the Child
- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- International Convention on the Rights of the Child
- Convention for the Protection of Human Rights and Fundamental Freedoms;
- Charter of Fundamental Rights of the EU;
- Convention of 10.12.1984 against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment
- International Covenant on Civil and Political Rights
- Directive 2013/48/UE of the European Parliament and of the Council of 22.10.2013
- International Covenant on Civil and Political Rights
- International Covenant of 16.12.1966 on Economic, Social and Cultural Rights
- Directive of the European Parliament and of the Council No. 2012/13/UE of 22.05.2012 on the right to information in criminal proceedings, institutes minimum norms of information about the rights and charges brought
- Directive 2010/64/UE of the European Parliament and of the Council of 20.11.2010 on the right to interpretation and translation in criminal proceedings
- Directive of the European Parliament and of the Council No. 2012/13/UE of 22.05.2012 on the right to information in criminal proceedings
- Law no. 218/2002 on organization and functioning of the Romanian Police

NATIONAL LEGISLATION (BY THE DATE OF ADOPTION)

- Constitution of the Republic of Moldova of 29.07.1994
- Criminal Code no. 985/2002 of the RM
- CPC of the RM approved by the Decision of the Parliament no. 122-XV/14.03.2003
- Enforcement Code of the RM approved by the Decision of the Parliament no. 443-XV/24.12.2004
- Contravention Code no. 218/2008 of the RM
- Law no. 264-XVI/2008 on authorization and payment of interpreters and translators engaged by the Superior Council of Magistrates, MoJ, prosecutor's bodies
- Law no. 218/2012 on the application of physical force, special means and firearms
- Law no. 320/2012 on the activity of police and the status of police officers
- Law no. 325/2013 on testing professional integrity
- Decision of the Parliament of the RM no. 415-XV/2003 on approval of the National Human Rights Action Plan for 2004-2008

NORMATIVE ACTS (BY THE DATE OF ADOPTION)

a) Government Decisions

- GD no. 246/1993 on providing food products to persons sentenced to deprivation of liberty, to persons placed in pre-trial detention isolators and in institutions of social rehabilitation
- GD no. 1474/2002 on ensuring appropriate conditions of detention in PDIs of MIA
- GD no. 1119/2004 on certain aspects related to activity of the penitentiary system
- GD no. 1345/2006 on harmonization of the Moldovan legislation with the *acqui communautaire*
- GD no. 609/2006 on approval of the minimum daily feeding norms of detainees
- GD no. 1171/2010 on application of the Action Plan of the National Tuberculosis Control Program for 2011-2015

b) Inter-institutional and MIA internal normative acts (by the date of adoption)

- Joint Order of the MIA and the Ministry of Health no. 17/20/2002 on approval of the Guidelines on providing medical, sanitary and anti-epidemic assistance to the detained and arrested persons in PDI
- Order of MIA, MoJ and the Ministry of Health no. 109/96/134/24.03.2003 on providing health care to the persons with tuberculosis who are arrested or are placed in PDI of MIA
- OMIA no. 31/2004 on creating, arranging and equipping medical offices within rayonal police commissariats and job responsibilities of the medical assistant in PDI of the police commissariat
- OMIA No. 5/2004 on approval of the Regulation of police service for guarding and escorting detained and arrested persons; Instructions on the working schedule within PDI of the police commissariats; Regulation on internal order within PDI of the police commissariats.
- OMIA no. 353/2004 on supplementing and amending OMIA no. 5/05.01.2004, with attachment no. 3 Instructions on the activity of Internal Affairs Bodies related to detention of persons apprehended for committing administrative offences and placed under administrative arrest
- OMIA no. 384/2006 on medical examination of detained persons and persons placed in PDI of the rayonal police commissariat
- GD no. 609/2006 on approval of the minimum daily feeding norms of detainees
- OMIA no. 223/2012 on approval of the Instructions on PDI activity of MIA
- Instructions on the organization of criminal investigation activity within the GPI of MIA, approved by the Order of the GPI no. 138/2013
- Inter-departmental Order no. 572/408/1589/639-O/1331/2013 on approval of Regulation on the procedure for identification, recording and reporting of alleged cases of torture, inhuman or degrading treatment, approved by the General Prosecutor's Office, Ministry of Justice (MoJ), MIA, Customs Service, National Anti-Corruption Centre and Ministry of Health
- OMIA no. 311/2015 on approval of the Regulation on professional intervention of the employees with special status from MIA
- OMIA no. 192/2016 on approval of the Letter of the Rights

ELECTRONIC REFERENCES

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- Official journal of the EU, part I, L 280/1 of 26.10.2010 and available at the address: http://eur-lex.europa.eu/legal-content/ro/TXT/PDF/?uri=CELEX:0010L0064&rid=1
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ATTACHMENTS

ATTACHMENT NO. 1
CONCLUSIONS AND RECOMMENDATIONS

FIELD	CONCLUSIONS
1. INTERNATIONAL STANDARDS AND PRACTICE OF SEVERAL EU COUNTRIES IN THE FIELD OF APPREHENSION	
1.1. Aspects of European practice in the field of apprehension/arrest by police	1.1.1. Over the last decade, the national legal framework on the rights and freedoms of detained/arrested persons has been considerably amended and supplemented. As a result, it generally corresponds to European and international standards. The international practice of regulating specific police activities through SOPs has not been not assimilated yet, a fact that leads to violations of the rights of detained/arrested persons and improvisations on behalf of police staff
1.2. ECHR case-law on non-compliance/violations by Moldovan authorities, in the period 2014 - 2016, of the procedures related to apprehension/arrest	1.2.1. RM has been repeatedly convicted by the ECtHR for application by the police of ill-treatment in regards to detained persons, also for other violations of their rights. Following the ECtHR convictions, the RM has paid substantial compensations. Nevertheless, liability of the state authorities and police have still not been established, a fact that might lead to new human rights violations
2. ANALYSIS OF THE NORMATIVE FRAMEWORK ON APPREHENSION/ARREST BY POLICE	
2.1. Problems of the national legal framework on apprehension/arrest by police	2.1.1. Police officers questioned within the analysis estimated that there are deficiencies with respect to the relevance, applicability and completeness of the legislation regulating apprehension/arrest by police. As a result police officers have difficulties in the process of implementing the legal framework, which creates the risk of improper performance of their duties and violation of the rights of detained persons
	2.1.2. Criminal investigators/investigative officers/local police inspectors are highly dissatisfied with their own professional status, when compared to the prosecutor's status, as well as with the legal protection of police officers involved in apprehension/arrest actions. Therefore, problems of status and inadequate legal protection generate deficiencies in their professional performance, along with frustrations that may additionally affect the quality of public service
	2.1.3. Law no. 320/2012 provides that police officers are authorized to detain the person as regulated by the law and enter as set forth in any house or property to fulfil their duties. The legislation does not regulate ***de facto*** apprehension procedures in all possible generic situations. As a result, human rights are violated by police, and the police themselves are forced to commit illegalities

RECOMMENDATIONS
1) Conducting information activities and training on international regulations on apprehension with relevant MIA staff 2) Annual assessment by the GPI of the legal framework on police detention in order to timely adjust it to relevant European/international regulations 3) Request of information and support from development partners on the SOP framework on police apprehension/arrest in order to ensure its assimilation within the MIA system
1) Intensifying the specialized training of MIA personnel responsible for apprehension of persons in order to ensure correct application of the legislation, elimination of human rights violations, abuses and increasing the level of integrity of MIA staff 2) Bi-annual evaluation by GPI/other relevant subdivisions of cases of violations during apprehension/arrest, and consequent steps to be taken 3) MIA review of cases where the RM was convicted by the ECtHR for the ways in which the institution's staff handled execution of orders 4) GPI review, within the system of lessons learnt, of cases where the RM was convicted by the ECtHR due to inadequate actions by the police, dissemination of findings and institution of measures to avoid similar situations
1) Conducting within MIA of systematic communication/consultations with the staff, in order to learn perspective of the practitioners on the relevance, applicability and completeness of legislation that regulates apprehension/arrest by the police. The findings of such consultations should be further used for improving the legal framework and SOPs 2) Development by MIA of institutional cooperation with development partners and civil society on issues of mutual interest, regarding apprehension of persons and respect of the rights of detained persons 3) Conducting communication actions by MIA, in a systematic manner, in order to inform the public on issues related to human rights, aiming at the support of the society and the improvement of overall institutional image 4) Identification by MIA of external funding in order to ensure implementation of recommendations included in the Analysis Report, as well as financial support for other specific needs
1) Urgent identification by MIA of exact dissatisfactions of the staff with the professional status and inadequate legal protection of police officers involved in the apprehension/arrest of persons. Evaluation of the consequences and initiating requests for ensuring the status and proper legal protection of the personnel
1) Initiation by MIA of requests for amending and supplementing Law no. 320/2012 in order to regulate ***de facto*** apprehension procedures in all possible generic situations 2) Initiation by MIA of requests for amending and supplementing Law no. 320/2012 to add provisions that would allow police officers to conduct "***preventive bodily control***" of a ***de facto*** detained person and elaboration of specific SOP

	2.1.4. Certain criminal norms regulating apprehension do not correspond to the principles of clarity and predictability. In the process of regulating apprehension, CPC has a number of ambiguities, regulatory shortcomings, contradictions and repetitions of the same norms from different legal perspectives. For these reasons, there are confusions in interpretation and application of the law. Case law is not uniform and violations of the rights of detained persons occur. Also, police officers are forced to commit illegalities or avoid carrying out their duties, due to the risk of violating the law - a fact that affects the quality of public service and the authority of the act of justice
	2.1.5. The CC includes several ambiguous provisions which can ultimately lead to violations of the rights of persons and unregulated actions by the police
2.2. Problems pertaining to MIA internal normative framework on apprehension/arrest by police	2.2.1. The internal normative framework that regulates apprehension/arrest by the police is outdated and incomplete. As a result, police officers frequently work according to inherited practices and precedents, not based on strict internal regulations. This fosters subjective interpretations and inconsistent practices. Therefore, human rights are violated both during apprehension, as well as afterwards
	2.2.2. There are no SOPs on apprehension/arrest by the police. For this reason, the tasks are not algorithm-based, there is room for subjectivity in carrying out police duties, affecting the quality and predictability of such activities; there is high risk of human rights violations and unregulated actions by the police

1) Initiation by MIA of requests for supplementing the CPC with norms regulating entry or forced entry into persons' domicile in order to apprehend the sentenced person, in order to enforce the decision on the cancellation of the conviction with conditional suspension of the execution of punishment, decision on the early cancellation of the conditional suspension from punishment, decision on the cancellation of the acquittal and adoption of the imprisonment sentence
2) Initiation by the MIA of requests for amending/supplementing the CPC on the procedure of apprehending a person at his/her domicile based on the apprehension order; apprehension order in order to charge the person; apprehension order of the accused before the arrest
3) Initiation by the MIA of requests for amending/supplementing/interpreting CPC provisions in order to clarify the obligation to simultaneously meet apprehension grounds provided both in Art. 166 par. (1), and in Art. 166 par. (3)
4) Initiation by the MIA of requests for amending/supplementing the CPC with provisions that would establish unequivocally the moment when the right to information of the detained person must be respected – at the stage of ***de facto*** apprehension (especially when criminal investigation actions are planned to be conducted on–site) or at the stage of ***de jure*** apprehension (when the transcript of apprehension is drawn up)
5) Initiation by the MIA of requests for amending the provisions of Art. 166 par. (4) of the CPC (the person shall be released immediately, except as provided by Art. 273 par. (1) pt. 2) of the same Code, if the crime is registered later than within 3 hours from the moment when the detained person is brought to the criminal investigative body) in order to be adjusted to the provisions of Art. 273 par. (1), which does not include the point to which the reference is made
6) Initiation by the MIA of requests for amending/supplementing the provisions of Art. 165 par. (2) and (3) of the CPC in order to regulate situations where the criminal investigative body draws up the transcript of apprehension
7) Initiation by the MIA of requests for amending/supplementing provisions of the CPC in order to regulate the circumstances where criminal investigators are entitled to order apprehension of a person based on order (art. 57 par. (2) pt. 11), and the procedure of enforcing this order by the police
8) Initiation by the MIA of requests for amending the provisions of Art. 167 par. (1) of the CPC in order to extend the time-limit for drawing up the transcript on apprehension, to make the time-limit realistic, so that it is observed by police, but also to ensure observance of the rights of detained persons
9) Initiation by the MIA of requests for amending the provisions of Art. 167 par. (1), in order to regulate the procedure of informing the prosecutor about apprehensions carried out at night or on non-working days, when secretariat of the criminal investigative body is off duty
10) Initiation by the MIA of requests for amending/supplementing the provisions of Art. 64 par. (2) pt. 12); Art. 66 par. (2) pt. 13) and Art. 173 par. (1) of the CPC in order to exclude ambiguity in the process of notifying relatives about apprehension
11) Initiation by the MIA of requests for amending the time limit set forth in Art. 273 par. (4) of the CPC for sending the transcript on the crime, the physical evidence and the apprehended person to the criminal investigative body by the official examining body, so that the time limit is realistic, can be respected, and ensures the rights of detained persons
12) Formulation by the MIA, together with the institutions involved, of proposals for supplementing the legislation, in order to ensure legal regulation of the situations where persons detained without a police warrant are taken to the police headquarters
13) Identification by the MIA of solutions for increasing the quality of the entire procedural activity carried out by MIA structures/personnel, by establishing clear and predictable practices, following legal provisions and the system of safeguards against abuses and violations of the law; increasing police accountability
14) Developing institutional integrity policies specific to apprehension/arrest by the police
15) Improving theoretical and practical training, as well as tactical, procedural and human rights training to ensure proper behaviour of the police within the society, as well as to increase the quality of public service

1) Initiation by the MIA of requests for amending Art. 443 of the CC in order to simplify the procedure for drawing up the transcript on administrative contravention in case the apprehended person has no identity documents
2) Initiation by the MIA of requests for amending Art. 379 of the CC, in order to clarify which procedural acts issued by the competent authority need to be translated and handed to the person against whom an administrative case is opened, and in which cases an interpreter needs to be included in the process
3) Initiation by the MIA of requests for amending the CC in order to eliminate discrepancies between the provisions of Art. 433 par. (1), which provide that apprehension shall be applied in cases of flagrant contraventions sanctioned by the Code with administrative arrest, and of Art. 435 par. (4), which stipulates that the authority competent to examine administrative cases may also apprehend persons who committed unsanctioned offenses with administrative arrest

1) Identification at the MIA and departmental level of the new internal and inter-departmental regulations that need to be introduced in the field of apprehension/arrest by police
2) Joint elaboration by the MIA, and its departments, in consultation with relevant practitioners, of the normative and methodological framework necessary for effective apprehension/arrest by the police
3) Elaboration of guidelines on good practices for criminal investigators, investigative officers and for prosecutors on the observance of the rights of persons during apprehension and pre-trial detention
4) Elaboration by the MIA/departments and in consultation with the practitioners of amendments to the current internal normative framework in order to ensure its optimization and eliminate possible violations of human rights

1) Setting up a standardization council at the MIA level and its departments
2) Elaboration of the methodology by the MIA for drafting the SOPs
3) Elaboration by MIA/departments of a comprehensive list of SOPs that need to be developed in the field of apprehension/arrest by the police
4) Elaboration of the plan for development of internal and inter-institutional SOPs in the field of apprehension/arrest by the police
5) Elaboration of SOPs necessary for implementation of the legal provisions on apprehension/arrest by the police, as well as on the activities carried out by the PDI staff (security, escorts etc.). They shall include detailed operational rules for standard situations and for emergency and crisis situations
6) Initiation by the MIA of a process on implementing inter-institutional arrangements related to the problems of cooperation in the field of apprehension/arrest by the police

3. ANALYSIS OF THE OBSERVANCE OF RIGHTS OF DETAINED PERSONS	
3.1. Observance of the rights of persons	3.1.1. The practice of ensuring the right of detained persons to information is not uniform. No clear explanations are provided and detained persons are not informed of their rights immediately after the ***de facto*** apprehension. Due to the fact that apprehension is not regarded as a unitary procedural action, and there is no necessary SOP, information is not provided in a timely manner, and premises are created for the violation of said right and violation of the law by police officers
	3.1.2. The law establishes special mechanisms to ensure the right to defense. There are however problems, caused by the ambiguity of certain norms, of procedural deadlines that cannot be met, of the failure to ensure the timely presence of the defenders, including their transportation. These situations, plus the absence of internal rules and SOPs, lead to inconsistent practices, jeopardize the right to defense of detained persons, allow police abuses and foster integrity risks
	3.1.3. Due to shortcomings in the legislation, limited number of authorized interpreters/translators, especially in the regions and for certain languages, there are problems in ensuring the right of detained persons to understand procedural documents in the language they speak, and to undergo fair trial. It is also difficult for the police to observe this right, because there are no organizational and financial means. At the same time, translation/interpretation services by police officers do not offer a fair solution. On the contrary, they generate suspicion, limit the rights of persons, and make police officers violate certain legal provisions
	3.1.4. In certain circumstances, and for allegedly operative reasons, the right to silence of the detained persons is not explained to them. Therefore, in the absence of specific SOPs, intentional violations and police abuses occur, which have a negative effect on detained persons
	3.1.5. The problem of ensuring the right to health care of persons placed in police custody cannot be properly resolved due to the shortage of specialized staff, necessary facilities, vehicles and resources. As a result, there are risks for the health of detained persons and premises for serious incidents in police offices
	3.1.6. Due to a lack of SOPs, the practice of ensuring the right of detained persons to notifying their relatives/other persons is inconsistent. For this reason, the rights of detained persons are violated, resources are used improperly by the police and there are integrity risks
	3.1.7. Although Moldova has been repeatedly convicted by the ECtHR for ill-treatment by police, these practices continue. Still, a significant number of cases of inhuman and degrading treatment, including torture, occur. As a result, observance of the rights of detained persons is still jeopardized, public trust in police is damaged and full observance of the rule of law principles is still not ensured
3.2. Unregulated practices in observing the rights of detained persons by the MIA	3.2.1. In their current activity, the police are using practices that contradict national and international legislation on the concept of reasonable doubt, the process of interviewing persons, apprehension of persons without proper evidence, filling in data in the transcript, the use of physical force and relations with the media. As a result, the police violate the rights of persons, and exceed their professional duties

	1) Development of SOPs by the GPI and interested departments, to ensure that detained persons are timely informed, to unify the existing practices in the field, to exclude violations of the rights of detained persons and to provide necessary guidelines for police officers 2) Assessment by the MIA of the Letter of Rights (OMIA no. 284/2016), one year after its release, and introducing updates, if necessary 3) Initiation by the MIA of amendments to Annex No. 2 of OMIA No. 192/2016, editing the Letter of Rights, in order to include basic information about existing possibilities to challenge the legality of the arrest, to have apprehension reviewed or to ask for provisional release, as stipulated in Directive 2012/13/EU of the European Parliament and of the European Council 4) Instituting special mechanism within the MIA to check how detained persons are informed about their rights
	1) Training by the GPI/DBP/DCT of their own staff, in order to ensure that persons are informed about their right to defense from the moment of their ***de facto apprehension*** 2) Identification by the MIA, together with interested departments, of legal solutions to ensure the timely presence of the defender at the apprehension procedure, by also observing legal deadlines 3) Setting up rooms for confidential meetings (where needed) between detained persons and their defenders within the premises of police units that host criminal investigative structures 4) Development of SOPs for ensuring the right to defense of detained persons 5) Editing of relevant SOPs by the GPI, to include criteria for analyzing situations to avoid unjustified apprehensions of persons suspected for committing administrative contraventions or crimes
	1) Planning GPI/departments budgets to include the amounts necessary for paying translation/interpretation costs incurred during criminal/administrative proceedings 2) Initiating by the MIA of a process of development of a Governmental normative act to regulate the mechanism of providing translators/interpreters contracted by the MIA at the request of criminal investigation bodies 3) Identification by regional criminal investigative structures of local authorized translators/interpreters, including for rarely spoken languages, and allocation by GPI/departments of the necessary resources for contracting them 4) Initiation by the MIA of a request to institute a national body comprised of qualified translators/interpreters, based on the model of territorial offices for providing emergency legal assistance 5) Elaboration of SOPs for ensuring observance of the right of detained person to a translator/interpreter
	1) Training at the departmental level of the staff with responsibilities in the field of apprehension in order to ultimately eliminate situations where detained persons are forced to make statements and admit their guilt, as well as to eliminate the practices of so-called inquiries before official interrogation 2) Elaboration of SOPs to ensure the right to silence or the right to avoid self-incrimination
	1) Elaboration by the GPI of a study identifying optimal solutions for safeguarding the health of persons placed in police custody, as well as their transportation/escort to medical institutions and in special situations 2) Reviewing and optimizing the mechanism within the MIA on: recording the activities for ensuring the right of detained persons to health care; recording the requests of detained persons to health care; mandatory recording of the bodily injuries caused to detained persons; the mechanism of informing the prosecutor about the presence of injuries on the body of the detained person in order to carry out immediate forensic examination or, where appropriate, necessary forensic expertise 3) Elaboration of SOPs to ensure observance of the rights of detained persons to health care and provide guidance for actions in special situations
	1) Providing mobile phones to criminal investigators by the MIA/GPI/departments in order to carry out relevant professional duties 2) Elaboration of SOP in order to ensure observance of the right of detained persons to notify their relatives/other persons about apprehension/arrest
	1) Carrying out a study within the MIA in order to identify, assess and remove the risks of subjecting detained/arrested persons to torture, inhuman or degrading treatment 2) Elaboration of a Plan within the MIA, for combating torture, inhuman or degrading treatment of detained/arrested persons, based on the results of the study referred to under recommendation 1) from conclusion 4.1.7. 3) Arranging special rooms for interviewing suspects/defendants within police units with responsibilities in the field of apprehension 4) Instituting a mechanism within the MIA for audio-video recording of de facto apprehensions and other relevant procedural actions 5) Elaboration of SOPs to ensure compliance with the rights of detained persons not to be subjected to ill-treatment 6) Elaboration by the MIA/GPI/departments, within the system of lessons learned, of a case analysis of issues related to infringements on the rights of detained persons, of cases lost by the RM before the ECtHR and their use as documentary support during staff training 7) Introduction by the MIA/GPI/departments of topics related to apprehension in the initial and ongoing training programs for police officers. Organizing inter-departmental training programs for exchange of experiences and best practices 8) Request for external assistance to develop SOPs in the field of apprehension/arrest by the police
	1) Initiation of requests by the MIA, together with interested subordinated structures, for identification of all existing unregulated practices and establishing measures to eliminate them by issuing guidance, amending normative framework and elaborating specific SOPs

4. ANALYSIS OF THE CURRENT MIA SYSTEM OF DETAINING PERSONS IN PRE-TRIAL DETENTION AND THE FUNCTIONING OF THE PRE-TRIAL DETENTION ISOLATORS	
4.1. International recommendations on the functioning of the system of pre-trial detention and of PDIs	4.1.1. Despite the fact that following two CPT visits, it was recommended to transfer pre-trial detention institutions from the MIA to the MoJ, and Moldovan authorities committed to implement this recommendation, it was not implemented until present. The alternative solution of building *Houses of Arrest* was not implemented either. The amendment of the provisions of Art. 175[1] of the Enforcement Code is palliative and resolves the problems of the system only partially. As a result, the conditions of detention in PDI continue to be inadequate - a fact that determines human rights violations and places the police in unfavorable situations, which are not entirely imputable to them.
4.2. Problems of the pre-trial detention system and the functioning of PDI	4.2.1. Because some bureaucratic procedural activities are conducted only in courts, and there is no electronic summons and videoconference system, PDI must organize many transportations for the detainees. This leads to inefficient use of MIA staff and resources, and creates potential for human rights violations
	4.2.2. Contrary to the provisions of the Enforcement Code, there are uneven practices of bringing persons under pre-trial detention to courts and illegally ordering prolongation of pre-trial detention and apprehension of persons in PDI. As a result, legal provisions, as well as rights of persons are violated and the police are forced to implement inconsistent decisions
	4.2.3. There are no inter-institutional arrangements regarding transportation and escorting of detained/arrested persons for various purposes. As a result, cooperation is inadequate, activity is ineffective, there is waste of staff and resources, unnecessary distress for detainees/arrested persons, as well as violations of labour legislation in case of police officers
	4.2.4. There is shortage in the quantity and quality of MIA vehicles equipped for security and escort services. Therefore, the rights of detained/arrested persons may be violated and there are security risks for police officers
	4.2.5. The PDI system is only partially functional, and this fact is leading to difficulties in ensuring decent conditions of detention/apprehension and in ensuring human rights protection

	1) Repeated requests by the MIA to transfer duties related to pre-trial detention that exceeds 72 hours to the MoJ 2) Keeping by the MIA, under PDI responsibility and according to Art. 166 of the CPC, of the competence to place and detain persons under administrative arrest and apprehended persons (up to 72 hours) 3) Initiation by the MIA of the process of implementation of inter-institutional arrangements in order to ensure firm observance of the provisions of Art. 323 and 324 of the Enforcement Code. According to these articles, persons apprehended under criminal charges should be detained in prisons after application of pre-trial detention in their respect
	1) Ensuring de-bureaucratization of the procedural activities in the context of justice sector reform and introducing electronic systems, in order to reduce the need of persons detained in PDI to come to court and, hence, save on human and financial resources allocated to the specific activities
	1) Initiation by the MIA of a process of implementation of institutional arrangements, in order to ensure unification of case-law on ordering physical presence in court of persons placed under pre-trial detention 2) Initiation by the MIA of a process of implementation of institutional arrangements, in order to eliminate illegal practice of extending detention of remanded persons in PDI, and preventing human rights violations 3) Elaboration by the GPI of SOPs on the mode of action of PDI in the situation when courts order bringing the remanded person to their headquarters, and in cases where prolongation of pre-trial detention of persons is ordered 4) Initiation by the MoJ of requests for arranging waiting rooms in the court premises for persons placed under pre-trial detention who are brought to the court, in order to ensure decent conditions and guarding opportunities
	1) Request sent by the MIA to the Supreme Court of Justice to issue guidance on transportation and escorting of detained/arrested persons, for procedural purposes 2) Elaboration by the MIA and relevant institutions of inter-institutional methodologies on cooperation for establishment of an effective network of transporting and escorting detained/arrested persons for procedural purposes. Examining the possibility of implementing the solution of joint escorting of detained/arrested persons by the MIA-MoJ 3) Elaboration by the GPI of SOPs on transporting and escorting detained/arrested persons to the PDI
	1) Sending continuous requests by MIA/GPI in order to ensure police units with specialized vehicles for transporting detained/arrested persons in conditions of safety, respect of their rights, and security of escorting personnel 2) Formulation by the GPI of an interdiction to transport detained/arrested persons by other vehicles than the designated ones
	1) Resumption by the Moldovan Government of the requests for building, based on regional principles, of 8 conceptualized ***Houses of arrest,*** with a capacity of 250 places (in Glodeni, Comrat, Orhei, Hancesti, Causeni, Edinet, Floresti, Ungheni), managed by the MoJ, with the perspective for the MoJ to take over all detention aspects, according to community practices 2) Reviewing and observing within the MIA of the regulations on organized feeding of detained/arrested persons 3) Initiation by the MIA of requests for amending GD No. 609/2006 on approval of minimum daily feeding norms for prisoners and allocating detergents, in order to review the amounts of money allotted for food and provide necessary conditions of detention/apprehension in PDI 4) Elaboration of SOPs on organized and centralized feeding of persons placed in detention/arrest in PDI

ATTACHMENT NO. 2

Summary of judgments delivered by the ECtHR in the period 2014-2016, on violations by moldovan authorities to the right of detained persons to liberty

NO.	NAME OF APPLICATION	ECtHR JUDGMENT FROM	NUMBER OF THE APPLICATION	VIOLATIONS FOUND	COMPESANTION AWARDED
1	**Buzadji v. RM**	05/07/16	23755/07	Violation of Article 5 § 3 of the Convention – because of insufficient reasoning of the orders on pre-trial arrest of the applicant.	**Total amount: EUR 7.837** Non-pecuniary damage: EUR 3.000 Costs and expenses: EUR 4.837
2	**Caracet v. RM**	16/02/16	16031/10	Violation of Articles 3 and 5 § 3 of the Convention – for subjecting the applicant to ill-treatment by police officers during apprehension and pre-trial arrest, as well as for lack of an efficient investigation in this regard.	**Total amount: EUR 13.160** Non-pecuniary damage: EUR 12.000 Costs and expenses: EUR 1.160
3	**Balakin v. RM**	29/01/16	59474/11	Violation of art. 5 § 3 of the Convention – concerning the duration of arrest and insufficient reasons for arrest.	Total amount: Applicant did not request just satisfaction within the deadline set by the Court. Therefore, the Court considered that there are no reasons to award it to the applicant
4	**Cazanbaev v. RM**	19/01/2016	32510/09	Violation of Articles 3 and 13 of the Convention – ill-treatment by police officers during apprehension and during pre-trial arrest and inefficient investigation conducted based on allegations of the applicant.	**Total amount: EUR 13.500** Non-pecuniary damage: EUR 12.000; Costs and expenses: EUR 1.500
5	**Sara v. RM**	20/10/2015	45175/08	Violation of Articles 5 § 1 of the Convention – illegal deprivation of liberty, keeping the person in pre-trial detention based on abstract and insufficient reasons.	**Total amount: EUR 1.300** Costs and expenses: EUR 1.300
6	**Doroşeva v. RM**	28/07/2015	39553/12	Violation of art. 3 of the Convention – ill-treatment during police custody and lack of effective investigation in this regard.	**Total amount: EUR 12.000** Non-pecuniary damage: EUR 12.000
7	**Rimschi v. RM**	13/01/2015	1649/12	Violation of art. 5 § 3 of the Convention – pre-trial detention was not based on relevant and sufficient reasons.	**Total amount: EUR 3.000** Non-pecuniary damage: EUR 3.000

The Court noted that while the domestic courts were obliged under domestic law to verify a number of circumstances, they had in fact not done so but had limited themselves to repeating in their decisions the formal grounds for detention provided by law in an abstract and stereotyped manner without explaining how they had been applicable in concreto to the applicant's situation.[35]

The Court found that the Government has not established the need to use force against the applicant in the view of his behaviour.
Thus, material violation of art. 3 of the Convention have taken place. In respect of the investigation carried out by the national authorities, the Court noted that the forensic report which established the applicant's injuries did not indicate their origin and the prosecution's office did not take into account whether the applicant's injuries, and namely on the face, could have been caused in the circumstances described by police, during immobilization of the applicant on the ground. The Court found that the Prosecution's office has not taken decisive measures to elucidate the circumstances of the case and that it accepted without any reserves the version of the facts presented by police. These elements were sufficient for the Court to conclude that the criminal investigation conducted by the authorities was not detailed and effective. At the same time, procedural violation of art. 3 of the Convention have also taken place. [36]

The Court considered that a person charged with an offence must always be released pending trial unless the State can show that there are *"relevant and sufficient"* reasons to justify the continued detention. The Court concluded that the applicant's detention on remand for more than twenty-nine months was excessively long and was not based on reasonable and sufficient reasons. There has accordingly been a violation of Article 5 § 3 of the Convention. [37]

The Court found that the prosecutors did not identify the officers responsible for ill-treatment and, moreover, have not confronted police officers with the applicant. The Court considered therefore that the competent authorities have not taken decisive measures that would have allowed to elucidate the circumstances of the case and that they accepted, without any reserves, the version of the facts presented by police. The Court has also found that the investigation carried out by the state authorities has not responded to the criteria of promptness and effectiveness required by art. 3 of the Convention. Thus, there has been a violation of these procedures, including under its procedural head.[38]

The Court found that the applicant was not charged upon the expiry of the legal term of seventy-two hours and that, therefore, the criminal investigative body should have, in accordance with Art. 64 para. (3) of the CPC, discontinued criminal investigation against the applicant and released him.
The Court also found that by authorizing the applicant's arrest in the period 6-12.06.2008, the national courts have not complied with the prior legal condition provided by art. 175 para. (4) of the CPC (see paragraph 13 above), since the applicant had no procedural status during the respective period.
In conclusion, the Court concluded that the aforementioned procedural violations were serious and evident, and therefore applicant's detention in the respective period was arbitrary and *ex facie* illegal. Therefore, this deprivation of liberty was not in compliance with the law. Thus, violation of Article 5 § 1 of the Convention took place.[39]

The Court noted that, after release from arrest, the applicant had numerous injuries on her body. Considering that the Government had failed to explain the origin of the injuries, the Court concludes that they were the result of ill treatment while in police custody. Accordingly, there has been a substantive violation of Article 3 of the Convention. The Court further notes that the prosecutors did not ask the applicant to identify the police officers responsible for her ill-treatment, let alone conduct a confrontation between them. It is therefore impossible for the Court to conclude that an effective official investigation took place. Thus, there has been a violation of Article 3 of the Convention under its procedural head as well.[40]

The Court notes that the measure of preventive arrest against the applicant was repeatedly prolonged – on the basis of the same reasons each time – for more than thirty months. The reasons appear to have been limited to paraphrasing the reasons for detention provided for by the CPC, without explaining how they applied in the applicant's case.[41]

[35] http://hudoc.echr.coe.int/fre?i=001-168546

[36] http://hudoc.echr.coe.int/fre?i=001-165510

[37] http://hudoc.echr.coe.int/fre?i=001-165506

[38] http://hudoc.echr.coe.int/fre?i=001-165508

[39] http://hudoc.echr.coe.int/fre?i=001-163338

[40] http://hudoc.echr.coe.int/fre?i=001-157606

[41] http://hudoc.echr.coe.int/fre?i=001-154865

NO.	NAME OF APPLICATION	ECtHR JUDGMENT FROM	NUMBER OF THE APPLICATION	VIOLATIONS FOUND	COMPESANTION AWARDED
8	**Buzadji v. RM**	16/12/2014	23755/07	Violation of art. 5 § 3 of the Convention – illegal arrest, without relevant and sufficient grounds for pre-trial detention.	**Total amount: EUR 4.300** Non-pecuniary damage: EUR 3.000 Costs and expenses: EUR 1.300
9	**Bulgaru v. RM**	30/12/2014	35840/09	Violation of art. 3 of the Convention – ill-treatment during detention in police custody and lack of effective investigation in this regard.	**Total amount: EUR 20.000** Non-pecuniary damage: EUR 20.000
10	**Ninescu v. RM**	15/07/2014	47306/07	Violation of art. 5 § 3 of the Convention – apprehension and detention without pertinent and sufficient reasons.	**Total amount: EUR 4.000** Non-pecuniary damage: EUR 2.000 Costs and expenses: EUR 2.000
11	**Gavriliță v. RM**	22/04/2014	22741/06	Violation of art. 3 and art. 5 § 1 of the Convention – application of ill-treatment and apprehension without having legal mandate at the beginning of detention.	**Total amount: EUR 19.140** Non-pecuniary damage: EUR 9.000 Non-pecuniary damage: EUR 10.000 Costs and expenses: EUR 140
12	**Buhaniuc v. RM**	28/01/2014	56074/10	Violation of art. 3 of the Convention – ill-treatment during detention in police custody and lack of an effective investigation in this regard.	**Total amount: EUR 16.370** Non-pecuniary damage: EUR 15.000 Costs and expenses: EUR 1.370

	The Court considers that, although the applicant did not expressly invoke art. 5 § 3 of the Convention, he complained in his application of the fact that the domestic courts had not motivated sufficiently their decisions concerning applicant's detention pending trial. [42]
	Applicant's statement, which was not rejected by the authorities, was related to his declarations that he was tied and suspended on a metal bar. Since the Government have failed to provide an explanation for this injury, the Court concludes that it was the result of ill-treatment while in police custody, namely a result of being tied up and suspended on a metal bar. The Court considers this form of ill-treatment particularly reprehensible, as it presupposes an intention to obtain information that would serve as ground for applicant's conviction. In such circumstances, the Court considers that the violence inflicted upon the applicant was of a particularly serious nature, capable of provoking severe pain and cruel suffering, and that it falls to be treated as acts of torture. Accordingly, there has been a violation of Article 3 of the Convention under its substantive head. At the same time, the Court notes that after receiving the applicant's complaint of ill-treatment, the prosecutor's office did not even make reference to his hospitalisation between 12 February and 9 April 2009, but limited its investigation to the initial conclusion. The Court noted that the prosecutor's office did not undertake any decisive steps to investigate the applicant's complaint but was content to accept, without reservation, the statements of the accused police officers. It is therefore impossible for the Court to conclude that an effective official investigation took place.[43]
	The Court noted that applicant was detained for one month and five days. The Court also noted that in order to justify deprivation of applicant's liberty, domestic courts have merely paraphrased the reasons for pre-trial detention provided for by the CPC, without explaining how they applied in the applicant's case.[44]
	The Court noted the conclusion of domestic courts in this case, that the rights of applicants guaranteed by art. 3 of the Convention were violated. Domestic courts found that applicants were subjected to ill-treatment by police and that the respective investigations were not efficient. The Court noted that the parties have not contested the findings of the domestic courts. Therefore, the Court accepted their findings that, on the one hand, applicants were subjected to ill-treatment applied by the police, and, on the other hand, the respective investigation carried out by authorities was not effective. The Court analyzed whether the amount of compensation awarded to the applicants was appropriate. The Court found that the Supreme Court of Justice awarded applicants the equivalent of 900 euro for pecuniary damage and that this amount was much smaller than the amounts awarded by the Court in similar cases against the RM (see, recent examples: Gorea v. RM, no. 6343/11, § 48 23 July 2013; Gasanov v. RM, no. 39441/09, § 60, 18 December 2012). The Court noted that domestic courts found that the second applicant was apprehended several days before his official placement into custody, on 05.01.2006. Domestic courts did not explicitly recognize that violation of art. 5 § 1 of the Convention took place in respect of the second applicant. Taking into consideration the findings of the domestic courts, and in the light of the circumstances of the case, the Court did not question violation of Article 5 § 1 of the Convention in respect of the detention of the second applicant, before 05.01.2006.[45]
	The Court notes that the investigation into the applicant's complaint was heavily flawed. It notes firstly that, in spite of the serious allegations made against police officers by the applicant, no criminal investigation was formally instituted until early May 2010. The Court was not convinced by the Government's assertion that the prosecutor acted swiftly when new information became available.[46]

[42] http://hudoc.echr.coe.int/fre?i=001-154903

[43] http://hudoc.echr.coe.int/fre?i=001-154956

[44] http://hudoc.echr.coe.int/fre?i=001-145569

[45] http://hudoc.echr.coe.int/fre?i=001-142460

[46] http://hudoc.echr.coe.int/fre?i=001-140238