



# THEMATIC REPORT

**Access of foreigners to the Republic of Moldova  
through the Border Crossing Point  
“Chisinau International Airport”**

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AVOCATUL  
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OMBUDSMAN

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## LIST OF ABBREVIATIONS:

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**PA** – The People’s Advocate (Ombudsman)

**PAO** – People’s Advocate Office

**MIA** – Ministry of Internal Affairs of the Republic of Moldova

**GIBP** – General Inspectorate of Border Police

**BMA** – Bureau for Migration and Asylum

**CIA** – Chisinau International Airport

**BPS** – Border Police Sector

**BCP** – Border Crossing Point

**BP** – Border Police

**UNCHR** – United Nations High Commissioner for Refugees in Moldova

**OP CAT** – Optional Protocol to the UN Convention Against Torture



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## INTRODUCTION -

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- 1) The People's Advocate ensures the promotion and protection of fundamental human rights and freedoms, exercising his activity under Article 59/1 of the Constitution of the Republic of Moldova, Law No. 52 of 3 April 2014 on the People's Advocate (Ombudsman), Principles Relating to the Status of National Human Rights Institutions (Paris Principles).
- 2) In this regard, the People's Advocate Office (National Institution for the Protection of Human Rights), through its specific mechanisms, examines applications from persons who consider that their fundamental rights and freedoms have been violated, conducts regular preventive and monitoring visits to places of deprivation of liberty, issues reports and recommendations to the authorities concerned. The People's Advocate reports have become a source of reliable information for the ECtHR, UN CAT/SPT/CPT on the state of compliance by the Republic of Moldova with its commitments to protect and ensure the right to life, physical and mental integrity, as well as the right to health, liberty and security, access to effective remedies in the national courts.
- 3) Between October - December 2022, the People's Advocate Office continued to monitor the observance of the rights of foreigners in the Republic of Moldova through the Border Crossing Point "Chisinau International Airport". Thereby, the representatives of the People's Advocate Office conducted three preventive (unannounced) monitoring visits to the BCP CIA. These visits aimed at verifying the situation concerning the observance of the rights of foreign nationals, refugees, asylum seekers and/or persons detained for illegal crossing of the state border, placed in a sterile area, as well as formulating recommendations to improve the situation in this field. Following the visits and other information collected, the PAO decided to draft a Thematic Report with recommendations to the responsible authorities. The last monitoring visit to BCP CIA was conducted in 2019<sup>1</sup>.
- 4) The thematic report "Access of Foreigners to the Republic of Moldova through the BCP CIA" is a first in the specialized field. It provides generalised observations and conclusions on the state of play concerning the mechanism for ensuring those legal guarantees provided for by national legislation on the entry of foreign nationals into the Republic of Moldova through the air crossing point of the state border. The report does not describe the situation of foreigners leaving the country. Next, we do not pretend that this work is perfect. This work aims to contribute to improving the situation concerning ensuring the fundamental rights of foreigners who have not been granted access to the country and asylum seekers. The information covers the period from October to December 2022.
- 5) The thematic report includes **office work** (*data analysis, data storage and processing; analysis of the legal framework and international standards; research of systemic problems; formulation of recommendations; discussion of the issues identified; submission of requests for additional information; drafting of the report itself, etc.*) and **fieldwork** (*3 monitoring visits to the BCP CIA; interviews with shift supervisors and BP employees; discussions with 20 foreigners in the sterile area; analysis of the information presented; direct observation of the work of BP employees in the CIA, etc.*).
- 6) The report includes findings, conclusions and recommendations. The paper claims to be objective and unique in its style of reporting. The conclusions expressed by the authors may serve to improve the situation in the field. We mention the openness of the BP employees of the BCP CIA towards cooperation in this segment. Access to the BCP CIA and the requested information was unhindered.

## MONITORING STANDARDS:

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- ✓ 1951 UN Geneva Refugee Convention
- ✓ Rules of the European Committee for the Prevention of Torture;

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<sup>1</sup> [http://ombudsman.md/wp-content/uploads/2020/02/Raport\\_PTF-AIC\\_31.01.2020.pdf](http://ombudsman.md/wp-content/uploads/2020/02/Raport_PTF-AIC_31.01.2020.pdf)

- ✓ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers;
- ✓ Resolution of the Economic and Social Council No. 663 (XXIV) of 31 July 1957 concerning Minimum Rules for the Treatment of Prisoners;
- ✓ Law No. 215/2011 on State Border of the Republic of Moldova;
- ✓ Law No. 283/2011 on Border Police;
- ✓ Law No. 200/2010 on Regime of Foreigners in the Republic of Moldova;
- ✓ Law No. 270/2008 on Asylum in the Republic of Moldova;
- ✓ Government Decision No. 147 of 09.03.2022 147/2022 on the approval of the National Air Transport Facilitation Programme;
- ✓ Law No. 52/2014 on the People's Advocate (Ombudsman);
- ✓ Law No. 164/2015 approves the Regulation on the organisation and functioning of the People's Advocate Office;

#### **RESPONSIBILITIES OF THE BP REGARDING THE PROTECTION OF FOREIGN NATIONALS:**

- 7) The GIBP ensures the maintenance of the state border regime, the border area regime, as well as the regime and public order at the state border crossing points, ensures public security, aviation security, security control of passengers, baggage, cargo, aviation personnel, naval personnel and personnel for the protection of security areas with limited access at airports and ports of the Republic of Moldova.
- 8) The BP has the mission to implement the state policy in the field of integrated management of the state border of the Republic of Moldova to achieve effective control of the state border by addressing challenges related to risks and threats likely to compromise national security, thus contributing to the fight against cross-border crime, ensuring a high level of security **with full observance of fundamental rights, while guaranteeing the free movement of persons.**
- 9) In the field of combating illegal migration and cross-border crime, the Border Police are entitled to apply the measure of refusal of entry of the foreigner into the Republic of Moldova, under the legislation in force. Similarly, the institution ensures migration control at the state border crossing points (BCP), including other duties provided for by Law 283/2011<sup>2</sup>.

#### **CHISINAU INTERNATIONAL AIRPORT:**

- 10) CIA is located 13 km away from Chisinau Municipality and is managed by the private company S.R.L „Avia Invest”<sup>3</sup>. CIA provides space for the needs of foreign passengers and the activity of the BP.
- 11) Security control is provided by BP and a private security company.
- 12) CIA has two rooms for asylum seekers located in the entrance area. One room is temporarily used by the FRONTEX Agency as an office due to the lack of other premises.
- 13) For passengers with children, the CIA has a room for mothers and infants located in a sterile departure area.
- 14) Persons not admitted to the territory of the Republic of Moldova are placed in a sterile area until their voluntary or enforced return from the country.

#### **INFORMAȚII DESPRE PROTECȚIA SOLICITANȚILOR DE AZIL:**

- 15) In the entrance area of the airport, there is an information board with leaflets about the rights of asylum seekers in 3 languages, as well as the contact addresses of relevant organisations, placed by representatives of the NGO PA "Lawyers' Law Centre", in partnership with GIBP, PAO and BMA, with UNCHR funding (Annex 1).
- 16) Additional information on the rights of other categories of persons is not visible.
- 17) In the sterile and transit zone, there is no information on the rights of asylum seekers or the mechanism for applying for such protection.

<sup>2</sup> [https://www.legis.md/cautare/getResults?doc\\_id=106470&lang=ro](https://www.legis.md/cautare/getResults?doc_id=106470&lang=ro)

<sup>3</sup> The situation at the time of drafting the Report.

### ASYLUM SEEKERS' ROOMS:

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- 18) The room for asylum seekers is equipped with 3 beds, one of which is a bunk bed, including a toilet (Annex 2-3).
- 19) The ladder intended for climbing to the upper floor of the bed is damaged, which is why people use the table in the wardroom for this purpose. There is still a strong smell in the room, which makes it necessary to ventilate. The room itself includes 1 window and 3 chairs. The mattresses are untidy and in places damaged.
- 20) From discussions with BP staff, if there are asylum seekers of different sex, female asylum seekers and minors are accommodated in the dormitory as a priority. Male persons are being placed on the seats in the entrance area of the airport.
- 21) Information needed by asylum seekers on support mechanisms and services in the wardroom is lacking. **Mentions on the date, time, number, and duration of placement of asylum seekers are not made.** In this regard, **it was not possible to identify the date of the last placement of asylum seekers in the respective room.**

### REQUESTS FOR ASYLUM AT THE AIRPORT:

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- 22) According to the Register for Asylum Applications submitted by Asylum Seekers No. 17 of 25 July 2013 in the period 01.01.2022 - 07.12.2022 **110 asylum applications** were submitted at the airport.
- 23) **The register is not a standardised and uniform one.** The entries in the Register indicate data on the time of registration, time of informing the Bureau for Migration and Asylum (BMA), data of the asylum seeker, country of origin, direction of movement of the applicant, date and time of departure, function of the BMA that received the applicant, data of the border guard who received the asylum application. The first asylum application in 2022 was on 01 January 2022, then followed only in May 2022. For 4 months, there would have been no asylum applications.
- 24) The observations of the visiting team concern the accuracy of the recording and mentioning of the data in the respective Register, as well as the mandatory inclusion of the **time of delivery** of the applicant to the BMA, and **the signature of the BMA representative** who received the applicant. The same remark is to be applied to the handover receipt documents. Thus, it is hoped that by applying the signature and the time of handing over the applicant, guarantees will be provided that the asylum seeker has not been kept at the airport for an undue period.
- 25) Another remark concerns the fact that the BMA is informed (according to the entries in the Register) within 10 min - 1 hour about the asylum seeker at the airport. The visiting team understands the complexity of the work of the border guard in documenting the asylum application, but ensuring that the BMA is immediately informed about the asylum application is important.
- 26) Data from the same Register shows that many asylum seekers were on the territory of the CIA between 12-24 hours before being handed over to the BMA. As **there is no register of persons placed in asylum rooms**, it is difficult to assume where asylum seekers were during this period and what basic guarantees they benefited from on the territory of the CIA (water, access to luggage, fresh air, food, lawyer, etc.).
- 27) **The People's Advocate reiterates that the period up to the surrender of the asylum seeker (or the person detained to the competent authorities) includes the responsibility for his/her safety and integrity. Following this, the BP has to ensure access to accommodation, food, water, resting space, a lawyer, and dignified and respectful treatment throughout the asylum seekers' stay in custody. Reference, such as that national legislation does not place the GIBP as a detention institution are not justified, or: -**
  - | *Stricto sensu*, deprivation of liberty is defined **as any form of placement of a person**, by order of any judicial, **administrative** or other body, in a state or private place of detention, which

the person cannot leave at will, as a punishment, sanction, procedural measure of constraint, security measure, or as a result of dependence on care or for **any other reason**<sup>4</sup>. For Article 4 of the Optional Protocol to the UN Convention against Torture: deprivation of liberty means any form of detention or imprisonment or placing of a person in a public or private place of confinement **which he/she is not permitted to leave at will** by order of any judicial, **administrative** or other authority<sup>5</sup>.

#### REFUSAL OF ENTRY INTO THE REPUBLIC OF MOLDOVA:

- 28) The conditions of entry of foreign citizens on the territory of the country are mentioned in Law 215/2011 on the State Border of the Republic of Moldova and Law 200/2010 on the Regime of Foreigners in the Republic of Moldova<sup>6</sup>. Similarly, on the official GIBP website, there is information on national legislation, regulations and answers to frequently asked questions<sup>7</sup>.
- 29) The provisions of GD 147/2022 state that [...when a passenger or an inadmissible person to be removed is in the custody of the public officers concerned, those officers shall protect the dignity of those persons and shall not take any action that violates their dignity. Such persons shall be treated under the relevant international provisions, including the UN International Covenant on Civil and Political Rights. The competent public authorities shall consult with the air carrier on the time limit for the removal of an inadmissible person to give the air carrier sufficient time to transport the person on its own or to prepare an alternative transfer, but no longer than the time limits provided for in the regulatory framework on the treatment of aliens in the Republic of Moldova. The stipulated provisions shall not be interpreted as allowing the removal of a person who has applied for asylum on the territory of the Republic of Moldova to a State where the life and freedom of the person concerned are endangered for reasons of race, religion, nationality, social origin or political opinion, except in cases provided for by the applicable legal framework. In cases where the appropriate public authorities have reason to believe that the person who has been declared inadmissible may resist during the removal procedure, they shall immediately inform the air carrier to take all precautionary measures to ensure the safe conduct of the flight. The competent authorities shall be responsible for the costs associated with the care and custody of all other categories of inadmissible persons, including persons refused entry on grounds of problems relating to documents not under the control of the air carrier or for reasons other than inadequate documentation, from the moment it is established that they are inadmissible to the territory of the Republic of Moldova until they are transferred to the air carrier for removal from the Republic of Moldova...]<sup>8</sup>.
- 30) **Information on access to the national territory is available only in Romanian, even if the official GIBP page has mentions in Russian and English.**
- 31) **The lack of information in foreign languages, especially international languages, limits foreigners' right to truthful information on the provisions of the legislation and entry conditions, etc., and misleads foreigners, who prefer to obtain information from indirect rather than official sources.**
- 32) The PAO representatives note that since October 2022 the general rule on the access of foreigners for tourist purposes for about 90 days is either not applied regularly or is applied selectively based on individual and subjective decisions of the employees of the BP.
- 33) PAO representatives noted that **there is no information** in the BCP CIA on the general conditions for entry into the Republic of Moldova, including during the exceptional period. Foreigners already learn about the refusal of access only when they arrive at the border police counter.

<sup>4</sup> Art.30 Law 52/2014 on the People's s Advocate (Ombudsman);

<sup>5</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>;

<sup>6</sup> Law 215/2011 [https://www.legis.md/cautare/getResults?doc\\_id=133230&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=133230&lang=ro#)

Law 200/ 2010 [https://www.legis.md/cautare/getResults?doc\\_id=133235&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=133235&lang=ro#)

<sup>7</sup> <https://www.border.gov.md/index.php/ru/node/5614>

<sup>8</sup> Chapter VI, Section 1 inadmissible persons and persons subject to removal proceedings; Government Decision No. 147/2022 on the approval of the National Air Transport Facilitation Programme:

[https://www.legis.md/cautare/getResults?doc\\_id=131156&lang=ro](https://www.legis.md/cautare/getResults?doc_id=131156&lang=ro)

- 34) Moreover, from discussions with some foreigners in the sterile (re-entry) zone, border guards would abuse individual decisions on admission to the country, even if the foreigners have all their papers in order.
- 35) The answers to the questions put to the BP representatives on how the criteria for refusal of entry are determined would argue with this respect. They argue that the person being refused often appears to be suspect as soon as he or she answers incompletely to questions about host persons, suspected forged supporting documents or available funds.
- 36) However, PAO representatives identified foreigners who had confirmatory documents such as hotel reservations with online payment made but were refused entry. At the same time, BP employees interviewed on these cases could not justify their decision to refuse entry.
- 37) Likewise, the BP employees mention that the amount of 30 Euros per day established in the national legislation required for a foreigner to justify his stay in the country needs to be revised given inflation and other economic and social phenomena.
- 38) According to the Register on the refusal of entry into the Republic of Moldova with no.1270 of 01.06.2022, **681 persons** were refused entry between 25 October 2022 and 07 December 2022.
- 39) Analysis of the registers indicates that in the period until October 2022, the regime of access of foreigners to the Republic of Moldova was much more relaxed. Later, however, it is observed that access to the territory of the country is conditional, mostly for people of Turkish, Pakistani, Indian, and Russian origin, coming from Turkey, Georgia, or even from EU countries. In this regard, some PF officers mentioned that: *"...better we don't give them access, rather than go after them in the hills", "We are few, but they come and come. We don't have enough staff, and even less at night, as most of them, are mothers with children and family"*.
- 40) Remains unclear why in the period 01.06.2022 - 25.10.2022 **no foreigners were registered** who were refused entry.
- 41) The reason for non-admission to the country **"does not justify the purpose of the trip"**.
- 42) According to Article 17 of Law 215/2011, border guards have the right to request justification of the purpose of entry of foreigners into the Republic of Moldova, who are required to submit a list of documents. Usually, the justification is made by presenting exhaustive documents and not on subjective grounds or the border guard's own conviction/ decision. The legal rule stipulates that foreigners can justify their entry into the country on personal or tourist grounds if they present "the supporting document concerning hotel accommodation or an invitation from the host stating the address of the guest's accommodation".
- 43) Law 215 does not have standard model invitations or accommodation documents attached. However, according to some border guards, an electronic hotel reservation on [www.booking.com](http://www.booking.com) or a notarised invitation from the host are not documenting justifying travel. In addition, national legislation provides that foreigners are allowed entry for 90 days, which means that they can enter the country regardless of secondary rules as long as no derogations have been made by the ESC or special acts issued by the border police in the context of the exceptional situation.

#### CONTESTING THE REFUSAL OF ENTRY INTO THE REPUBLIC OF MOLDOVA/ RIGHT OF DEFENCE:

- 44) Article 24 of Law 215/2011 provides for the right to appeal against the reasoned decision of the border guard to refuse the alien entry into the country. The alien must be given the contact details of the Lawyers' Union or specialised lawyers within the National Council for State Guaranteed Assistance (NCSGA) who can provide information about their representatives competent to act in the person's interest. Lodging an appeal with the court does not suspend the execution of the refusal decision.
- 45) Decisions on the refusal of entry to the Republic of Moldova are in a standardized format and include that they can be appealed within 30 days in the order of administrative dispute at the Court of Chisinau Municipality, Riscani Office, Kiev Street, no. 3. The person concerned shall receive a copy of this document. The decision is in 3 languages (Romanian, Russian and English).

- 46) *De facto*, the right to access to justice is unattainable in the prescribed situation because foreigners are voluntarily or involuntarily returned before this right is realized (within 24-48 hours).
- 47) None of the foreigners in the sterile area knows about the mechanism to challenge the decision of the BP, nor is it possible to realize this right.
- 48) Furthermore, aliens are not provided with pens, tabs, envelopes, letters of rights, mailboxes, addresses, access to evidence and lawyers (except in asylum cases) to lodge complaints or appeals against border police actions or inactions.
- 49) In addition, **foreigners do not have the physical or online possibility to appear before a national court, because they cannot leave the BCP CIA. And, CIA has no accommodation for the period of examination of appeals.** In this regard, the representatives of the police force argue that they have the right, *we do not restrict them, and they can call lawyers.* And to the question, which lawyers? The answer is "*anyone they want*".
- 50) Similarly, lawyers (even if they were solicited by foreigners) are not allowed in the sterile area.
- 51) PAO representatives note that the BP **does not ensure access to defence** against its decisions on persons refused entry to the Republic of Moldova, and the right to a lawyer is violated.
- 52) The People's Advocate believes that in the context of an increased number of refusals of entry of foreigners into the country, **the GIBP should take responsibility for remedying all the above-mentioned shortcomings and fully ensure the fundamental rights of non-admitted foreigners.**

#### **NON-ADMITTED ALIENS PLACED IN THE STERILE AREA:**

- 53) According to the Register of inadmissible citizens in the Republic of Moldova in the sterile zone no.1310 of 06.10.2022 of BPS CIA in the period 06 October 2022 - 07 December 2022, **682 foreigners** (men, women, and families with minors) were placed in the sterile area<sup>9</sup>. The given register is in a sloppy state, with inaccurate information, omissions and vagueness.
- 54) Remains unclear, why this Register is dated 06 October 2022 (What was it before? Were entries made or not?), and the model for filling it in is dated 07 October 2022. Finally, the data in this register allows the identification of the name, surname, passport number, date and time of entry, departure details and notes on food provision. The average length of stay of a foreigner during the recorded periods was 24 hours.
- 55) The sterile area is a cubicle, walking area, play area, toilet, mother and baby room and furniture, located on the 2nd floor of the CIA. Foreigners are only allowed to circulate during their stay in the hall on the 2nd floor of the airport. The sterile area is supervised by 3-4 border police employees, who are responsible for the foreigners during the waiting period. Passports are collected from foreigners. Foreigners are not allowed to leave the airport or the 2nd-floor area. Leaving the 2nd floor to the Duty-Free shops can be considered as an "escape".
- 56) The passports of non-admitted aliens shall be sealed and handed over to the flight attendants of the airline that is to carry out their return. Some foreigners have objected to the process of collecting their passports in the sterile area, both for lack of information and on the grounds of a well-founded fear of not having their identity papers. Verbal conflicts often occur between foreigners and border guards after their passports are collected.
- 57) PAO representatives did not observe that foreigners were issued with any information **sheets on their rights and obligations** during their stay in the sterile area, addresses for complaints, as well as information on flight-return opportunities or the basis for obtaining a passport/identity card.
- 58) During their stay in the sterile area, foreigners can buy fast food, coffee, tea or water from the restaurant or café on the second floor from their own resources. The CIA also gives a voucher worth 90 lei per person per day (a sandwich costs 85 lei and plain water 0.5 costs 30 lei). At the time of the visits, food was not provided.

<sup>9</sup> Sterile area: neutral, transit area in an international airport, located after checkpoints or customs or pre-departure areas. Access area for boarding and deplaning aircraft. Access to this area is restricted and only ticketed passengers and persons with an airport identification card may enter this area through the passenger checkpoint.

- 59) There is no access for foreigners to the open-air rides, duty-free area or smokehouse. Upon request, the border police may allow them access to their luggage or some of the goods in their luggage. Foreigners can only sleep or rest on, which are narrow, without blankets or quilts (Annex 4). There is no space for a shower/bath or privacy, which undeniably causes some suffering that can reach a minimum level of severity.
- 60) According to GIBP representatives, the premises for the sterile area were not arranged by the economic agent in the process of reconstruction of the CIA. Their remediation is another matter.

According to the rules of the European Committee for the Prevention of Torture applicable to aliens placed in the sterile area: (i) Migrant detainees in holding facilities at entry points must be provided with adequate sleeping facilities, (ii) allowed access to their luggage, (iii) adequately equipped sanitary facilities, and (iv) allowed daily access to fresh air. Access to (v) food and, if necessary, (vi) medical care must also be provided. According to the same international standards, the prohibition of torture and inhuman or degrading treatment or punishment includes the obligation not to send a person to a country where there are substantial grounds for believing that there is a real risk that he or she would be subjected to torture or ill-treatment<sup>10</sup>.

GD 147/2022 provides that after passengers and crew members have been received for screening, the competent public authorities are responsible for the protection and custody of passengers and crew members until they are legally allowed to enter the territory of the Republic of Moldova or determined to be inadmissible persons, in which case they are to be transferred back to the custody of the air carrier for transportation outside the territory of the Republic of Moldova.<sup>11</sup>

- 61) During monitoring visits, language barriers are observed in the communication of border police representatives with persons who are refused access to the territory of the country and placed in a sterile area. Thus, in most cases, communication is carried out in an online format using *translate* software. The persons record the message via the microphone of the telephone, after which it is automatically translated by the program and shown to the communicator.
- 62) Refusal decisions (according to some persons who have been refused entry) are not handed to them but are collected together with their personal documents (passport).
- 63) During monitoring visits, the PAO identified 1 person who was placed in the sterile area and was not registered in the Register. In another case, despite the validity of the passport of the person refused entry, the period of validity of the identity document was filled in by the inspector in the refusal decision as expired and the reason for refusal was not ticked. Thus, the person was in the sterile area without justification for 24 hours, without being explained the reasons.
- 64) According to the allegations of foreigners, there are also indications of unethical behaviour of border police officials, their refusal to provide them with information or access to exchange currency. Some foreigners in the sterile area indicate that border police officers tell them that only citizens of Ukraine can apply for asylum.
- 65) PAO representatives note that foreigners placed in the sterile area are treated as "illegals". There are no guarantees that foreigners can apply for asylum from the sterile area. However, this process depends strictly on the disposition of the BP employees.
- 66) Only 2 BP employees are responsible during the shift for the safety and security of all foreigners in the sterile area. Although the employees in charge claimed that they are doing well, the workload is high and their effort is to be appreciated. Controlling people who oppose the BP decisions is difficult, complex and complicated.

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[https://www.coe.int/en/web/cpt/standards?p\\_p\\_id=56\\_INSTANCE\\_rmo9MHZGnl46&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-4&p\\_p\\_col\\_count=1&\\_56\\_INSTANCE\\_rmo9MHZGnl46\\_languageId=ro\\_RO#immigration](https://www.coe.int/en/web/cpt/standards?p_p_id=56_INSTANCE_rmo9MHZGnl46&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-4&p_p_col_count=1&_56_INSTANCE_rmo9MHZGnl46_languageId=ro_RO#immigration)

<sup>11</sup> Section 10 Arrival procedures and obligations; Government Decision No 147/2022 on the approval of the National Air Transport Facilitation Programme; [https://www.legis.md/cautare/getResults?doc\\_id=131156&lang=ro](https://www.legis.md/cautare/getResults?doc_id=131156&lang=ro)

## INVOLUNTARY RETURNS:

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- 67) Foreigners, who either do not want to return or resist returning, are "forcibly" led by BP employees to the plane and handed over to the flight attendants. No records are kept on these matters.
- 68) Similarly, **the mechanism for assessing the principle of non-refoulement by border guards in the case of involuntary return of aliens to the country of origin or transit is not clear.**

## FINDINGS:

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Following the monitoring process, we make the following findings: -

- In the entrance area of the airport, there is an information board with leaflets on the rights of asylum seekers in 3 languages, as well as the contact addresses of relevant organisations, placed by representatives of the NGO PA "Lawyers' Law Centre", in partnership with GIBP, PAO and BMA, with UNCHR funding;
- Out of 2 rooms for asylum seekers, only 1 room is in use. The other has been handed over for use by FRONTEX Agency representatives due to the lack of offices in the BCP CIA. The accommodation in the functional room is satisfactory;
- No mention is made of the date, time, number, or duration of the placement of asylum seekers. It was not possible to identify the date of the last placement of asylum seekers in the respective rooms.
- According to the Register of Asylum Applications submitted by Asylum Seekers No. 17 of 25 July 2013 in the period 01.01.2022 - 07.12.2022 **110 asylum applications were submitted at the airport.** The register is not a standardized and uniform one.
- The first application for asylum in 2022 was on 1 January 2022, followed only in May 2022. For 4 months there would have been no asylum applications?
- The register of asylum applications does not include **the time when the applicant was handed over** to the BMA and **the signature of the BMA representative** who received the applicant.
- Data from the same Register shows that many asylum seekers were on the territory of the CIA between 12-24 hours before being handed over to the BMA.
- As there is no register of persons placed in asylum chambers, it is difficult to assume where asylum seekers were during this period and what basic guarantees they benefited from on the territory of CIA (water, access to luggage, fresh air, food, and lawyer).
- The format of all registers in which records are kept of foreigners, regardless of their status once they enter the country, is outdated and does not respect the confidentiality of personal data, or their digitisation is a priority.
- **Access information in the national territory is available only in Romanian, even if the official GIBP page contains mentions in Russian and English. The lack of information in foreign languages, especially international languages, limits foreigners' right to truthful information on the provisions of the legislation and entry conditions, etc., and misleads foreigners, who prefer to obtain information from indirect rather than official sources.**
- The visiting team noted that **there is no information** in the BCP CIA on the conditions for entry into Moldova. Foreigners already know about the refusal of access only when they arrive at the border guard's counter. Moreover, from discussions with some foreigners in the sterile (return) area, border guards abuse individual decisions on admission to the country, even if foreigners have all the documents in order.
- According to the Register on the refusal of entry into the Republic of Moldova with no.1270 of 01.06.2022 we find that in the period 25 October 2022 - 07 December 2022 **681 persons** were refused entry. It remains unclear why in the period 01.06.2022 - 25.10.2022 there were no foreigners who were refused entry. The reasons for non-admission were "does not justify the purpose of the trip".

- GIBP/border police officers abuse (through personal interpretations) the obligation to justify the purpose of entry into the country when deporting foreigners.
- Since October 2022 the general rule on the access of foreigners for tourist purposes for about 90 days is not applied or is selectively applied based on individual and subjective decisions of the employees of BP.
- The right of access to justice is unattainable in the case of non-admitted foreigners because they are voluntarily or involuntarily returned before this de facto and de jure right is realized.
- There is no complaint mechanism against abuses by the border police.
- According to the Register of inadmissible citizens in the Republic of Moldova in the sterile area no.1310 of 06.10.2022 of the BPS CIA in the period 06 October 2022 - 07 December 2022, **682 foreigners** (men, women, families with minors) were placed in the sterile<sup>12</sup> area. The given register is in a sloppy state, with inaccurate information, omissions and vagueness. It remains unclear, why this Register is dated 06 October 2022 (What was it before? Were entries made or not?), and the model for filling it in is dated 07 October 2022.
- Foreigners placed in the sterile area have their passports collected. Against this background, there are conflicts between employees and foreigners.
- Sterile area accommodation is not suitable for keeping people in the area for 24 hours or more. Lack of necessary accommodation leads to minimal suffering.
- Foreigners, who either do not want to return or are reluctant to do so, are "forcibly" taken by border police to the plane and handed over to the flight attendants. No notes are made on these matters. Similarly, **the mechanism for assessing the non-refoulement principle by border guards in the case of involuntary return of aliens to their country of origin or transit is unclear.**
- **The lack of record keeping/ inconsistent evidence of the detention/non-admission/ placement/return of aliens in BCP CIA, regardless of duration, raises questions and in some cases concerns about ensuring safeguards against torture and/or other forms of ill-treatment of persons in custody.**
- **In addition, the GIBP is to identify solutions to ensure the fundamental rights to food, sanitation, medical assistance, to go for a walk in the fresh air, access to luggage and other specific needs of people from vulnerable risk groups (minors, people with disabilities, with certain diseases, etc.).**
- The People's Advocate does not question the competence and skills of border police employees, including their honesty in communicating the performance of their duties under the law. Rather, the Ombudsman's position is one of principle and is motivated by the need to provide a framework for the protection of persons with whom border guards come into contact and to avoid any doubt as to the safety of the person and the integrity of the employee.
- Furthermore, *to protect physical and mental integrity* "States shall not only refrain from inflicting ill-treatment but shall also adopt/take *preventive measures* necessary to ensure the physical and mental integrity and well-being of persons deprived of their liberty".<sup>13</sup>
- In point 10 of resolution 72/163 of 19 December 2017, the United Nations General Assembly specifically stressed the obligation of States *to take decisive and effective measures as a matter of priority to prevent acts of torture and inhuman or degrading treatment or punishment.*

## RECOMMENDATIONS:

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<sup>12</sup> Sterile area: neutral, transit area in an international airport, located after checkpoints or customs or pre-departure areas. Access area for boarding and deplaning aircraft. Access to this area is restricted and only ticketed passengers and persons with an airport identification card may enter this area through the passenger checkpoint.

<sup>13</sup> ECtHR, *Mouisel v. France*, 2002.

**Following the findings of the Thematic Report, the People's Advocate (Ombudsman) is guided by the provisions of para.2, art.24 of the Law no.52 of 03.04.2014 on the People's Advocate (Ombudsman):**

#### **R E C O M M E N D S**

- 1) The **BMA** to examine the appropriateness of seconding a representative(s) of the BMA to the BCP CIA to ensure the rights of asylum seekers in both the entry and sterile areas;
- 2) The **GIPB** to ensure that the asylum seekers' room, temporarily occupied by the FRONTEX Agency and converted into an office, will be readjusted to its original state once the Agency's application is withdrawn. If that application is for an indefinite period, then the GIPB is to identify another office for the international organisation;
- 3) The **GIPB** is to draw up a Register of asylum seekers placed in asylum hostels until they are taken over by the BMA indicating the date, time, number, duration of the placement, food, water, and accommodation. The register is also to be regarded as a guarantee against allegations of abuse of asylum seekers.
- 4) The **GIPB** ensures the correct, concise and uniform completion of the Register of Asylum Applications submitted by asylum seekers. Similarly, the **time of delivery** of the applicant to the BMA and **the signature of the representative of the BMA** who received the applicant shall be fixed in the Register. These entries are to be applied by the representatives of the border police and the BMA as a safeguard against arbitrariness.
- 5) The **GIPB** to ensure the translation of national access information into international languages or at least into Russian and English on the official website (including updating it).
- 6) The **GIPB** to ensure that border guards at BCP CIA do not abuse their legal prerogatives in making decisions on the unjustified non-admission of aliens into the country - such as "not justifying the purpose of the journey".
- 7) The **GIPB** to ensure that all foreign citizens who have been refused entry are registered in the Register on Refusal of Entry into the Republic of Moldova and that this Register is standardized and subject to institutional checks.
- 8) The **GIPB** to ensure the realization of the de facto right of access to justice provided for in Article 24 of Law 215/2011, through the creation of a Register of Lawyers within the Lawyers' Union, information on the contact details of lawyers empowered to carry out counselling and appeal of return decisions, conditions for hearings and access of lawyers to the sterile area, including ensuring access of Lawyers' Union lawyers to the sterile area for legal assistance services.
- 9) The **GIPB** to provide a complaints mechanism against decisions of border police employees in the sterile area.
- 10) The **GIPB** to ensure that the Register of Persons in Sterile Areas is completed on an ongoing, accountable basis with accurate, clear and conclusive information. A standardised Register would be appropriate in this situation.
- 11) The **GIPB** to ensure that information boards on the rights and obligations of foreigners in the sterile area are posted in the sterile area in the languages of international circulation, including providing each foreigner with a Sterile Area Rights and Obligations Sheet.
- 12) The **GIPB** to ensure that foreigners placed in the sterile area are properly informed in an understandable language about the process and effects of passport collection.
- 13) The **GIPB** to contribute jointly with Avia Invest Ltd/ responsible persons in providing necessary and dignified accommodation in the sterile area (food, sanitation, medical assistance, fresh air walks, access to luggage and other specific needs of persons from vulnerable risk groups (minors, disabled persons, persons with diseases, etc.)), given the high flow of inadmissible persons.
- 14) The **GIPB** to keep a record of foreigners who either do not wish to return or refuse to return and are "forcibly" led by border police employees to the plane and handed over to the flight attendants.
- 15) The **GIPB** to ensure that any person before being returned is assessed by border guards according to the principle of non-refoulement.

- 16) The **GIPB** to increase the staff of BCP CIA / BPS CIA given the increased flow of travellers, including ensuring decent working spaces and conditions for employees.
- 17) The **GIPB** to circulate a copy of the respective report to BPS CIA for information and feedback as appropriate.

This Report is placed on the PAO website for information and dissemination.

Annexe 1 - Information Panel BCP CIA









Annexe 4 - Sleeping space sterile area BCP CIA

