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# Special Report

**on investigation's results from Office about the case of death of the national  
Andrei Braguta into state custody**

*(developed under Art. 22 (2) Law on The People's Advocate(Ombudsman)*

*No. 52/2014)*

**Chisinau, 2017**



*The People's Advocate expresses his sincere condolences grieving relatives*

*Mihail COTOROBAI*

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The People's Advocate	PA
The Office of People's Advocate	OPA
Ministry of Justice	MJ
Ministry of Internal Affairs	MIA
Ministry of Health, Labour and Social Protection(Moldova)	MHLSP
Department of Penitentiary Institutions	DPI
Penitentiary No. 13 Chisinau	P13
Penitentiary No. 16-Pruncul Chisinau	P16
General Inspectorate of Police	GIP
Chisinau Police Department	PD Chisinau
Provisional Detention Center of PD Chisinau, Tighina Street 6	PDC
Police Inspectorate of the Ciocana district in Chisinau	PI Ciocana
Forensic Center Chisinau	FC
FC's Department No12 (Forensic psychiatry department)	Department 12
Public Medical-Sanitary Institution	PMSI
PMSI Republican Narcological Dispensary	RND
PMSI " Institute of Emergency Medicine"	IEM
National Center of Pre-hospital Emergency Medical Assistance Chisinau	NCPEMA
Health Center "Biruinta", Singerei District	HC Biruinta
Community Mental Health Center Singerei	CMHC Singerei
PMSI Psychiatric Hospital Balti	PH Balti
PMSI Clinical Psychiatric Hospital Codru	CPH Codru
Prosecutor General's Office of Republic of Moldova	PGO
National Inspectorate of Patrol	NIP
The Convention for the Protection of Human Rights and Fundamental Freedoms	ECHR

§1. The People's Advocate (Ombudsman) ensures the protection of all human rights and freedoms by the public authorities, by the organizations and companies, no matter of the type of property and the legal organizational form, by the non-commercial organizations and by decision makers at all levels.<sup>1</sup> The People's Advocate contributes to the protection of the human rights and freedoms through the prevention of their violation, through monitoring and reporting on the modality of protection of the fundamental human rights and freedoms at the national level through the improvement of the legislation related to the human rights and freedoms, through international collaboration in this area, through the promotion of the human rights and freedoms and their protection mechanisms, through the application of the procedures provided by the Law on The People's Advocate(Ombudsman) No. 52 - 03.04.2014 (hereinafter Law No. 52/2014).

§2. In his/her activity, the People's Advocate follows the principles of legality, equality, impartiality, transparency, social equity, democracy, humanism and follows own conscience.

§3. In the case of having information on the mass or severe violation of the human rights and freedoms, in the cases of special social importance or in the case when is needed the protection of the interests of people who cannot use on their own legal defense means, the People's Advocate has the right to act ex officio.<sup>2</sup>

§4. In the case when are found mass or severe violations of the human rights and freedoms, the People's Advocate has the right to present special reports at the Parliament's sittings, as well as to propose the creation of special commissions to verify these facts.<sup>3</sup>

§5. In his/her activity for the prevention of torture, the People's Advocate presents to the authority or responsible official his/her recommendations in order to correct the behavior towards detainees, to improve the conditions of detention and to prevent torture.<sup>4</sup> In this regard, National human rights institution, by its mechanisms, regularly makes preventive and monitoring visits in places of detention, issues reports and submits to the authorities recommendations.

§6. Thus, the People's Advocate may initiate inquiries on request or ex officio in cases of violation of human rights and fundamental freedoms, using the rights provided by Art. 11 of Law No. 52/2014. In such cases, the People's Advocate relies on the guiding role of the prosecutor's office, whose duties include the initiation of criminal prosecution of torture and / or ill-treatment. In accordance with Art. 18 (2) of the Law No. 52/2014,, *The People's Advocate does not substitute by his/her competencies the public authorities, legal bodies or courts.*“. The mandate of the People's Advocate does not allow the substitution of the reactive function of Moldovan law enforcement bodies. An important criterion of the investigation conducted by the People's Advocate compared to other state or legal organs, resides in its quasi-judicial character. Respectively, the investigation is not aimed at collecting evidence to hold accountable. Rather, the Ombudsman's investigation comes up with the reasons, causes, systemic problems that have encouraged abuses against human rights and fundamental freedoms.<sup>5</sup> Likewise, the People's Advocate shall examine the actions or inactions of the public authorities, of the organizations and companies, no matter of the type of property and the legal organizational form, of the non-commercial organizations and of the decision

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<sup>1</sup> Law on The People's Advocate(Ombudsman) No52/2014, Art. 1 (1)

<sup>2</sup> Law on The People's Advocate(Ombudsman) No52/2014, Art. 22 (1)

<sup>3</sup> Law on The People's Advocate(Ombudsman) No52/2014, Art. 22 (2)

<sup>4</sup> Law on The People's Advocate(Ombudsman) No52/2014, Art. 24 (2)

<sup>5</sup> UNDP, How to Conduct Investigations, p.25

makers at all levels, which are suspected of violating certain rights, and shall investigate if they meet both national and international standards.

**§7. On August 29, 2017, in the media came up information about the death of the national Andrei Braguta in suspicious circumstances in the penitentiary system of the Republic of Moldova. The allegations of maltreatment of the victim were supported by his relatives and attorney.<sup>6</sup>**

**Andrei Braguta is a national of the Republic of Moldova, born on 27 April 1985 in Biruinta village , Singerei district. Since 2007 he has been working as an engineer at JSC "Floarea Soarelui" in Balti. On August 15, 2017, he was detained by the police on charges of non-dangerous violence applied to an official. After 10 days of detention, he died in Penitentiary no. 16-Pruncul, from Chisinau (prison-hospital).**

§8. On August 30, 2017, under Article 22(1) of the Law No.52 / 2014, the People's Advocate made an ex officio hearing on the case of the mediated case regarding the "death of Andrei Braguta in Penitentiary No.13, qualifying it as a case of particular social importance.<sup>7</sup>

§9. In the process of investigating the case according to the standardized procedure, the People's Advocate proposed the following actions:

- examining the actions / inactions of the public authorities, officials at all levels in terms of functional attributions, national legislation and international standards as regards human rights in the context of ensuring the right to life, physical and mental integrity, the right to liberty and security, the right to a fair trial, the right to health protection in case of death of the national Andrei Braguta during the period of detention in the state custody;
- identifying the systemic issues that caused the death of the person during the period of detention in the state custody;
- making recommendations to authorities and officials, as appropriate;
- informing the public about the results of the investigation.

§10. Based on the results of the investigation and the corroboration of the probative evidence gathered in the investigation process, the People's Advocate drew his conclusions in terms of international and national standards in the field and analyzed how the authorities concerned applied these standards. Likewise, the People's Advocate proposed to analyze the objective, subjective or systemic reasons that led to the tragic case. Ultimately, recommendations were made to prevent and improve the situation in the field.

§11. The People's Advocate reiterates that the determination of the circumstances of the application of bodily harm, torture and / or ill-treatment, and especially cause of death of the national Braguta Andrei, belongs exclusively to the criminal investigation bodies and the courts.

§12. The People's Advocate insists on a public, transparent, fair and equitable trial, in compliance with the principles of contradictory and presumption of innocence. At the same time, the authorities concerned are to become aware of and to assume their consequences and to go beyond the criminal

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<sup>6</sup> Title: Rudele unui bărbat decedat în penitenciarul 13 acuza autoritățile de moartea acestuia. Administrația susține că el s-a stins de pneumonie: <http://protv.md/stiri/actualitate/rudele-unui-barbat-decedat-in-penitenciarul-13-acuza-autoritatile---1994871.html>

<sup>7</sup> Title: Cazul barbatului decedat în Penitenciarul 13 va fi investigat de către Oficiul Avocatului Poporului: <http://ombudsman.md/ro/content/cazul-barbatului-decedat-penitenciarul-nr-13-va-fi-investigat-de-catre-oficiul-avocatului>

charge. The highlighted rigorous systemic problems are to be addressed with priority in the interest of upholding of human dignity and integrity.

§13. The People's Advocate admits that the investigation can achieve different aspects or opinions on this case, the appreciation of which is to be done with professional diligence. In doing so, the People's Advocate avails of the right not to be persecuted for his views expressed during the investigation of the case.

§14. The People's Advocate welcomes, with certain reservations, the opening of most of the authorities concerned for collaboration in the initiated investigation process. Likewise, The People's Advocate remarks their prompt reaction to clarify the circumstances of the case. At the same time, the People's Advocate assesses the involvement of the media and civil society, in particular, to mobilise the authorities.

§15. Both national and international public opinion await firm answers to pledging positive governmental commitments against torture and other cruel, inhuman or degrading treatment. This obligation, a priori, presupposes the joint assumption of the eradication of the torture. In the case of Braguta, the authorities concerned acted independently, trying to legitimize their actions to the facts. These attempts produced various opinions, especially with a negative connotation on public order, good morals, and also increased hatred for people with disabilities, police and prison staff, etc.

§16. In the opinion of the People's Advocate, the manner in which the case was covered by state institutions, in particular through the dissemination of photo and video materials on circumstances unexamined by the courts, with clear infringement of the right to privacy and the presumption of innocence does not legitimize the purpose of preventing torture. Quite the opposite, it has led to irreversible effects on the victims of torture, relatives of the deceased and society in general.

§17. The People's Advocate calls on society, stakeholders, media and policymakers to reflect equally, objectively and transparently this case, respecting professional ethics, without politicizing it.

§18. On August 30, 2017, the People's Advocate created a working group of ten employees from the People's Advocate Office and a contracted expert to investigate the "Braguta case" by carrying out the actions mentioned in §9. In order to achieve the necessary actions, in order to ensure the investigation process, taking into account the functions of the People's Advocate, the working group proposed the following objectives:

**Objective 1:** To identify the places of detention where has been the national Andrei Braguta from the moment of apprehension until the moment of death;

**Objective 2:** To investigate how the authorities ensured upholding of the right to individual freedom and the safety of the person according to Art. 5 of the ECHR;

**Objective 3:** To investigate to what extent were upheld the guarantees related to ill-treatment and the right to life according to Art. 2 and 3 of the ECHR;

**Objective 4:** To investigate to what extent were upheld the guarantees regarding the access to assistance and medical care, according to art. 2 and 3 of the ECHR.

§19. The establishment of the facts and circumstances necessary for the investigation was achieved through:

- visits to all institutions / organizations that, in the People's Advocate's opinion, have had or could touch closely upon the case investigated, in particular: Police Inspectorate of Ciocana district of GIP Chisinau, Pre-trial Detention Center of PD Chisinau within, the General Inspectorate of Police, Tighina Street 6 Chisinau, Penitentiary No. 13 Chisinau, Penitentiary No. 16-Pruncul Chisinau, National Center of Pre-hospital Emergency Medical Service Chisinau, Forensic Center Chisinau, Republican Narcological Dispensary Chisinau, and other institutions;
- gathering of information, documents and materials, video and audio records, from authorities / institutions, from officials, necessary for effective and objective investigation of the case, including official information with limited access and information assigned to state secret;
- inviting officials for hearings and requesting explanations;
- collecting, systematization and analyzing of information from the media and other available sources.

§20. According to the Investigation Plan, the following information, documents and materials should be examined and gathered in the investigation process as follows:

**At Objective 1: To identify the places of detention where has been the national Andrei Braguta from the moment of apprehension until the moment of death:**

- 1) Information from internal records of PI Ciocana;
- 2) Information from internal records of PDC Chisinau;
- 3) Information from internal records of Clinical Psychiatric Hospital Chisinau;
- 4) Information from internal records of P13;
- 5) Information from internal records of P16.

**At Objective 2: To investigate how the authorities ensured upholding of the right to individual freedom and the safety of the person according to Art. 5 of the ECHR:**

- 1) To request from the Ciocana district Court all the materials on the criminal case against the national A. Braguta, including a copy of the arrest warrant and additional information; the closures of the preventive measures and the additional documents on which the admission decision was based, the prosecutor's approach and the advocate's pleadings;



- 2) To investigate whether the placement under the arrest and the end of admission were or not contested / picked up by children;

**At Objective 3: To investigate to what extent were upheld the guarantees related to ill-treatment and the right to life according to Art. 2 and 3 of the ECHR:**

- 1) To investigate if during the detention in PI/ P13 / P16, the national Braguta Andrei has undergone blows, acts of torture and / or ill-treatment;
- 2) The actions of the NIP collaborators (application of handcuffs was legal, proportionate and necessary)/ To investigate if any internal investigations have been initiated on the alleged outrage;
- 3) To investigate allegations of maltreatment by other prisoners from the same cell in PDC if internal and criminal investigations have been recorded;
- 4) To investigate whether international / national standards of detention of people with mental illness were upheld (de facto PDC behavior);
- 5) To investigate the conditions of detention in PDC/ P13/ P16;
- 6) To investigate allegations about the maltreatment of Andrei Braguta in the PDC's cell by co-detainees, as well as the actions of the PDC's administration;
- 7) To consult the PDC's registers;
- 8) To hear persons in pre-trial detention on physical aggression (*if they are in IDP or P13 according to the list of detention records*);
- 9) To investigate if the detainee A.Braguta has been entitled to the minimum detention guarantees (*telephone call, access to a doctor, access to an attorney, material conditions*).

**At Objective 4: To investigate to what extent were upheld the guarantees regarding the access to assistance and medical care, according to art. 2 and 3 of the ECHR:**

- 1) To determine the circumstances of the pneumonia (prior to imprisonment or aggravation in detention / medical certificates from home (relatives), claimed or not the detainee about his illness and the behavior of the administration in this case, according to the prosecutors' statements);
- 2) To pick up medical information from PDC;
- 3) To pick up medical information from P13;
- 4) To pick up medical information from P16;
- 5) To request information from the Emergency Hospital (*medical records / medical periods / conclusions*);
- 6) To request from the Forensic Center the FC expert report;
- 7) To request a specialist's opinion on the examination of medical records and an opinion on the causes and the circumstances of death, in particular the provision of medical assistance;
- 8) To investigate if PDC provided medical assistance, including medicine and treatment information;
- 9) To investigate if at entrance-exit to PDC Andrei Braguta has undergone medical examination;
- 10) To analyze Escort Service reports on Andrei Braguta's behavior during the escort; stages and escort period;
- 11) Also to investigate other important aspects in that case.

§21. The Working Group has gained written evidence in both preliminary visits as well as following the steps taken. Likewise, were studied the materials for the investigations initiated by the institutions concerned in this case. All the materials have been examined and corroborated with the provisions of national normative acts and international standards.

§22. Also, the working group held individual hearings with officials who met with Andrei Braguta, co-detainees, police officers, penitentiaries, law enforcement, attorneys, practitioners and theorists;

systematized information from the media and social media; has analyzed relevant international case-law as well as the reports and recommendations of specific international structures.

§23. A distinct area of interest was evidence collection regarding the health care provided to Andrei Braguta within the public medical-sanitary institutions. The investigation covered the period from September to December 2017.

§24. Likewise, the members of the working group carried out fact-finding visits in the closed and open institutions, that ensured the detention, as well as the treatment of Mr. Andrei Braguta. The purpose of these visits de facto and de jure was to monitor the situation in these institutions; upholding the principles and mechanisms of internal activity; intra and inter-institutional collaboration; how to ensure guarantees against ill-treatment and torture; the component of providing patient health care; picking up documents and evidence, interviews, questioning of employees, etc.

§25 On September 4, 2017, the People's Advocate launched an appeal to civil society to work with the Ombudsman's Institution to elucidate case-related aspects <sup>8</sup>.

§26. Thus, between September and October 2017, the members of the working group carried out 23 fact-finding visits (including repeated) to:

1. Police Inspectorate of the Ciocana district, Chisinau
2. Penitentiary No. 13, Chisinau
3. Provisional Detention Center of PD Chisinau, Tighina Street 6
4. Penitentiary No16-Pruncul Chisinau
5. PMSI Clinical Psychiatric Hospital Codru
6. FC's Department No12 (Forensic psychiatry department)
7. PMSI Republican Narcological Dispensary
8. PMSI "Institute of Emergency Medicine"
9. National Center of Pre-hospital Emergency Medical Service Chisinau
10. Forensic Center Chisinau
11. Health Center "Biruinta", Singerei District
12. Community Mental Health Center Singerei
13. PMSI Psychiatric Hospital Balti
14. National Inspectorate of Patrol Chisinau
15. Prosecutor General's Office of Republic of Moldova
16. Prosecutor's Office Chisinau.

§27. The findings made as a result of the investigation result from the primary information obtained from the authorities informed. Some of the documents that were qualified as probative evidence in the criminal case (for example, video from the Chisinau Provisional Detention Center) were inaccessible to the OPA employees.

§28. The conclusions of the working group covered the period before the Prosecutor's Office of the Republic of Moldova (October 24, 2017) broadcasted the video sequences recorded between 15-16 August 2017<sup>9</sup>. Therefore, this report does not answer questions about the circumstances of the application of violence / ill-treatment in the period reflected by prosecutors.

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<sup>8</sup> Title: Avocatul Poporului și angajații OAP încurajează societatea civilă să colaboreze cu Instituția ombudsmanului în elucidarea aspectelor legate de cazul AB: <http://ombudsman.md/ro/content/avocatul-poporului-si-angajatii-oap-incurajeaza-societatea-civila-sa-colaboreze-cu>;

<sup>9</sup> PGO's Release „Trei polițiști și patru deținuți trimiși în judecată în cazul Braguta”, 24/10/2017, available in romanian at <http://procuratura.md/md/news/1211/1/7289/>

§29. The report contains pictures of places of detention for the purpose of raising awareness of the conditions of detention in the media field.

§30. This report will be disseminated to the national authorities, to the court as *amicus curiae* brief, as well as to the international structures. The final variant will be published on the official website of the national human rights institution. ([www.ombudsman.md](http://www.ombudsman.md)).

§31. Subsequent data processing, including personal data (in particular regarding the illness) has to be carried out with stagecoach .

**OBJECTIVE No.1 Time - periods and custody of Andrei Braguta**

§32. In this chapter are the periods during which Andrei Braguta was in the custody of the authorities who detained and apprehended him. Primo, it was decided to present the information on the attitude of the authorities versus the case of death, after several statements were made in the media field about the lack of information about injuries and death. The People's Advocate proposed to establish, on the basis of the available information and material, how the de-facto mechanism of ensuring the rights of the detained person has been exercised and the attitude of those responsible for the person at risk.

**1.1. Informing authorities about injuries and death**

§33. On August 24, 2017, the P16 administration announced that *"in the institution, at 12.00 PM, the detainee Andrei Braguta(1985) was found with bodily harm, escorted from Penitentiary No. 13. The detainee refused to give any explanation on this case."*<sup>10</sup>. Informing the authorities was done in electronic form and by mail.

§34. On the same day, psychiatrist at the Department of Psycho-neurology, Justice Senior Lieutenant, Silivestru Larisa, informed the Chisinau Prosecutor's Office, Buiucani Office, about the detection during the examination of Andrei Braguta of the following bodily harm: *yellowish purplish ecchymosis in the region of the right arm, yellowish purplish ecchymosis in the region of the right hemithorax, yellowish purplish ecchymosis in the region of the iliac crest.*

§33. On August 25, 2017, the Detention Service of P16 informed, via a special press release, that *„on 12/24/2017 at 12.00 PM, Braguta Andrei Ion, born in 1985 was brought from the Penitentiary No. 13 to the Penitentiary no. 16. The medical examination revealed bodily harm indicated in the medical investigation document No.63: yellowish purplish ecchymosis in the region of the right arm, of the right hemithorax and of the iliac crest. The detainee refused to give any explanation on this case”.*

§34. On August 26, 2017, the P16 administration reported that in the institution at 03.00 AM the detainee Braguta Andrei Ion died a natural death, without any signs of violence<sup>11</sup>.

§35. The People's Advocate received information about the death of Andrei Braguta, submitted in the following way: *„on 26.08.2017 in the P-16 at 03.00 AM, the detainee Braguta Andrei Ion, born in 1985, died a natural death, without any signs of violence”.* PA received this information on 27 August 2017.

§36. Under Art. 232 of the Executive Code of the Republic of Moldova, *„...on arrival in the penitentiary, the convicted, within 24 hours, is examined for the existence of bodily harm or other signs of violence and, within 15 days, he / she is questioned and subjected to the medical examination and hygienic cleaning in the quarantine cells of the penitentiary.*

*If signs of violence, cruel, inhuman or degrading treatment or other ill-treatment are found, or the*

<sup>10</sup> Factsheet on the operational situation in the penitentiary system at 07.30 AM on 24.08.2017 until 07.30 AM on 25.08.2017 (contains personal date).

<sup>11</sup> Factsheet on the operational situation in the penitentiary system at 07.30 AM on 25.08.2017 until 07.30 AM on 26.08.2017 (contains personal date).

*person convicted accuses of violence, the doctor conducting the medical examination has the obligation , to record in the medical record the findings and the statements of the convict about these or any other aggression and immediately to announce the head of the penitentiary institution, who informs the Public Prosecutor and the People's Advocate or, in cases involving juvenile offenders, the People's Advocate for the Rights of the Child within 24 hours.*

*In the case of serious illness or the finding that the convicted person has been subjected to torture, cruel, inhuman or degrading treatment or other ill-treatment, the administration of the penitentiary ensures that, immediately, by telegram or otherwise, the family, other persons close to the convict are informed about this fact”.*

**Therefore, the obligation of the doctor in the penitentiary system is to inform the prosecutor and the People's Advocate if it is found that the convicted person has been subjected to torture, cruel, inhuman or degrading treatment or other ill-treatment. Likewise, the doctor is required to record the findings as well as the convict's statements about them.**

### *Conclusions*

- ✓ The authorities failed to identify, record, report and document the case in accordance with the provisions of the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment, approved by the Joint Order of the General Prosecutor, the Minister of Justice, the Minister of Internal Affairs, the General Director of the Customs Service, the Director of the National Anticorruption Center and the Minister of Health , No. 77 / 572 / 408 / 639-o / 197 / 1589 dated on December 31, 2013 (*hereinafter Order 77*)<sup>12</sup> . The Regulation establishes the procedure for the identification, recording and reporting of alleged cases of torture, inhuman or degrading treatment and regulates: the principles to be upheld within the interdepartmental cooperation mechanism; the role and attributions of authorities in preventing and solving alleged cases of torture, inhuman or degrading treatment; how to perform the obligation to register and report ex officio to the prosecutor all cases of torture, inhuman or degrading treatment; how to submit medical records in cases of torture, inhuman or degrading treatment, research principles and the schedule of bodily harm description; the particularities of carrying out internal disciplinary investigations of the alleged cases of torture, inhuman or degrading treatment, the correlation of these investigations with the criminal proceedings.
- ✓ The authorities did not ensure the examination and documentation of acts of torture, inhuman or degrading treatment in accordance with the provisions of the Istanbul Protocol<sup>13</sup>, developed in order to allow states to deal with one of the fundamental issues in defending individuals against torture - an effective documentation.
- ✓ DPI, PGO and Prosecutor's Office Chisinau knew the fact that Andrei Braguta was received in the 16th Penitentiary with bodily harm (*with details of the location of the ecchymosis*), including death.
- ✓ PGO reacted only on 3 September 2017, reiterating the lack of information on the case, even

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<sup>12</sup> Order No. 77/2013, available in Romanian on

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353245>

<sup>13</sup> Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, sent to the Office of the High Commissioner for Human Rights, United Nations, 9 August, 1999, [http://unhcr.org.ua/img/uploads/docs/Protocolul%20de%20la%20Istambul\\_1.pdf](http://unhcr.org.ua/img/uploads/docs/Protocolul%20de%20la%20Istambul_1.pdf)

though it was informed by special press release on 24 August 2017<sup>14</sup>.

- ✓ P13 Chisinau has not reported that Andrei Braguta was injured on arrival in the institution.
- ✓ P13 and P16 did not immediately inform the relatives of the deceased about the serious illness / the finding of subjection to ill-treatment as provided in Article 232 of the Executive Code.

The P16 administration complied with the obligation to inform the prosecutor and the People's Advocate of the findings of the violence, under Art. 232 of Executive Code.

- ✓ Primary information on alleged torture and / or ill-treatment of the penitentiary system sent to the PA in electronic form was incomplete. Even though the P16 administration informed the People's Advocate of the finding of bodily harm to prisoner Andrei Braguta, escorted from P13, at the time of receiving this information, PA was unable to give an opinion on the circumstances of the death of Andrei Braguta. However, the ex officio referral was prompt.
- ✓ Empowered authorities reacted ONLY to pressure from media and civil society. They tried to pass, as soon as possible, the responsibility one another, to communicate various options on the case of death, as result misleading the public opinion. This case has shown that the authorities are not fully prepared to react in exceptional or sensitive cases. For example, MJ / DPI has fired from the earliest days - employees of the penitentiary system.

### *Recommendations:*

1. DPI and GIP must improve and streamline reporting procedures on alleged cases of torture, inhuman or degrading treatment, in accordance with the rules in force and the Istanbul Protocol, as well as the empowerment of state officials in this respect.
2. DPI and GIP are due to report PA and Prosecutor within 24 hours more comprehensive information on ill-treatment, incidents, abuse or deaths in custody / detention.
3. This information should include the reports of the duty officers, the guardian, the medical records followed by the photographs of the location of the bodily harm, primary conclusions about the death, information on the emergency service call, information for relatives and the prosecutor, including other relevant details on the case.

#### *a. Two days in the Penitentiary*

§37. Andrei Braguta was in the Penitentiary for two days, between 24-26 August 2017. On August 24, 2017, for about 40 minutes, the detainee was held in the Service Escort van of P13 for the period of setting out of the personal file in order to escort the detainee to P16 with the status of a prison hospital. Subsequently, he was escorted to P16, where he died on August 26, 2017 at 3:00 AM in the Psychiatric Department.

§38. An attempt to place Andrei Braguta in P13 was taken on 21 August 2017. After the detention period (72 hours), the days off and the basis of conclusion on 18 August 2017 issued by the Chisinau Court Judge, from Ciocana district, Iurie Obada, PDC employees of PD Chisinau escorted Andrei Braguta at P13 for placement in criminal prosecution detention center. On the same day, the special service of P13 allowed the placement of Braguta on the basis of the documents in his

<sup>14</sup> Video\_Press-release\_PG\_04.11.2017 <https://point.md/ro/noutati/incidente/cazul-andrei-braguta-pg-a-deschis-dosar-penal-pentru-tortura-si-rele-tratamentu>; <http://procuratura.md/md/news/1211/1/7243/>

personal file, however, the P13 medical service refused to receive it on the grounds that medical information was insufficient, inconclusive, unclear anamnestic data, the medical examination did not contain the clinical and para-clinical examination, including the consultation of the psychiatrist.

§39. According to the explanation of the head of the P13 medical service, Adriana Ignat, „...on August 21, 2017 the police employees brought the detainee Andrei Braguta to Penitentiary no. 13 Chisinau. Thus, I personally examined the detainee, but he presented an unclear clinical picture, did not react to external stimulus and was placed in the intake area in a horizontal position. For this reason, having no anamnestic data, information on whether he was in medical records as well as other objective data about the prisoner's state of health, I explained to the police employees that it is necessary for the detainee Andrei Braguta to be first fully examined clinical and para-clinical within the Emergency Hospital and subsequently on the basis of the medical conclusion would be decided the subsequent tactics and if necessary to transfer him to Penitentiary No. 16-Pruncul”. She notes that “ As a result of this discussion, the employees of the MIA escort van took the detainee Braguta Andrei to escort him to the Emergency Hospital and on that day they did not come back”<sup>15</sup>.

§40. At the beginning of the investigation, the People's Advocate was informed that Andrei Braguta did not get to P13 on 21 August 2017. At the same time, the PDC employees claimed that there was an attempt to place him in P13. Later, the P13 administration acknowledged that they refused to receive Andrei Braguta in the detention center.

§41. The Working Group established that Andrei Braguta was escorted by PDC staff at the PMSI “Institute of Emergency Medicine”, where medical examination was impossible. Finally, PDC employees decided to place the detainee in the PDC, which took place after 06.00 PM. This action can not be justified, even though it was contrary to the preventive arrest warrant. However, PDC employees were not entitled to release the detainee. Rather, P13 was to enforce the decision of the examining magistrate.

§42. Under Art. 200 (1) of Executive Code Republic of Moldova, „...the reception of the convicted in the penitentiary is carried out by the penitentiary administration, once his/her identity is established, on the basis of the execution order, ruling of conviction, identification papers, other documents in the manner prescribed by the Statute of execution of sentences by convicted persons”. At the same time, paragraph 18(14) of Statute of execution of sentences by convicted persons provides that „for receiving detainees in prisons represents the gathering of the following acts: the act constituting the basis of detention and the act confirming the identity of the detainee. In case of receiving a detainee in transit or of a detainee transferred from another penitentiary institution or from the body that detained a person, it is necessary to present, in addition to the documents mentioned above, the accompanying list and the personal file of the detainee, as well as the order of the Director of the Department of Penitentiary Institutions regarding his / her transfer”<sup>16</sup>.

The normative provisions cited above indicate the obligation to receive persons in the penitentiary system, medical examination or any other medical documents not required for receiving. On the contrary, the responsibility of the penitentiaries is to perform the medical examination of detainees, irrespective of their condition. Here, the legislator included the guarantee of reporting all cases of ill-treatment, torture, injuries declared and observed in the process of receiving detainees and did not forbid non-receiving them in the penitentiary system.

§43. The People's Advocate received complaints about the refusal to place prisoners in the

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<sup>15</sup> Extract from the DPI Conclusion of the Service Survey referring to the Death of Inmate Braguta Andrei in Penitentiary No. 16-Pruncul of September 7, 2017.

<sup>16</sup> Statute of execution of sentences by convicted persons, approved by the Government Decision No. 583 of 26.05.2006



penitentiary without the medical examination records. **PDC has not a feldsher** (a health care professional who provides various medical services limited to emergency treatment and ambulance practice). This in fact implies an additional task for the PDC escort service - transporting the detainees to the Emergency Service, Health Centers or medical points for the medical records, with subsequent placement in the criminal prosecution detention center. The People's Advocate notes that this "procedure" prevents or generates the delay in the transportation of the prisoners to custody of the penitentiary system, i.e. violation of detention procedures. We could mention that P13 has medical service, which could supplement the "lack of the Feldsher at PDC".

§44. During the investigation, the working group determined that P13 refused to receive Andrei Braguta in the penitentiary for lack of identity document. As a result of interviewing the IDP employees and examining the escort register it was found that Andrei Braguta was escorted for provisional documentation to the Public Service Agency in Chisinau(PSA). The People's Advocate understands that the process of identifying detainees in the Republic of Moldova is flawed due to the lack of a centralized system of citizens' records between the PSA and the police. At the same time, the law allows detainees to be placed on the basis of *the act of detention and other documents confirming the identity of the person*. Consequently, the court settlement, in which the identity of the detainee is established, is to be treated as a court act, the non-execution of which represents a criminal offense. Moreover, in the disputed case, Andrei Braguta was identified by the police officers on the basis of the driving license. Respectively, the driving license can be considered an act confirming the identity of the person.

§45. Another problem identified during the investigation process is the non-placement of Andrei Braguta in P13 on days off. We would like to remind you that the Examining magistrate settlement was issued on Friday August 18, 2017. Identity procedures and medical examinations have led to the delay in receiving Andrei Braguta into the criminal prosecution detention center on Friday. The Working Group did not receive a plausible explanation on the reasons for non-placement the detainee on Saturday and Sunday (19-20 August 2017) in P13.

§46. The People's Advocate concluded that the decision of non-placement of Andrei Braguta on August 18 (19-20 August) in P13 occurred due to his state of health. The concern of P13 medical staff about the state of health of detainee on August 18, 2017 shows the existence of a health problem which was to be treated seriously within the P13 medical service or within a specialized one. The People's Advocate assumes that the P13 doctors relied on the fact that Andrei Bragutas' serious health condition will be found in the complex medical examination at the PMSI Institute of Emergency Medicine, something that did not occur. This human omission or the professional failure of doctors in P13 could indirectly influence his state of health. It is doubtless that the detainee brought to P13 had a serious health problem.

### **Conclusions**

- ✓ On 18 August 2017 Andrei Braguta was to be placed in the P13 criminal prosecution detention center under the preventive arrest warrant. He was not received in P13 because he did not have an ID and was missing a medical examination record. These requests are contrary to the provisions of Art. 200 of the Executive Code, as well as paragraph 18 of GD 583/2006 regarding the approval of the Statute of execution of sentences by convicted persons.
- ✓ The lack of a valid identity document (in the interpretation of P13 - the identity card) can not be a reason of non-placement of detainees / convicts in the penitentiary.
- ✓ P13 and PD Chisinau did not mention that they refused to place Andrei Braguta in P13 detention center .



- ✓ In P13, either in a specialized hospital, Andrei Braguta was to receive the medical care needed for his acute state of health. If in the arrest warrant it was stated that P13 is to ensure the custody of the detainee, namely, it is assumed that P13 had to provide medical care / necessary medical treatment or had to put him in a civil hospital;
- ✓ P13 and PDC did not comply with the settlement of the Examining magistrate of the Ciocana district Court, according to which Andrei Braguta was to be placed under arrest. The non-placement of detainees with arrest warrants for lack of ID or medical records was a "pre-established practice". All due to the lack of a feldsher at PDC who was to draw up the medical record / to examine the detainees at the PDC exit, etc. Braguta was not the first prisoner, transported several times for placement in P13.
- ✓ P13 can not be accused of refusing to place prisoner Andrei Braguta, notwithstanding that, this provision is expressly stipulated in the Executive Code of Republic of Moldova. Therefore, P13 has complied with the legal requirements.
- ✓ GIP / PDC face with either the lack of identity papers or their expiration, which the detainees possess. This is an old and unsolved problem. At the same time, police can not be charged with the task of recording the population.
- ✓ Under the Statute of execution of sentences by convicted persons, „...receiving detainees in overtime hours, on days off and holidays is done by the service officer, guard duty and medical service”. Therefore, Andrei Braguta was to be received in P13 both overtime and the next day. The People's Advocate notes that this legal provision has not been respected and regrets that these circumstances have not been examined in the internal investigation conducted by the DPI.

### **Recommendations:**

1. The escort service of the PDC as well as the receiving service in the penitentiaries is to carry out records / entries regarding the refusal to receive in the penitentiary or in the criminal prosecution detention center. This evidence is necessary in the context of ensuring guarantees against ill-treatment.
2. The People's Advocate reiterates the abolition of practices of refusal to receive detainees in penitentiaries due to the lack of medical documents, as well as the obligation to comply strictly with the provisions of Art. 200 of the Executive Code and with paragraph 18 of the Statute of execution of sentences by convicted persons.
3. The penitentiary administrations are to ensure that detainees / convicts are placed into the place of execution of the sentence / arrest warrant, including on days off, holidays and overtime schedule in the manner provided by paragraphs 18 - 19 of the Statute of execution of sentences by convicted persons.
4. The People's Advocate insists on the need to review the procedures for the receiving persons with serious diseases in prisons and to introduce clear regulations, especially for prison staff.
5. DPI is to identify a clear and effective mechanism regarding the involvement of prison officers and domestic and civilian medical services in the cases of serious health problems of detainees.
6. The DPI is to ensure the receiving of all persons in the penitentiary, in strict compliance with the normative framework in force and all standardized procedures. The practice of not-receiving detainees to prison due to the lack of identity document or medical records is to be countered.

7. Police departments are expected to take firm steps to prevent people from being held for more than 72 hours due to lack of medical records and / or identity documents. They are to be escorted into the criminal prosecution detention center.

*b. 10 hour in police custody*

§47. On August 15, 2017, Andrei Braguta was stopped by GIP employees on the suspicion of driving drunk and traffic violation. This happened on the M2 route, km.27, Ratus-Gornoe village, in the Orhei District. The Working Group did not know the exact time this happened. On the basis of the analyzed documents, it is assumed that the police stopped the vehicle approximately between 10 and 10.40 AM. Andrei Braguta was taken out of the car and immobilized by handcuffs.

§48. On the same day, Andrei Braguta was led for a medical examination to determine the state of blood alcohol level at the Republican Narcological Dispensary (RND), where he was between 11.50 - 12.00 AM.

§49. Later, Andrei Braguta was escorted by NIP employees to the specialized car park on 19A Otovasca Street, Ciocana district , Chisinau, for parking the car at the Paid Parking. Andrei Braguta was on the parking lot between 01:00 and 03:20 PM. At the requirements of the employees and NIP to Andrei Braguta to leave the parking area, the last one cursed and punched in the face the police officer Stanislav Vozneac. NIP employees immobilized Andrei Braguta by applying the handcuffs and requested the intervention of the mobile crew of the Operational Reaction Battalion (902) from the Police Department of Chisinau. More than 20 minutes later, the police officers of the Ciocana PI arrived to register the deed .

§50. According to the minutes of detention, Andrei Braguta's de jure detention was held on August 15, 2017, at 06:02PM, in the PI Ciocana district of PD Chisinau, office 505. The minutes of detention were made in 5 min. by the criminal prosecution officer of PI Ciocana of PD Chisinau, senior inspector, R. Bolgarenco. The de facto detention took place on August 15, 2017, at 03:22 PM, at 19A Otovasca, Chisinau (car parking). This entry is recorded in the minutes of detention.

§51. According to PI Ciocana police officers, at Ciocana PI, Andrei Braguta was isolated for about an hour in the cubicle in the guard unit. Subsequently, he was picked up in the police officer's office, in the presence of the ex officio attorney and a relative, for the drawing up of the detention papers. The Working Group thinks that the police employee was more concerned about upholding the legal framework established for the detention procedure (3 hours) than the cause, circumstances and situation of Braguta. Further more, the Working Group found out that police officers had no clear methodology neither on the behavior and / or identification of people intoxicated, nor of the person who presumes certain deviant behavior or mental disorders. Similarly, the working group did not find any information about whether Braguta received food, water or medical and profile assistance.

§52. At the car parking, NIP employees were supposed to let them go, although, also they claimed that his condition and behavior were antisocial. From the moment when they stopped the car till the moment they came to car parking it took about 6 hours, during which NIP employees were unable to prevent and manage aggression or bullying. The Working Group did not understand why Braguta was not drawn up a minutes on injuries or hooliganism (*both RND doctors and NIP employees*). Notwithstanding that, in all the explanations , there are entries of the detainee's ribald speech.

At the same time, the People's Advocate considers that Andrei Braguta should be examined by a psychiatrist or psychologist, and psychiatrist and / or psychologist or other specialists should be involved in the practice of detaining people with obvious signs of disorder in order to prevent and

precisely establish the preventive measure.

### **Conclusions**

- ✓ Police officers are not trained, and the GIP/ NIP does not have clear methodologies / regulations on the intervention of police officers in cases of detention of people with mental disorders, disabilities, or that who are drunk, etc., in order to prevent abuses against them.
- ✓ Andrei Braguta was in police custody for 10 hours without food and water.
- ✓ The MIA / GIP does not have solutions regarding food and water supply of the detained / offended persons, during the record of their case or until their placement in the preventive detention center, as appropriate.
- ✓ The MIA / GIP does not have clear mechanisms regarding the involvement of psychiatrists, psychologists or other specialists in the process of detention of vulnerable persons.

### **Recommendations:**

1. The People's Advocate recommends MIA/ GIP/ NIP to ensure that all deeds and circumstances of the person's state of detention are properly recorded in order to prevent any form of abuse, as well as compliance with detention pledges;
2. The People's Advocate recommends MIA and MHLSP to identify a mechanism for inter-institutional co-operation in the case of detention of persons with mental disabilities, upholding human rights, including the right to privacy in the context of processing personal data.

#### ***c. 16 minutes at the Department of Emergency Medicine***

§53. According to the information provided by IEM, on August 15, 2017, 07:34 PM, at the Department of Emergency Medicine, patient Andrei Braguta was examined by the emergency doctor and the orthopedic-traumatologist.

§54. According to the register 001 /e the reason for the request was: ***"Trauma in the street by accident on 15.08.2017 at 04:00 PM"***. According to Medical Record no. 722641, "the patient is rampant, nervous, speaks uncensored, exhibits abrasions in the region of the bilateral elbow joints." Following the clinical examination by the orthopedic traumatologist, the diagnosis was established *„soft tissue contusion in the joint region of the bilateral elbow”* with recommendations for surveillance in ambulatory conditions, with no indication of hospitalization.

§55. The patient's time in DEM was between 07:34 PM – 07:50 PM, for about 16 minutes. Concerning the informed agreement on medical intervention, the following entry is highlighted *„can not sign because of nervousness”*, there was only the doctor's signature.

§56. The Working Group observed that at the DEM level, there is no system for registering and recording patients brought for the examination, by police officers. The "trauma in the street" request can not reflect the true picture of the case, respectively can prevent to find out the truth about alleged acts of abuse admitted by police officers, or by those who applied violence to a police employee. The Working Group did not intend to verify the accuracy of the emergency medical examination and did not have the necessary qualifications to do so. However, there is reasonable suspicion that it was a formal one. The Working Group was unable to clarify why the patient was not under psychiatric control at DEM, considering that doctors have observed his misbehavior.

## *Conclusions*

- ✓ Andrei Braguta has not been subject to specialised and necessary medical care by DEM, considering his alarming state. Notwithstanding that, in this case, there is a negligent attitude towards the persons at risk of vulnerability;
- ✓ The process of recording data about the detainee's transfer to DEM for an examination by police employees is flawed;
- ✓ Doctors have not complied with the Joint Order no.77 in terms of reporting to the competent bodies about allegations of bodily harm in the context of preventing torture;

## *Recommendations:*

1. The People's Advocate recommends the DEM to provide individual recording of patients for primary / urgent medical examination, whether specialized within the police or penitentiary system in order to fulfill the positive commitments of the Statute for preventing and combating torture and / or ill-treatment. Such a registry, either a separate record, could present statistics and a much more complex situation regarding the number, duration, state of the persons brought for the medical-primary examination by the police employees, respectively identifying and managing the problems;
2. The People's Advocate recommends the DEM to pay special attention, including the medical examination of patients brought by the police and / or the penitentiary system, to the component of physical injuries, physical and mental disorders, etc., as appropriate, doctors should report all cases to the prosecutor's offices;
3. The People's Advocate recommends DEM to hire a psychiatrist to examine the behavior, mental state and mental health of patients as defined by the World Health Organization<sup>17</sup>.

### *d. Eight nights in provisional detention center*

§57. Between 15-23 August 2017, Andrei Braguta was detained in PDC Chisinau. On August 15, 2017, at 20.02 PM was placed in the PDC. WAS detained on the basis of Art.166 CCP of Moldova, at 03:22. By PI Ciocana, Chisinau, being suspected of committing the offense provided by art. 349(1)<sup>1</sup> of Criminal Procedure Code <sup>18</sup> of Republic of Moldova.

§58. The provisional detention center is intended for the detention of detained persons for a period not exceeding, 72 hours for adults and 24 hours for minors. In the case of Braguta, as mentioned above, the detention period has been exceeded. Issues regarding violation of the right to individual freedom and guarantees against ill-treatment are discussed in the following chapters.

### *e. 12 hours in Department of forensic psychiatry*

§59. On August 23, 2017, Court from Chisinau, Ciocana district, examining magistrate Igor Batalai, alongside with the Prosecutor Filimon Ivan, attorney Anatol Bulgaru, the accused Andrei Braguta, examined in a closed court hearing, the prosecutor's request for admission to the psychiatric institution on the criminal case. The judge admitted the prosecutor's request. Has been authorized the hospitalization of the accused Braguta Andrei Ion in the medical institution - Chisinau Clinical Psychiatric Hospital, to perform psychiatric expertise under stationary conditions

<sup>17</sup> <http://www.who.int/about/mission/en/>;

<sup>18</sup> Threatening with signs of violence against a Responsible Person or Person Performing Public Debt;

for a period of 30 days starting August 23, 2017 to 22 September 2017 at 10.00 AM. Has been authorized the transfer of the accused Braguta Andrei from the PDC - within the Chisinau Clinical Psychiatric Hospital. The ruling was open to appeal, appealed to the Chisinau Court of Appeal, but was not objected.

§60. The People's Advocate considers that the judge, wrongly authorized the admission of Andrei Braguta to the PMSI Clinical Psychiatric Hospital. Notwithstanding that, from April 1, 2017 PMSI The Clinical Psychiatric Hospital does not perform psychiatric expertise, this attribution being attributed to a specialized department of the FC of MHLSP. Andrei Braguta was escorted by the employees of the PDC escort service to the Clinical Psychiatric Hospital, but the admissions department refused to accept him due to the lack of competence. Later, Andrei Braguta was escorted to Department 12 of the Forensic Center of MJ (Codru, Chisinau - ex-section for forced admission of CPH Chisinau). Andrei Braguta was hospitalized at the Department no. 12 overtime schedule and placed in the ward. The next day, for 2 hours, Andrei Braguta was examined by the psychiatric-forensic commission, who ordered hospitalization for psychiatric treatment in P16 with hospital profile. The extermination took place on August 24, 2017 at 10.00 AM, after which Andrei Braguta was escorted to P13.

### *Conclusions*

- ✓ Between August 24-26, 2017, Andrei Braguta was detained in P16.
- ✓ Between August 23-24, 2017, Andrei Braguta was hospitalized at the Department no. 12 from the Forensic Center alongside MHLSP.
- ✓ Between 15-23 August 2017 Andrei Braguta was in police custody (PI Ciocana and PD Chisinau).
- ✓ For 10 days in the state custody, the detention and health care authorities failed to secure Andrei Braguta's life, psychological and physical integrity, because of subjective negligence and the lack of clear regulation of intervention.
- ✓ The representatives of the judicial system and of the Prosecutor's Office did not know about the fact that on 01.04.2017, by Order of the Minister of Health no. 166 of 01.03.2017 "on the transmission of the subdivisions of psychiatric-legal expertise to the Forensic Center" <sup>19</sup>, The Psychiatric-Legal Expert Service within the PMSI Clinical Psychiatric Hospital was transferred to the Public Judicial Expert Institution - Forensic Center(FC).<sup>20</sup>
- ✓ Both attorneys who provided free legal assistance to the state did not contest the ruling of the Examining magistrate regarding the medical-psychiatric examination of the patient Andrei Braguta.
- ✓ Generally, the role of attorneys was a passive one especially regarding the defense of Mr. Andrei Braguta's interests.

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<sup>19</sup> [http://old2.ms.gov.md/sites/default/files/legislatie/ordin\\_166.pdf](http://old2.ms.gov.md/sites/default/files/legislatie/ordin_166.pdf)

<sup>20</sup> [http://medicina-legala.md/wp-content/uploads/2015/10/Activitatea-serviciului-de-psihiatrie-medico-legal\\_\\_Obiyavlenie.htm](http://medicina-legala.md/wp-content/uploads/2015/10/Activitatea-serviciului-de-psihiatrie-medico-legal__Obiyavlenie.htm)



## OBJECTIVE No.2 Upholding of personal freedom and safety

In this chapter are analyzed how the state authorities ensured the right to individual freedom and the safety of the person, as well as the how justified was the need to arrest the national Andrei Braguta. The People's Advocate tried to find out whether placing in the system of sanctions was due to the NIP police's revenge in relation to offensive conduct and police punch. Likewise, the Working Group set out to analyze how will react NIP employees during their first contact with people with mental disorders, whether they are drunk or under a narcotic substance.

The People's Advocate found regretfully that the GIP investigation was reserved against NIP employees' actions. They were not the subject of internal research, and only PDC of PD Chisinau employees were involved in sanctioned international investigations, which raises certain doubts about impartiality and objectivity. In fact, NIP employees were unable to manage the conflict with the offender Andrei Braguta and also to prevent acts of aggression or violence.

Likewise, the People's Advocate concluded that recorded video images that were loaded in the media regarding the detention of the offender Andrei Braguta was contrary to the principles of the presumption of innocence and privacy and had no legal purpose, it was done just to arouse the public opinion towards the car drivers that violates road traffic rules.

### 2.1. *The need to stop the vehicle*

§61. The People's Advocate has carefully followed the reaction of public opinion on the effectiveness of the detention operation of the car drove by Andrei Braguta, with the purpose of preventing serious consequences. There were opinions for and against. From the legal point of view, the actions of NIP employees are justified. The prevention of serious consequences in the field of road is one of the NIP duties. According to the documents submitted, the driver admitted the violation of several articles of the Contravention Code and Road Traffic Regulations. The operation of stopping the dangerous car was recorded on video. The Working Group did not have access to these evidence, including to the contravention process.

§62. However, the People's Advocate was confused about the pursuit of over 70 km of the car drove by Andrei Braguta. It is unclear why the NIP employees did not ask for help from M2 on the M2 route to stop the car at a lower net distance. The NIP employees have begun the pursuit action in the village Saratele, Telenesti District, and the means of transport was stopped only in the village Ratus-Gornoe, 12 km from Chisinau. Is is also unclear if the vehicle has endangered other drivers. There is no mention about this in the NIP reports. At the same time, it is not clear what was the style of driving of the car on the Balti-Sarateni route (about 60 km). NIP could not answer if the offender's behavior up to the village Sarateni, where patrol police were, was equally aggressive and dangerous.

§63. The People's Advocate could not give an opinion on the circumstances that would have caused Andrei Braguta to force his own vehicle in traffic. Primary data on over-speed traffic or denial to stop to summons were not disclosed to the public. Under these circumstances, the People's Advocate can not expose on abuses of NIP employees or on Andrei Braguta's behavior.

### 2.2. *Medical examination to determine blood alcohol and narcotic level*

§64. From NIP, Andrei Braguta was led to the Republican Narcological Dispensary (RND) to determine the blood alcohol and narcotic level. The referral for medical examination was ordered by the inspector, Vozneac Stanislav. The purpose of the expertise was "*allegations about driving*

*the vehicle under narcotics". The following goals have been set for the specialist: whether or not the person is intoxicated and whether or not, what is the nature of the intoxication, the concentration of alcohol in the exhaled air and the blood alcohol level. **Although he raised doubts about the influence of drugs, the inspector did not ask the expert any question about this suspicion.***

§65. According to the presented documents, the examination of alcoholic intoxication at RND took place between 11:50AM and 12:00PM. The blood alcohol level test showed 0.00 mg / l, respectively the lack of alcohol in blood. Andrei Braguta refused collection of urine and blood<sup>21</sup> in order to find out the state of alcoholic / narcotic intoxication. Respectively, the examination was incomplete.

§66. The narcologist argues that Andrei Braguta initially had a calm behavior and, after requesting urine and blood samples, became impulsive, exposed himself uncensored and refused to sign the act of observation, tracing the sign of the "cross". The narcologist did not notice bodily harm, and Andrei Braguta did not complain about this. After stopping alcohol testing, NIP policemen drew up a minutes regarding blood alcohol level test and then left with the detainee, handcuffing him.

### *Conclusions:*

- ✓ The psychiatrist-narcologist did not pay due attention to the patient's reaction to the proposal to collect his urine and blood sample. The patient said very clear that: "*I will come tomorrow*". A narcologist expert could raise suspicions of this phrase, exposed calmly. However, certain amounts of drugs / psychotropic substances expire within certain time limits, or they can be identified by urine or blood samples.
- ✓ If medical examination to determine the state of narcotic intoxication and, as appropriate, the presence of narcotic drugs were performed, it would be obvious the mechanism of granting medical treatment in health care. In the absence of any answer to this question, the doctors who later examined Andrei Braguta were able to find only the mental disorder.
- ✓ The psychiatrist-narcologist would not have assessed the psychological condition of the person undergoing narcological expertise, in accordance with the provisions of the Regulation on Alcohol Testing and Medical Examination for Determining the DUI and its Nature (GD 296/2009).
- ✓ No medical examination was conducted in accordance with the Law No.713 of 06.12.2001 on the control and prevention of the abuse of alcohol, illegal drugs and other psychotropic substances.
- ✓ The patient was not examined in accordance with the provisions of Article 17 of the Law No. 264 of 27.10.2005 regarding the exercise of the profession of doctor (professional duties of the doctor).
- ✓ The psychiatrist-narcologist who examined Andrei Braguta is working on his job description as Head of Department with management duties. This job description does not specify the attributions, duties and responsibilities as narcologist-psychiatrist of the Department of Determining the DUI and its nature.

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<sup>21</sup> From doctor's explanations "I will come tomorrow and we will collect the urine".

## Recommendations

1. The People's Advocate recommends RND to organize the medical services according to the legislation in force, in compliance with the provisions of the Regulation on Alcohol Testing and Medical Examination for Determining the DUI and its Nature, approved by the Government Decision no. 296 of 16.04.2009 and the Law on the control and prevention of the abuse of alcohol, illegal drugs and other psychotropic substances No.713 of 06.12.2001.;
2. The People's Advocate recommends RND to define the Clinical Dependence Protocol and its Nature with an exact algorithm that determines the actions of medical staff, including patient refusal to examine and collect biological samples;
3. The People's Advocate recommends RND to hire enough medical staff;
4. The People's Advocate recommends RND to inform the Public Prosecutor and, as appropriate, the PAO about the presence of blows, injuries, especially the behavior of police officers regarding the examination of intoxication, and their entry in a Special Register.

### 2.3. *The basis of the detention, upholding of the detention procedure*

§67. On 15 August 2017, at 03.07 PM, PI Ciocana received information from NIP patrol inspector, Stanislav Vozneac, that on 19th Otovasca Street, Chisinau he was assaulted by the national Braguta Andrei. Information 902 on the offense was registered in R-2 (Register no. 2) as No.11204.

§68. At 03:10 PM, The Task Force consisted of: criminal prosecution officer, inspector Roman Bolgarenco, criminal prosecution officer, senior inspector Vasile Girbu and criminologist, commissioner Alexandr Norolschi moved to the criminal scene.

§69. According to the information note on criminal case no. 201748228, „...*on the spot, the task force found that on 15 August 2017 at 03:00 PM Braguta Andrei being on the territory of the Paid Parking on 19A Otovasca Street, Chisinau, intentionally, following the purpose of stopping the activity of the lower inspector of NIP, Stanislav Vozneac, who was in service, realizing that the last finds himself in the exercise of his office duties and acts legally, appoints him with uncensored words and then applies the last a punch with his fist in inspector's face, causing him insignificant bodily harm(video is attached)*”.

§70. On this occasion, IP Ciocana initiated a criminal case no. 2017481228 on the basis of the constitutive signs of the offense provided by Art.349 (1)<sup>1</sup> of Criminal Code of the Republic of Moldova<sup>22</sup>. The suspect was detained under Article 166 of the Criminal Procedure Code for a period of 72 hours.

§71. Under provisions of Art.167 of the Criminal Procedure Code of the Republic of Moldova, *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 a crime. The transcript shall cover the grounds, the reasons for and the place, year, month, date and hour of detention; the act committed by the respective person; the results of a corporal search of the detainee and the date and hour of the transcript.*

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<sup>22</sup> Art.349(1<sup>1</sup>) Criminal Code: The use of violence that does not threaten the life or health of an official or of his/her close relatives or the destruction of his/her goods for the purpose of ceasing his/her official duties or of changing the nature of such duties for the benefit of the person using violence or of another person and the same actions on a person performing a civic duty or on his/her close relatives due to his/her participation in the prevention or suppression of a crime or an antisocial act shall be punished by a fine in the amount of 500 to 1000 conventional units or by community service for 180 to 240 hours or by imprisonment for up to 3 years . [Art.349(1<sup>1</sup>), amended by LP207 of 29.07.16, MO369-378/28.10.16 art.751; in force 07.11.16]



*The transcript shall be brought to the notice of the detainee. At the same time, he/she shall be provided with written information about the rights set forth in art. 64, including the right to keep silent, not to testify against himself/herself, to provide explanations that will be included in the transcript, to benefit from the assistance of a defense counsel and to make statements in his/her presence and a note to that effect shall be made in the transcript. The transcript of detention shall be signed by the person that prepared it and by the detainee. The person who issued the transcript shall within three hours from the time of detention notify the prosecutor in writing about the detention. The criminal investigative body shall within one hour from the time of detention of a person require that the Regional Office of the National Council for the Legal Assistance Guaranteed by the State or other authorized persons appoint an attorney to provide urgent legal assistance. The request for the appointment of an attorney shall be filed in writing, including by fax, or by telephone.*

*A detainee shall be immediately informed about the reasons for his/her detention only in the presence of a selected defense counsel or a court-appointed attorney providing urgent legal assistance.*

*If a the detention is found that the detainee has injuries or bodily harm of , the person conducting the criminal investigation shall immediately inform the prosecutor, who shall immediately order a forensic finding or, as appropriate, a medical forensic examination finds the origin and nature of injuries .*

§72. Three rights of persons detained by the police are considered to be of particular importance by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter CPT Rules):

- *the right of the person concerned to notify his or her detention to a third party chosen by her / him(a family member, a friend, the counselor);*
- *the right to have access to an attorney;*
- *the right to an independent medical examination upon request;*

§73. As regards the medical examination of the persons from police custodies, this should be done outside the hearings, and preferably not in front of police officers. Further, the results of each examination, the relevant statements of the prisoner and the doctor's conclusions should be formally registered by the doctor and made available to the prisoner and his attorney.

§74. From Andrei Braguta's minutes of detention, follows:

- The drawing up of the minutes of detention started at 06:02 PM and ended at 06:09 PM. Respectively, within 5 minutes, the entire detention procedure provided by art.167 Criminal Procedure Code and CPT Rules would have been respected.
- The de facto time of the detention is notified in the detention record: 15 August 2018, 03:22 PM, Otovasca 19 Street, Chisinau.
- Identity data has been mentioned, including telephone contacts.
- Under the criminal record - no criminal record.
- The reason of detention: suspected of committing offenses for which the criminal law provides imprisonment for a period of more than one year, namely provided by Article 349(1) of the Criminal Code.
- The reason for this is allegation that national Braguta Andrei committed the offense under Article 349 (1) of the Criminal Code for which the criminal law provides imprisonment for

more than one year, as well as the fact that it was caught in a flagrant offense, also the injured party, indicates directly that the person has committed the offense and there are clues that he will escape criminal prosecution, will prevent the getting of the truth or will commit other offenses.

- There is no signature in the translator section.
- In the compartment the results of the search - no objects or documents were picked up.
- At the time of detention, Andrei Braguta is dressed in a blue shirt, blue jeans (written in the minutes with mistakes, as “djeans”), black shoes.
- He refused forensic examination. There are several abrasions on the body (forehead, face, shoulder, back, elbow region).
- The detained person was informed on the rights of the suspect under Article 64 of the Criminal Procedure Code, including the right to remain silent, not to confess against him/her, to give explanations included in the minutes, to have an attorney and to make statements in his presence.
- The detained person will be assigned to the Provisional Detention Center of PD Chisinau .
- The citizen Braguta Ion (father) was informed about the detention of the detainee .
- A copy of the minutes was handed over.
- Data regarding disability or mental status is missing.
- In signatures' section : mention about the suspect's refusal to sign, noting the defendant's signature (without name indication) and the criminal prosecution officer.

§75. The People's Advocate is not entitled to rule on the lawfulness of the arrest of Andrei Braguta, having regard to the principle of non-interference. At the same time, there are reservations about the need to apply this procedural coercive measure. Although it is alleged that the police have respected the detention pledges, there are some reservations about this. Andrei Braguta was Russian speaker, but a translator or interpreter was not assured. At the same time, it is unclear whether the defender and the suspect have had a confidential meeting until the first hearing. There has been no claim from the defender, the relative, or even the suspect about disagreement with the detention. There is also no mention of the application of special means, as seen in the video report. At the same time, it is not clear if the criminal prosecution officer immediately informed the prosecutor about the alleged bodily harm. The minutes do not contain information about the suspect's place from 03:22 PM (from the moment of de facto detention) until the minutes of detention - 06:02 PM.

### *Conclusions :*

- ✓ The People's Advocate believes that once the suspect has been taken into custody by the police, any data about it will be documented (*time, claims about injuries, behavior, etc.*) However the police mission also includes ensuring the rights of detained persons.
- ✓ In the context of the specific protection of the lives of detained persons, States' obligations naturally take a specific dimension with regard to detainees, as they are completely under the control of the authorities who have the duty to protect them because of their vulnerability.<sup>23</sup>

### *2.4. Arrest warrant of 18 August 2017*

§76. On August 17, 2017 in Chisinau, Ciocana headquarters, was recorded a request from the prosecutor of the Prosecutor's Office from Ciocana district, Ivan Filimon, about application to Braguta Andrei of the procedural measure of coercion in the form of preventive arrest. The case

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<sup>23</sup> ECHR, 27 July 2004, case *Sliman ag. France*

was assigned to the judge Iurie Obada for examination. The hearing on the enforcement of the procedural measure of coercion was established for 18 August 2017 at 03:00PM.

§77. On August 18, 2017, Chisinau, Ciocana headquarters, Judge Iurie Obada, alongside with the prosecutor Ivan Filimon, attorney Vladislav Nevreanschi, has tried in the closed session the prosecutor's request regarding the enforcement of the coercive measure in the form of preventive arrest and the release of a warrant for his arrest in the name of the accused Braguta Andrei for a period of 30 days.

§78. According to the escort register, on August 18, 2017 at 12:05 PM, Andrei Braguta was escorted by the employees of PI Ciocana (Bolgarenco R.) from PDC Chisinau to the Chisinau District Court, Ciocana district for issuing a placement in provisional detention. Examination of the case began at 02:40 PM. Respectively, for 2-3 hours, Andrei Braguta was held either in the escort van or in the special court room.

§79. According to the explanations of the judge Iurie Obada „ *...Braguta Andrei had an absolutely inappropriate behavior. From the room for detainees on the 1st floor to the meeting room on the 3rd floor, Braguta Andrei struggled with escort police, shouting, swearing, kicking in doors and walls. Near the meeting room, he was absolutely naked, the escorts covered him with a sheet, he cried out, made some inhuman sounds. He refused to enter the meeting room, due to that the request was examined without him . The hearing was conducted in accordance with procedural rules. The prosecutor argued that the accused is in a state of irresponsibility and that it is necessary to appoint a psychiatric expertise under stationary conditions and it is necessary to hospitalize him in the psychiatric institution, and without the constraint - arrest, hospitalization in the psychiatric institution is impossible. I ruled the enforcement of the preventive measure in the form of arrest. Otherwise, if the accused had an adequate behavior, I probably would not have applied the constraint measure. The preventive measure was applied to protect Braguta A. himself and others, and his finding in liberty would pose a danger to all, being inadequate, aggressive, with the skills to drive vehicle, he could have caused many actions with serious consequences. Moreover, he was naked, without clothes, the relatives were not in court, therefore there was a balance between the preventive measure and the public interest in all circumstances*”. Judge Iurie Obada claims that he *”agrees with the prosecutor's assertion about the possibility of placing the accused in the penitentiary institution without applying the precautionary measure in the form of arrest, but this could happen if the prosecutor made such a request. At the moment, the enforcement of the coercive measures was examined in court and, in case of rejection, Braguta A. was to be released from custody, without supervision, in the state where he was, presenting danger both for himself and for society. Moreover, the arrest request was examined on Friday afternoon, and another one would be examined after days off. It is also claimed that the provisions of art. 490 CPC applies in other situations”*.

§80. The hearing took place in the absence of Mr. Andrei Braguta. Entries of the impossibility of examining the case in the presence of the accused were made in the minutes of the hearing.

§81. The attorney Vladislav Nevreanschi demanded that the prosecutor's request to be rejected by applying a non-deprivation of liberty or even home arrest. He informed that Andrei Braguta a few days ago left the Balti Psychiatric Hospital; as well as , his parents can take care of him and take measures to treat him. The attorney also claims that *”the materials presented by the prosecutor do not prove the need to apply the coercive measure in the form of preventive arrest in respect of Andrei Braguta, however, he is accused of committing a less serious crime, has a place of permanent residence in the Republic of Moldova, has his family, and under these circumstances can be investigated being in liberty. The accumulated evidence is fixed and the accused can not destroy them, and the prosecutor's statements that Andrei Braguta will be hiding from the criminal*

*prosecution body or will prevent the truth from being established are incorrect. There is no legal basis for enforcing the coercive measure in the form of preventive arrest. The mere fact of appointing psychiatric expertise under stationary conditions does not justify his being in pre-trial detention”.*

§82. According to the minutes of the hearing, the court asked the defense counsel if there is a possibility to be hospitalized in the psychiatric hospital in Balti. The attorney said there was a chance for hospitalization, noting „...*if I'm not mistaken, he suffers from schizophrenia. There is such a department at the psychiatric hospital in Balti where Braguta Andrei can be under surveillance*”. Nobody comments on this.

§83. After deliberation, the judge accepted the prosecutor's request. He applied to the accused Braguta Andrei the coercive measure in the form of preventive arrest and issued a arrest warrant for his arrest for 30 days. The term of arrest was calculated from 15.08.2017, 03:22PM to 14.09.2017, 03:22PM. Issuing the statement with right of appeal within three days to Chisinau Court of Appeal.

§84. According to the escort register, on 18 August 2017, at 04:57PM, Andrei Braguta was escorted by the employees of the Escort Service from the Chisinau Court of Appeal, Ciocana to PDC.

§85. The People's Advocate states that, according to Art.176 of the Criminal Procedure Code, in addressing the issue of the necessity to apply the respective preventive measure, the prosecutor and the court will appreciate and will motivate, **necessary**, if the preventive measure **is proportionate to the individual circumstances of the criminal case**, including taking into account the following:

1) the reasonableness of the suspicion, the severity and the injurious degree of the incriminated act, given to each individual case, but without ruling on the guilt;

2) the personality and characteristics of the suspect, the accused, the defendant, including, at the moment of committing the incriminated acts;

3) age and **state of health**;

4) his/her job/hobby;

5) family situation and the presence of dependents;

6) his/her material status, income, immovable property or other property;

7) having a permanent place of residence, having a permanent or temporary job;

8) other essential circumstances presented by the suspect, accused, defendant or by the prosecutor, the criminal prosecution body.

At the same time, when dealing with the question of preventive arrest, the examining magistrate or the court has the obligation to examine, as a matter of priority, **the opportunity to apply other non-custodial measures** and has the right to order any other measure under Art.175 of the Criminal Procedure Code. Under Art. 177(1<sup>1</sup>) Criminal Procedure Code, the court shall issue a reasoned ruling referring to the crime the person is suspected or accused of and the grounds for the respective preventive measure indicating the specific data that substantiate this preventive measure; the necessity to apply the preventive measure according to the conditions and criteria set in Art. 176 of Criminal Procedure Code; the order of the prosecutor or the ruling of the court shall refer to the fact that the accused/defendant was told about the consequences of violating the preventive measure applied; the arguments of the prosecutor and of the representative, the attorney, the suspect, the accused, the defendant, motivating their admission or not to the measure.

Accordingly, the ruling on preventive arrest should state the reasons justifying the failure of other preventive measures to eliminate the risks that served as a basis for the enforcement of preventive arrest.

§87. The People's Advocate considers that the court did not take into account the requirement of proportionality of the preventive measure with the severity of the crime, including the state of health, as well as the opportunity to apply other non-privative measures. It creates the impression of a double punishment. The judge may not apply an arrest warrant to persons who have presented themselves naked in court. However, this act is a hooliganism act is to be documented under the legislation. On the contrary, the court is to determine all the circumstances of the inappropriate behavior of the accused, avoiding subjective treatment in any form.

## *2.5. Arrest warrant of 23 August 2017*

§88. From the probative support of the PAO in the investigation process, it follows that after the attorney's submission of the certificate regarding the finding of Andrei Braguta at the psychiatric hospital in Balti, the prosecutor filed an additional request regarding the claim of a new arrest warrant on behalf of Braguta.

§89. On August 23, 2017, Chisinau, Ciocana headquarter, examining magistrate Igor Batalai, together with prosecutor Filimon Ivan, attorney Anatol Bulgaru and accused Andrei Braguta, examined in a closed court hearing the prosecutor's request for hospitalization in the psychiatric institution on the criminal case. The judge admitted the prosecutor's request and authorized the hospitalization of the accused Andrei Braguta to the PMSI Chisinau Clinical Psychiatric Hospital for psychiatric expertise under the stationary conditions for a period of 30 days between 23 August 2017 - 22 September 2017 at 10.00AM. The transfer of the accused Andrei Braguta from the NIP of the GIP of the MIA to the Chisinau Clinical Psychiatric Hospital was authorized. The ruling can be appealed, appeal to the Chisinau Court of Appeal. Details of the effect of this ruling are set out in Chapter 4 of this report.

## *2.6. The principle of proportionality in the application of the preventive arrest*

§92. The rule is the freedom of the person. Arrest is an exceptional measure. As a result, arrest can be ordered only in certain cases and only for certain reasons, which must be shown in a concrete and convincing way in the decision of the body<sup>24</sup>. In this context, as the release is the rule and the deprivation of liberty is the exception, it is necessary to justify why arrest was chosen rather than another measure of constraint<sup>25</sup>. Preventive arrest can be applied only if it is impossible to apply any other lesser preventive measure.

§94. According to the second paragraph of Article 5 § 3 of the ECHR, a person accused of committing an offense must be "judged within a reasonable time or released in the course of the proceedings". The word "or" does not mean that timely judgment is the alternative to release<sup>26</sup>. A person accused of committing an offense must always be released during the proceedings, unless the State can prove that there are "relevant and sufficient" grounds justifying the continued detention of the person<sup>27</sup>.

§95. The justification of any period of detention, no matter how short, must be convincingly proven by the authorities<sup>28</sup>. National courts "must examine all the facts in favor or against the existence of a

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<sup>24</sup> Decision of the Constitutional Court no. 3 of 23.02.2016 on the objection of unconstitutionality of paragraphs (3), (5), (8) and (9) of Article 186 of the Criminal Procedure Code (the term of preventive arrest)

<sup>25</sup> ECHR, April 4, 2000, Witold Lithuania v. Poland ; January 25, 2005, Enhorn vs. Sweden

<sup>26</sup> ECHR, June 27, 1968, Neumeister v. Austria; June 27, 1968, Wemhoff v. Germany

<sup>27</sup> ECHR, June 8, 1995, Yağcı and Sargın v. Turkey

<sup>28</sup> ECHR, April 8, 2004, Belchev v. Bulgaria ; October 4, 2005, Sarban v. Moldova ; March 13, 2007, Castravet v. Moldova; February 8, 2011, Ignatenco v. Moldova

need in the public interest that justifies, in compliance with the principle of the presumption of innocence, a violation of the rule of protection of individual freedom and to address them in their decisions on requests for release<sup>29</sup>.

§96. The jurisprudence of the European Court of Human Rights states that there must be protection of an arrested or detained person in the event of suspicion of a criminal offense through judicial review. This review is designed to provide effective guarantees against the risk of maltreatment, which is greatest at this early stage of detention, and against the abuse of power of the law enforcement officers or other authorities for what should be strictly restricted goals and strictly exercised according to the prescribed procedures.

§97. Judicial review must meet the requirements of promptitude, to allow detection of any ill-treatment and to minimize any unjustified interference with individual freedom. The strict time restrictions required by this requirement do not offer too much flexibility in interpretation, otherwise there would be a serious weakening of a procedural guarantee at the expense of the person and the risk of affecting the essence of the right protected by the provisions of Art. 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Thus, in the case *Brogan and Others vs The United Kingdom* (29 November 1988), the Court found that the period of more than four days of detention, without being brought before a judge, violates Article 5 § 3, even in the context of terrorist investigations. Courts have a constant duty to take into account what alternative measures they can undertake<sup>30</sup>.

§98. The requirement of form requires the "magistrate" to hear the person brought before him, on his own, before making the necessary decision<sup>31</sup>. At the same time, the substantive requirement requires the "magistrate" to examine the circumstances that militate for or against detention and to decide, according to the legal criteria, on the existence of reasons to justify it<sup>32</sup>. In other words, Art. 5 § 3 requires the magistrate to examine the issue of detention in substance<sup>33</sup>.

## 2.7. *Application of the principle of proportionality in the present case*

§99. In the opinion of the People's Advocate, in the case of Braguta, both the prosecutor and the judge failed to thoroughly examine the individual circumstances of the case. They did not necessarily apply the mandatory provisions of the law, especially Art. 9 (Equality before the Law and Authorities) and 10 ("Respecting Human Rights, Freedoms and Dignity") in relation to the provisions of Art.176(3) ("the grounds for the application of preventive measures") and Art. 185(3) ("Preventive Arrest") of the Criminal Procedure Code. State officials had to give an appreciation and motivate, if necessary, whether the preventive measure is proportionate to the individual circumstances of the criminal case, especially to examine the health of the accused Braguta Andrei. Moreover, the prosecutor during criminal investigation had to verify if there is a need to establish the accountability or not of the accused Braguta Andrei, because it was found out that he is under the evidence at the psychiatrist.

§100. According to Art. 3 (7) of the Law on Prosecution, the prosecutor is obliged, through his entire activity, to ensure the rule of law, to respect the rights and freedoms of persons, their equality before the law, to ensure non-discriminatory legal treatment for all participants in legal proceedings regardless of their quality, to comply with the Code of Ethics for Prosecutors and participate in

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<sup>29</sup> ECHR, 26 June 1991, *Letellier v. France*

<sup>30</sup> ECHR January 11, 2011 *Darvas v. Hungary*

<sup>31</sup> ECHR, *Schiesser v. Switzerland*; *De Jong, Baljet and Van den Brink v. the Netherlands*; *Nikolova v. Bulgaria*; *Aquilina v. Malta*

<sup>32</sup> ECHR, *Schiesser v. Switzerland*; *Pantea v. Romania*

<sup>33</sup> ECHR, *Aquilina v. Malta (MC)*; *Krejčíř v. The Czech Republic*

continuing vocational training. The hierarchical superior prosecutor performs duties in order to exercise the hierarchical control in particular, totally or partially cancels, amends or supplements, by reasoned ordinance, according to the present Code, acts of hierarchically inferior prosecutors and of the criminal prosecution officers<sup>34</sup>.

§101. According to Art. 185 (3) of the Criminal Procedure Code, when dealing with the preventive arrest, the examining magistrate or the court has the obligation to examine as a matter of priority the opportunity to apply other measures, not to be deprived of liberty, and has the right to order any other measures under Article 175 (Notion and Categories of Preventive Measures) of the Criminal Procedure Code. The judge did not take into account the thorough examination of the application of the provisions of Art. 185(3), did not indicate the reasons justifying the insufficiency of other preventive measures to remove the risks that served as a basis for the application of preventive arrest. The court limited itself in abstract terms and stereotypes in its judgments to the formal reasons for preventive arrest, without taking into account the disability of the person.

### *Conclusions :*

- ✓ The People's Advocate considers that the national courts limited themselves to paraphrasing the grounds of detention provided by the Criminal Procedure Code of the Republic of Moldova without explaining how and the arguments which they apply in the given case, even if Article 176 (3) of the Criminal Procedure Code requires them to take into account such factors.

### *2.8. Authorization of the hospitalization of the accused Braguta Andrei in psychiatric medical institution*

§103. Prosecutor Filimon Ivan submitted , only on August 22, 2017, the request for the authorization of the hospitalization of Andrei Braguta in the PMSI Clinical Psychiatric Hospital for conducting the psychiatric expertise under stationary conditions and authorizing the transfer from the PDC of the GIP of MIA to the Clinical Psychiatric Hospital. The prosecutor hesitated to identify and come up with this measure at the time of the initiation of the criminal prosecution, or no later than August 18, 2017, when the judge examined the need to apply the preventive measure. Even if there was no written evidence confirming disability, the prosecutor would have taken into account the deeds and behavior of Andrei Braguta at the time of the detention by the NIP and at the PI Ciocana hearing.

§104. The attorneys who have provided qualified legal assistance to Andrei Braguta also did not act to defend their client in all legal ways. In particular, they did not file complaints against the actions and decisions of the criminal prosecution body and did not contested court decisions on the application of preventive measures.

§105. The attorney's request for the application of the preventive home arrest measure was rejected<sup>35</sup>. In its turn, examining magistrate Iurie Obada hesitated to ensure the judicial control during the criminal prosecution by ordering the hospitalization of the person into a medical institution<sup>36</sup>.

§106. The placement of a person with disabilities in detention due to the passivity of the prosecutor in the collecting of evidence and the submission of the request is a clear violation of the right to individual freedom and the safety of the person guaranteed by Art. 25 of the Constitution. Thus, prosecutor Ivan Filimon claimed about institutional discrimination, because there was a strong

<sup>34</sup> Art. 53<sup>1</sup> (2) (d) of the Criminal Procedure Code of the Republic of Moldova

<sup>35</sup> Minutes of the hearing of 18 August 2017

<sup>36</sup> Art. 41 (4) Criminal Procedure Code



presumption that Andrei Braguta suffered from a mental illness and his state of health was recorded in the psychiatric institution.

§107. Moreover, the People's Advocate found that prosecutors, attorneys and judges were unaware that from April 1, 2017, legal psychiatric expertise was carried out at the Forensic Center within the MHLSP and not at PMSI Clinical Psychiatric Hospital.

## *2.9. The role of judges and prosecutors in applying human rights standards*

§108. Judges and prosecutors have the duty to ensure the protection of the rights and freedoms of people, their honor and dignity<sup>37</sup>. According to the Prosecutor's Code of Ethics, prosecutors are required to comply with national and international law, judicial practice and ECtHR jurisprudence, departmental, interdepartmental and representative and prosecutorial organs acts<sup>38</sup>. They need to contribute to the improvement of their professional skills, to keep up with the legislation, the modern jurisprudence and the human rights standards; must respect the equality of all persons before the law, ensuring their non-discriminatory treatment, regardless of nationality, ethnic origin and social status, sex, race, disability, wealth, language, age, religion, political views, sexual orientation or other criteria.

According to the Code of Ethics and Professional Conduct of the Judge<sup>39</sup>, judges will exercise their functions impartially and without prejudices, will not manifest a preconceived attitude of expression or deeds and will not allow words, phrases, gestures or other actions that could be interpreted as signs of bias. Judges are obliged to respect the equality of persons before the law, ensuring them a proper treatment by defending their dignity and honor, as well as the physical and moral integrity of all participants in legal proceedings. Correct, impartial attitude towards man as supreme value, observance of fundamental rights and freedoms in accordance with national and international norms and the generally recognized moral principles are mandatory requirements for the judge. In the performing of their duties, judges are required to maintain on a continuous basis and permanently improve their knowledge, skills and professional skills through self-training, continuous training and education in order to properly perform the duties of managing justice.

§109. Taking into account the circumstances of the case, the People's Advocate found that neither the prosecutor nor the judge knows or know a little bit about human rights standards or their applicability in concrete cases, especially when applying preventive measures. The Braguta's case highlighted, in the opinion of the People's Advocate, the existence of institutional discrimination of persons with disabilities at the stage of criminal prosecution.

§110. According to the Final Remarks of the Committee for the Protection of Persons with Disabilities regarding respecting the freedom and safety of the person<sup>40</sup> the state should: (a) to revise and repeal the legal provisions that legitimate forced incarceration and non-consensual psychiatric treatment due to deficiency; (b) to ensure that persons with disabilities accused of committing a crime have the right to a fair trial and to the guarantees due to a fair trial on equal terms with others; (c) to take all legal and other measures necessary to stop the deprivation of liberty of persons with disabilities based on a real or perceived deficiency. Therefore, judges need to know and be prepared to participate in the international assessment of judicial practice. They

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<sup>37</sup>Art. 15 (b) of the Law on Status of Judge no. 544 of 20.07.1995, art. 3 (7) and art. 6 (3) (c) Law on Prosecution no. 2 of 25.02.2016

<sup>38</sup>Code of Ethics for Prosecutors, approved by the General Prosecutor's Meeting Decision no. 4 of 27 May 2016

<sup>39</sup>The Code of Ethics and Professional Conduct of the Judge, approved by the Decision of the General Meeting of the Judges no. m8 of September 11, 2015

<sup>40</sup>Final remarks of the Committee to the original report of the Republic of Moldova 12 April 2017



must know and be able to apply international and European law, especially in the area of human rights<sup>41</sup>.

§112. In the prosecution phase, the judge either independently or often together with the prosecutor examines the lawfulness of criminal prosecution, especially those that affect fundamental rights, especially when it comes to decisions on preventive arrest. As a general rule, prosecutors must verify the lawfulness of criminal investigations and monitor the observance of human rights by investigators when deciding on the prosecution of criminal proceedings. The impartiality of prosecutors during the criminal proceedings must be understood in the sense that they must act fairly and communicate to the court the relevant factors and arguments, and in particular to ensure that the evidence in favor of the defendant is known / disclosed; must record exactly the position of the defendant and the victim; must refuse to use evidence obtained illegally, or by violating human rights, for example, through torture. Judges are the guarantees of individual freedoms, especially in terms of preventive measures involving deprivation of liberty, and it is their duty to ensure respect for the rights of the defense. Once the case has been brought before the court, the powers of the judge and the prosecutor vary depending on the role they play during the trial. In any case, if any of the elements of respect for the rights of the defense is lacking, the judge either the prosecutor, or both, depending on the national judicial system, should be able to draw attention to the situation and remedy it.

### *Conclusions:*

- ✓ The People's Advocate considers that the prosecutor and the judge have avoided correctly applying the preventive measure to a person with a mental disorder, applying discriminatory treatment to him, which has led to institutional discrimination.
- ✓ The People's Advocate found that neither the prosecutor nor the judge knows or knows a little bit about standards of human rights or their applicability in concrete cases, especially when applying preventive measures.

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<sup>41</sup>Opinion no. 12 (2009) of the Consultative Council of European Judges (CCEJ) and Opinion No 4 (2009) of the Consultative Council of European Prosecutors (CCEP) to the Committee of Ministers of the Council of Europe on the relationship between judges and prosecutors

## OBJECTIVE No. 3 Upholding of the right to life, to physical and moral integrity

In this chapter, we presented the circumstances of Andrei Braguta's detention in the PDC, as well as the way the guarantees against ill-treatment were ensured. We remind that a special topic was the monitoring of the detention conditions in which Andrei Braguta was placed and detained.

Under his torture prevention mandate, the People's Advocate visited PDC in March 2017. During the Braguta's case investigation, between August 28 and October 5, 2017, the working group conducted three monitoring visits, including one, to examine the organization of the day-to-day work process, including the cases of alarm. The Working Group was not allowed to have access to video samples from the hall and PDC cells. Respectively, the allegations of ill-treatment and the maltreatment applied to Mr. Andrei Braguta were analyzed on the basis of written evidence, statements of co-detainees and the explanation of the Chief of the Detention Center.

### 3.1. Overview of PDC. Andrei Braguta in PDC

§115. The provisional detention center is intended for the detention of detained persons for a period not exceeding 72 hours, for adults and 24 hours for minors. The detention has 20 cells. The maximum detention capacity is 65 people. Practically, the Detention Center administration does not admit overpopulation (about 50-55 persons), escorting immediately detainees with arrest warrants to Penitentiary no. 13, Chisinau according to the Recommendations of the European Committee for the Prevention of Torture (CPT) of September 2015<sup>42</sup>.

§116. During the visits, the Working Group had no restrictions on access to the institution, internal registers, hearing courts, food court, court for walking, surveillance system, detention facilities in which Andrei Braguta was detained. The Working Group held talks with the head of the Detention Center, Eduard Ermenco, on issues related to the work of the institution, the difficulties in everyday activities, the escorting process of the detainees, the institutional co-operation with the mutual bodies in the penitentiary system and public medical institutions, organizational management, etc.

§117. The members of the Working Group attended the process of receiving and escorting the PDC detainees, recording them; the interference of PDC employees in the case of alarm, reporting, recording and responding to the demands of detainees isolated in PDC cells.

§118. Major issues of PDC are the following :

- *Lack of enforcement staff in the PDC (escort-guard), respectively exhaustion of employees;*
- *Lack of feldsher (for about 1 year) due to the low pay;*
- *P13 does not receive detainees from PDCs without identity documents and medical examination records;*
- *Difficulties, including systemic, in recording identity documents, especially of foreigners;*
- *The lack of clear regulations on the intervention of employees working in detention facilities in exceptional, crisis situations, the prevention of violent and aggressive behavior, the action in cases of medical record related to a psychological disorder, on protected criteria, etc;*

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<sup>42</sup>Report to the Government of the Republic of Moldova on the visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 25 September 2015, <https://rm.coe.int/16806975da>

- *Lack of human rights training, of human rights based approach versus behavior toward detained persons;*
- *Lack of cells for the separate detention of the detainees;*
- *Lack of "anti-vandal" protection system in PDCs and so on.*

§119. At the time of the placement of Andrei Braguta in PDC, the head of the detention center, E.Ermenco, is on annual leave. Ensuring the Security and Guarding of Prevented Persons on August 15-16, 2017, was assigned to 4 PDC employees. The Working Group held no talk with the PDC employees involved in the night service between 15-16 August 2017 due to the fact that they were placed in custody regarding the criminal case initiated on the death of Andrei Braguta in state custody.

§120. The People's Advocate formulated his conclusions regarding the treatment of Andrei Braguta on the basis of the analysis of the information from the internal registers, the official answers and the explanations of the head of the detention center. The internal registers were not raised by the PAO on the grounds that they were assessed as evidence in the criminal prosecution initiated by the prosecution bodies in the criminal case.

§121. The place and periods of detention of Andrei Braguta in PDC of PD Chisinau were established on the basis of the analysis of Register no. 3 recording the persons detained.

### *Conclusions:*

- ✓ On the evening of 15 to 16 August 2017, 50 persons (maximum capacity) were held in PDC.
- ✓ Andrei Braguta was placed in cell No. 9, intended for the detention of 8 people, along with 4 other people suspected of committing offenses against heritage, against public health and social cohabitation.
- ✓ Cell No. 11, intended for the detention of one person, was filled at that time<sup>43</sup>.
- ✓ The decision regarding the placement of Andrei Braguta in cell No. 9 would have been taken by the PDC's night workers apparently because of the cell's detention capacity.
- ✓ On August 17, 2017, although cell No. 11 was spare, Andrei Braguta continued to be in cell No. 9, together with four detainees.
- ✓ Between August 18-23, 2017, Andrei Braguta was placed in cell No. 11 alone.

### *3.2. Medical assistance provided for Andrei Braguta in PDC*

§122. According to the healthcare Register of PDC:

- On August 16, 2017, 02.25 AM, the PDC employees called the emergency service 903 due to the inappropriate behavior of Andrei Braguta. At 02.35AM, according to the medical examination, the diagnosis was "**Schizo-affective disorder. Major Emergency - Code Red**".<sup>44</sup> The patient was injected intramuscularly amitriptyline.

<sup>43</sup>The PDC has only one cell for the separate detention of the detainees. Cell No. 11.

<sup>44</sup> **NOTE:**

"Code Red"/" Code Yellow"/" Code Green"- Classification" Color Code "aimed at directing the medical services of the Dispatch Center 903 (112) within the Operations section, calls, triage, and adequate response level. Urgent medical assistance requests at the pre-hospital stage are divided into three categories depending on the impact on the health of the patient (s):

I. **CODE RED** this code includes medical and surgical emergencies in which the vital functions of the applicants are put in jeopardy or the situations in which the existence of persons with vital functions in danger is suspected. In these cases it is mandatory to send specialized EMA teams for resuscitation, cardiology, neurology, psychiatry or general profession who possess the appropriate level of

- On August 18, 2017, at 07.36 PM, the PDC staff called the emergency service 903 due to the inappropriate behavior of Andrei Braguta. At 08.20 PM, according to the medical examination, the diagnosis was "***Drug abuse, withdrawal. Medical assistant was provided. The condition has improved. Satisfactory status. Second-degree emergency - Code Yellow***". The patient was injected intramuscularly with aminazine, cordiamine and demidrol.
- On August 22, 2017, at 01.32 PM the PDC staff called emergency service 903 due to the inappropriate behavior of Andrei Braguta. At 01.58 AM, according to the medical examination, the diagnosis was „***Schizotypal disorder, diarrheal syndrome. Major Emergency-Red Code. Transport to CPH is not possible because the Escort Chief was against, due to the lack of escort employees***”;
- On August 23,2017, at 00.43 AM, the PDC staff called emergency service 903 due to the inappropriate behavior of Andrei Braguta. At 01.06 AM, according to the medical examination, the diagnosis was „***Schizotypal disorder, Second-degree emergency***”<sup>45</sup>;

§123. Medical care during the detention of Andrei Braguta in PDC was provided only by Emergency Service 903.

§124. After consulting the internal registers and medical records 903, there were no entries regarding the body temperature of Andrei Braguta, including entries regarding the refusal to eat and the state of exhaustion of the detainee.

§125. Although the PDC requested urgent medical assistance for Andrei Braguta whenever necessary, there is no clarity about the actions / inactions of emergency healthcare staff regarding involving the hospital service.

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professional competence and endowment. The EMA team leader must inform the Department of Emergency Medicine (the internment department) to receive the patient (s).

II. **CODE YELLOW** this code includes medical-surgical emergencies indicating a potential danger of aggravating the health of the patients if they are not assisted promptly. These emergencies require rapid resolution, regardless of the fact that there is no danger to life. These emergencies can be solved by specialized or general EMA teams. In the case of hospitalization of the patient (s), the Department of Emergency Medicine (the department of hospitalization), which is to receive the patient, must be announced.

III. **CODE GREEN**: this code includes assisted medical transits and interventions where patients are out of danger and can wait without their condition getting worse. Medical-surgical emergencies in this code can be scheduled or timed.

<sup>45</sup> Annex no. 44 to the Order of the Ministry of Health no. 85 of March 30, 2009 "On the Organization and Functioning of the Emergency Medical Assistance Service of the Republic of Moldova": Involvement of the hospital service is mandatory in order to solve medical-surgical emergencies in the code red. Some medical-surgical emergencies in the code yellow and green can be solved on the spot. The staff from the 903 Dispatch Center (112) (feldshers, nurses) is ultimately responsible for making the final decision and assigning the code to the requests. If emergency assessment is difficult or impossible, and solving situations exceeds the competence of the dispatcher, he or she is required to consult the 903 (112) on-call coordinator or another experienced doctor to avoid underestimating the case or situation. In the case of medical-surgical emergencies, several EMA teams, including specialized ones, may be sent at the discretion of the coordinating doctor together with the feldsher.

§126. The PDC has a medical practice with two beds. The medical practice does not work. According to the head of the Detention Center, two feldsher functions are vacant since August 29, 2016, due to the fact that the PDC can not hire medical staff. He also claims that people at the entrance and exit of the Detention Center are visually examined (by gender) for injuries, by police officers, including when they are searched. In case of visible or reported visible bodily harm, persons are escorted to the PMSI Institute of Emergency Medicine for their medical examination and injury determination. Similarly, if more detainees are brought, PDC requires crew 902 to perform medical examination at PDC entry. According to the head of the Detention Center, PDC employees do not allow the placement of people with injuries, except those with the medical certificate. According to him, cases of concealment were not recorded. In the case of health crises, the PDC employees require urgent medical care, as instructed internally.

§127. Under Art.175<sup>1</sup> of Executive Code of Republic of Moldova and paragraph 19 of Instruction on the activity of temporary detention centers of MIA approved by MIA Order no.223 of 6 July 2012, at receiving / exit of detainees in / from PDC, these, will necessarily undergo the medical examination by the feldsher of PDC, with the elaboration of the respective act, and subsequently will be subjected to sanitary disinfection.

§128. The People's Advocate notes that, over a long period of time, there has been lack of action to hire a medical worker for PDC.

§129. The People's Advocate notes that the obligation of the state, under Art. 3 of the ECHR<sup>46</sup>, to protect the physical well-being of persons deprived of their liberty has been interpreted as including the obligation to provide them with the necessary medical assistance<sup>47</sup>. The mere fact that a prisoner is examined by a doctor and receives a certain type of treatment can not automatically lead to the conclusion that medical assistance is appropriate. Authorities should always ensure that there is a complete record on the state of health of the detained person and the treatment received during detention, that diagnoses and care are prompt and fair, and that, where the nature of the medical condition so requires, supervision is periodic and systematic and involves a therapeutic strategy designed to cure the prisoner's illnesses or to prevent their aggravation rather than address them symptomatic. The authorities also need to present that the necessary conditions have been created to follow the prescribed treatment<sup>48</sup>.

### ***3.3. Hearing of Andrei Braguta in PDC, access to an attorney***

§131. On August 17, 2017 between 02.45PM– 03.05 PM, prosecutors' office at the PDC held hearings and procedural actions regarding Andrei Braguta together with the prosecutor Ivan Filimon and attorney Vladislav Nevreanski. Other entries about hearings or meetings with the attorney are not recorded in the audience register.

### ***3.4. Access to bathroom, food supply***

§132. According to the head of the Isolator, during the period of detention, Andrei Braguta refused to eat, access to the bathroom and the walking court. There have been no entries in the internal registers about this. Respectively, it is not clear that food refusal has been monitored and evaluated from the point of view of health risk. Thus, the People's Advocate was unable to formulate an opinion if the refusal to eat affected the condition of the prisoner's health.

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<sup>46</sup> Art.3"Prohibition of torture":No one can be subjected to torture or to inhuman or degrading punishment or treatment "

<sup>47</sup> ECHR, *Hurtado v. Switzerland*

<sup>48</sup> ECHR, 24 June 2012, *Iacov Stanciu v. Romania and Visloguzov v. Ukraine*

§133. The People's Advocate recalls that CPT rules establish that if a person deprived of liberty refuses to receive food, the medical staff of the place of detention is required to explain to the person concerned the consequences of his decision on the state of his/her health. From the day of refusal to eat, doctor examines, daily or whenever it is necessary, the person deprived from liberty, recording the evolution of health in the medical record and in a specific intended register. All medical methods used for improving the health condition of persons deprived from liberty that refused to eat shall be carried out with their consent, as long as they are conscious and have the discernment preserved. If the state of health worsens due to food refusal or preexisting conditions, the person deprived of liberty is transferred or, as appropriate, interned in a hospital center.

§134. Since the PDC did not have a doctor to supervise these procedures at that time, and the absence of prisoner Andrei Braguta's consent, the CPT's rules were impossible to respect.

### *Recommendations:*

1. The People's Advocate recommends the development of internal instructions applicable in crisis situations to prevent negative consequences in case of serious alcoholic status, health status, refusal to eat, disability, etc. For this task are responsible the central authorities that ensure surveillance of the detention and the health of patients.
2. PDC/PD Chisinau must hire or contract IMMEDIATELY a doctor at PDC.

### *3.5. Video Surveillance at PDC*

§135. 32 video surveillance cameras are installed and work in PDC. They provide video recording (except audio) of the hall, hearing rooms (4), medical section, entrance and exit to / from the Detention Center, and all cells in the Detention Center. Video recording does not work in the bathroom. Surveillance video monitors are located at the entrance to the Detention Center and can be traced by the two detention's employees at the working place. Image quality is poor, apparently due to the technique used. Video files are stored on a server specially managed by PD Chisinau. Video altering is not possible. Both cell no. 9 and no. 11 are monitored 24/24. The PAO Working Group did not have the opportunity to view these images because they were picked up by the Prosecutor's Office in the prosecution initiated by the Department against Torture of the PGO.

### *3.6. Allegation of torture and ill-treatment*

§136. The People's Advocate was unable to find out if the PDC employees had used ill-treatment against Andrei Braguta. This fact is to be noted by the prosecutor's offices in the criminal prosecution initiated under art. 166/1 Criminal Code. We mention that the video images during the detention of Andrei Braguta were picked up by prosecutors in the criminal investigation.

§137. The head of the detention center informed the working group that Andrei Braguta had an inappropriate, injurious behavior towards PDC employees and co-detainees. On the night of August 16, 2017, he assaulted the detainees, including trying to fire cell No. 9. He also would have splashed with water from the tap, and then he would lie regularly on the wet (flooded) floor. The behavior of the person can be seen in the videos from that cell.

§138. According to the co-detainees<sup>49</sup>, Andrei Braguta's behavior was the same as the head of detention center described above. They mentioned that he had visible body injuries at the time of placement in the cell. Andrei Braguta told them that he was beaten by police at the NIP(National Inspectorate of Patrol), at the Car Parking, as he assaulted the respective police officers, including

<sup>49</sup> Interviews with 2 detainees in cell No. 9 on the night of August 16, 2017.



the fact that he consumed drugs “VINT” on August 13, 2017 and that he was under the influence of drugs. Co-detainees said they had not maltreated Andrei Braguta and had repeatedly asked to move him from the cell for their safety, including urgent medical examination. These facts were not recorded by guardians and prosecutors on 15 August 2017. The statements of co-detainees seem to be credible for as long as they have not been countered by other evidence.

### *3.7. Material conditions of detention*

§139. On the whole, material conditions of detention in the Detention Center are satisfactory<sup>50</sup>. The detention center is in a satisfactory hygienic state. Cells no. 9 and No.11 require rebuilding. Each cell is equipped with a toilet, which is bounded from the detention room by a 1 m high wall. The toilet is open and does not provide decent conditions and intimacy. There is specific smell.

§140. Detainees are not provided with clean blankets, pillows and sheet, and mattresses are dirty. According to the Head of the Detention Center, the detainees often intentionally destroy bed linen and mattresses. The administration allows the use of own sets brought by relatives and / or by detainees. The PDC administration has made inquiries regarding the provision of the necessary funds to ensure the detention center’s working.

§141. PDC is located in the adjacent building of the Chisinau Police Department. Access to PDC is possible through the Guards Unit of DP Chisinau with mandatory registration and through the central gate – only for the escort service of PD Chisinau and the means of transport service.

§142. The detention center has 21 cells, one is destroyed; 4 hearing/ meeting rooms, 1 - for examination / search, 1 walking court, 1 food court and a bathroom on the hall. Cell sizes range from 12 m<sup>2</sup> to 31 m<sup>2</sup>. Respectively, the minimum detention space of 4m<sup>2</sup> per prisoner is ensured. Cell lighting is artificial and natural. Window surfaces provide access to daylight.



*Foto\_PA\_PDC PD\_Chisinau\_hall\_14.09.2017*

§143. At the entrance/exit in/out of the Detention Center there are three cubicles in which according to the internal instructions are to be placed persons detained during the time of recording in Registers of the visual examination, including picking up the declarations regarding the abuses,

<sup>50</sup> The last rebuilding was carried out in 2012, with external financial support over 3.5 million lei.

illnesses etc. The PAO Working Group found that PDC employees do not always follow this procedure- not all people are brought into the cubicles designed exclusively to ensure the security and safety of those around.

§145. According to the explanation of the head of the Detention Center, Andrei Braguta was placed (does not know the duration) in one of these cubicles, until his placement in cell No.9. No placement / exit entries in/from those cubicles are made. Employees of the PDC do not notify the time spent in the cubicles. De facto, the period of detention of people in these cubicles is about 5-20 minutes.



*Foto\_PA\_PDC PD\_Chisinau\_cubicles\_14.09.2017*

§146. Cell No. 9 is equipped with 8 metal bunk beds, fixed to the floor; a table and two metal-wood chairs fixed to the floor. There is a sink and a toilet in the cell, which does not ensure the privacy of people. The floor is made of terracotta; the plaster came off the wall. The surface of the cell is about 30 m<sup>2</sup>. According to the administration, although the cell is equipped with 8 beds, it is not practiced to place eight people in it in order not to exceed the minimum space for a detainee. At the time when PA made a visit on five beds were laid mattresses. According to the Registers over the past 2 months, no more than five people have been placed in this cell.

§147. Andrei Braguta was in cell no. 9 for two days and two nights (the bottom bed on the right).





*Foto\_PA\_PDC PD\_Chisinau \_ Cell no.9\_14.09.2017*



*Foto\_PA\_PDC PD\_Chisinau \_ Cell no.9\_14.09.2017*



*Foto\_PA\_PDC PD\_Chisinau \_ Cell no.9\_bathroom\_14.09.2017*

§148. Cell No. 11 is intended for the separate detention of a single person. According to point 25 of the PDC Regulation, they are held separately:

- women from men;
- minors from adults;
- detained persons - from those under preventive arrest;
- people with tuberculosis from other detainees;
- people who previously have served their sentence in places of confinement from people who were not detained in those places;
- the particularly dangerous repeat offenders from others arrested;
- persons suspected or accused of committing particularly serious or exceptionally serious crimes;
- foreign citizens and non-citizens from others arrested;
- official (judges, police, prosecutors, military);
- people who are intoxicated with alcohol and narcotics from the rest of the people.

According to the same provision, in order to increase the security of the prisoners or create the conditions for their treatment, the PDC administration may also apply separate criteria of separate detention of the persons mentioned above. Separate detention in the detention center must not be discriminatory or must not injure the human dignity.

§150. Between August 18-23, 2017, Andrei Braguta was placed in cell no. 11 alone. The head of the PDC mentioned that the subordinates placed him in the separate cell due to the mental disorder he displayed.



*Foto\_PA\_PDC PD\_Chisinau \_ Cell no.11\_14.09.2017*



*Foto\_PA\_PDC PD\_Chisinau \_ Cell no.11\_14.09.2017*





*Foto\_PA\_PDC PD\_Chisinau \_ Cell no.11\_14.09.2017*



*Foto\_PA\_PDC PD\_Chisinau \_ Cell no.11\_14.09.2017*

### *Conclusions:*

- ✓ Andrei Braguta was detained in the PDC on August 15-23, 2017, during 8 nights.
- ✓ Andrei Braguta was in cell No. 9 two days and two nights.
- ✓ Between August 18-23, 2017, during 5 nights, Andrei Braguta was detained separately from the other detainees.
- ✓ During his detention period in PDC, Andrei Braguta refused to eat, access to baths and walks.
- ✓ No entries were made on ill-treatment, aggression and violence among detainees.
- ✓ Probably, due to the fact that Andrei Braguta has not been placed in emergency medical hospital or other hospital, for medical care, his health has worsened.
- ✓ The internal rules of the PDC do not provide for separate detention of persons with disabilities, including psychiatric disorders.

### *Recommendations:*

1. The People's Advocate recommends GIP/ PD/ PDC to adapt cells conforming to the detention of people at high risk of suicide, with inappropriate behavior, mental disorders, people with disabilities.
2. The People's Advocate recommends PD Chisinau to complete the internal regulations of the PDC with provisions on the detention of persons with physical or mental disabilities.
3. The People's Advocate recommends PDC to ensure that all cases of violence, maltreatment, disorder, torture are recorded, according to Order 77.
4. The People's Advocate recommends PD Chisinau to hire more staff at the PDC(escort service, safe and security service, doctors, etc.).
5. PDC staff will be trained on actions and behavior in exceptional situations, especially with people with behavioral or mental disorders.
6. The placement of people with mental disorders in PDCs can not be done without the necessary supervision. Any form of critical manifestation should alert the authority, and the decision to change the form of placement must be immediate and in order to ensure the state of the person's health and life.

## OBJECTIVE No. 4 Upholding of the guarantees concerning health-care

This chapter presents the way in which Andrei Braguta was assured access to medical assistance and care, including public medical and sanitary institutions. Thus, analyzing the information provided by the institutions concerned and the information received during the talks with the administration and collaborators, the People's Advocate found deviations from the internal rules and regulations regarding the health system through which Andrei Braguta passed as a healthcare beneficiary.

Defective management, ineffective and incomplete training of subordinate staff, lack of medical staff at PDC and MIA staff, lack of clear intra- and interdepartmental working arrangements, have led to the worsening of Andrei Braguta's health. In particular, it is highlighted lack of co-operation between the institutions subordinated to MHLSP and the institutions subordinated to MIA, even on the basis of concluded cooperation agreements.

### 4.1. Primary medical assistance

§151. According to the information provided by the family doctor from PMSI "The family doctors' center Biruinta", Andrei Braguta is under medical evidence from 2008. During this time, he addressed his family doctor twice.

§153. The family doctor told the working group that he did not know if Andrei Braguta was at psychiatric evidence and that he found out about this from TV. Referral tickets for medical examination by specialists have not been issued. Similarly, the doctor would not have prescribed to intern the detainee in a medical institution and / or for the release of psychotropic medicaments.

§154. The family doctor said the medical record did not contain treatment data from any specialist.

### Conclusions:

- ✓ The family doctor of FDC Biruinta did not have complete data on Andrei Braguta's health, except a medical record.
- ✓ The medical record did not contain information about mental health.
- ✓ Information about the mental state knows the district psychiatrist doctor. He did not inform the family doctor about this due to the confidentiality of medical data.
- ✓ There is a lack of cooperation between the primary health services and the mental health services in terms of the need for the medical information to be transferred by the specialized doctors (psychiatrist) to the family doctor on whose lists the beneficiary is registered.

### Recommendations:

1. The People's Advocate recommends MHLSP to establish a cooperation mechanism between primary and outpatient care services so as the information about the patient's situation is known by all healthcare providers.
2. The People's Advocate recommends the MHLSP to ensure the confidentiality of medical data by establishing the mentioned above mechanism.

#### 4.2. Community Mental Health Center Singerei

§155. The psychiatrist from CMHC Singerei (hereinafter CMHC) informed the working group that ...about the case of Braguta Andrei, he heard on TV, did not know him and did not have this person on record. Some psychotropic meds in the name of Braguta A. he did not prescribe.

§156. Additionally, the psychiatrist explained that in order to be recorded, the beneficiaries should personally address the medical conclusions from the psychiatric hospitals to the CMHC or the medical conclusions from the psychiatric hospitals are sent by simple mail to the CMHC.

§157. From the explanations,,...usually if the patient is treated for 10 days in the hospital, the district psychiatrist is informed, by mail is sent the extracts from the hospital. Psychotropic medicaments are released 100% free of charge through recipes. Once a month, patients must come under control. Beneficiaries immediately sign agreement / consent for treatment. The Center operates on the basis of the Framework Regulation of the Community Mental Health Center and Quality Standards”, approved by the Government Decision no.55 of 30.01.2012. The doctor added that there are no departmental level regulations to ensure collaboration between CMHC and Psychiatric Hospitals.

#### Conclusions:

- ✓ There is no single information system in the Republic of Moldova that would allow the transmission of data on healthcare provided within different medical institutions and the continuity of services for people affected by mental illness.
- ✓ It is incomplete and ineffective the mechanism of transmission of information by psychiatric hospitals regarding the medical diagnosis to the Community Centers of mental health and recording the patient by the psychiatrist, which would ensure the continuity of treatment and the possibilities for recovery through dynamic surveillance.

#### 4.3. Psychiatric Hospital of Balti

§158. The Head of Psychiatric Department no. 5 from the Psychiatric Hospital of Balti, informed the working group that between 2012 and 2016 the patient Andrei Braguta was hospitalized several times in the psychiatric department, having the diagnosis, mental disease.

§159. According to the Head of Department, in all cases the psychiatrist at the stationary discharge explained the beneficiary and recommended ambulatory care treatment with the recording at the family doctor and the psychiatrist from the Community Mental Health Center. Upon discharge from the hospital, the psychiatrist discharged prescriptions for the antipsychotic meds for a period of 7-10 days and explained that the medicaments will then be prescribed by the CMHC psychiatrist from the place of residence (because the patient requires permanent psychotropic treatment). Other recipes during the outpatient period had not released.

§160. Antipsychotic meds are strict evidence and their free release from drug stores is not carried out. The psychiatrist does not know who gave them to him and if Andrei Braguta bought these preparations.

§161. The doctor also informed that Andrei Braguta did not ask for the confidentiality of his diagnosis. He also explained that each time, at discharge, he released the medical conclusion with the appropriate entries. The superior sister of the department sent a copy of the medical conclusion together with the medical record of the patient to the hospital archiving department. Subsequently,



the archivist of the department, in accordance with the Regulation of activity of the hospital and the regulation of the activity of the archiving department, sent through the post of Moldova, by simple letter, a copy of the medical conclusion to CMHC of the district.

§162. The head of PMSI Psychiatric Hospital Balti explained that, *about the case of Braguta A., he found out on August 18, 2017, when his father asked for information about medical assistance and the issue of confirmatory documents. The father said he needed to present them to the attorney. Thus, on 18 August his father received the last extract from the medical record of the patient A. Braguta. But since the father did not have the attorney's warrant, the other copies on the medical records were released on August 21, when the father presented the copy of the attorney's warrant.*

§163. The Head of PMSI Psychiatric Hospital Balti also said that the necessary information for taking the patient under the record of the psychiatrist in the territory was submitted by the archivist of the institution according to his attributions. Within the hospital an archivist works and its work is verified by the medical vice-director, who was on leave at the time of the visit of the employees of the PAO. He also claims that he does not know if Andrei Braguta addresses the psychiatrist from the CMHC.

#### **Recommendations:**

- 1) The People's Advocate recommends MHLSP to examine how the medical staff and the heads of the public medical-sanitary institutions comply with the normative acts for granting medical assistance to the population.
- 2) The People's Advocate recommends CPH Balti periodically examine the upholding of the legal prescribing mechanism of psychotropic medicaments and their evidence.
- 3) The People's Advocate recommends MHLSP to develop case-based methodology for the different stages of providing mental health services to patients affected by mental illness.

#### **4.4. Clinical Psychiatric Hospital of Chisinau**

§164. According to the court ruling no.13-840/2017 of 23 August 2017 of the Chisinau Court from Ciocana district, was issued the authorization of the hospitalization of the accused Braguta Andrei in the medical institution - the Clinical Psychiatric Hospital, to conduct psychiatric expertise under stationary conditions for a period of 30 days starting August 23, 2017 and till September 22, 2017 at 10.00 AM.

§165. Following the request on September 4, 2017, the head of the PMSI Clinical Psychiatric Hospital informed the working group that, according to the data of the Admitting Department and the Extra-Hospital Advisory Psychiatric Assistance Department, Andrei Braguta was not attended this institution during the year 2017. He also did not address psychiatric care in ambulatory conditions. The management of PMSI Clinical Psychiatric Hospital informed that they do not know about the admission of the national Andrei Braguta to this institution.

#### **Conclusions:**

- ✓ PMSI CPH Chisinau refused to enforce the ruling of the Chisinau Court (Ciocana district) no.13-840/2017 of 23 August 2017.

#### 4.5. Institute of Emergency Medicine

§167. The Head of the PMSI Institute of Emergency Medicine informed the working group that information about the patient Andrei Braguta was registered at the Department of Emergency Medicine (no. 72641). Andrei Braguta was examined by the emergency doctor and the orthopedic-traumatologist on 15.08.2017, 07.34 PM, together with MIA collaborators. In the Registry of recording of admitted patients and refusal to hospitalisation is made an entry "retained". There were no other entries made.

§168. According to DEM medical record no.72641 under the section Andrei Braguta is mentioned the following: the reason of asking help: **„trauma in the street by accident on 15.08.2017, 04.00PM”**. Similarly, medical records show that the patient was aggressive, nervous, spoke uncensored, the presence of abrasions in the joint region of the bilateral elbow. The diagnosis was the following *„soft tissue contusion in the joint region of the bilateral elbow”* with recommendations for surveillance in ambulatory conditions, with no indication of hospitalization. The patient was in DEM from 07:34PM to 07.50PM. Similarly, the medical record states that the patient **"does not enter verbal contact"**.

§169. According to the documents in Annex no.3, Medical Record no. 722641 "Medical Agreement for Medical Intervention", in section „patients' sign (legal representative)" doctor made the following entry „can not sign because of the aggression”.

#### Conclusions:

- ✓ Andrei Braguta would have been medically examined at IEM for 10 minutes.
- ✓ The injuries resulting from the police employee's altercations have been entered by IEM doctors as accidentally obtained trauma.
- ✓ Doctors avoided to make a comprehensive assessment of the circumstances of the presence of injuries to the person detained or brought by police officers to IEM under Order 77.
- ✓ Doctors did not make the necessary recommendations in contrast to the statements made about the patient's behavior. These "does not enter verbal contact" health-related recommendations were extremely important to determine later behavior towards Andrei Braguta.
- ✓ DEM has not a psychiatrist<sup>51</sup>.

#### Recommendations:

- 1) The People's Advocate recommends the DEM to include in the team of the Emergency Admitting Department within the PMSI Institute of Emergency Medicine a psychiatrist or a doctor with competence in examining the patients' mental state;
- 2) The People's Advocate recommends the DEM to report cases of detainees with injuries brought by police under the common Order 77.

<sup>51</sup> <http://www.who.int/about/mission/en/>

#### 4.6. Forensic Center within MHLSP

§170. According to the information provided by the Legal Medicine Center, Andrei Braguta was admitted to the stationary medical forensic psychiatry department on August 23, 2017, at 04.50 PM and discharged on 10.08.2017 at 10.15 AM. The admission for the psychiatric-forensic assessment under stationary conditions was authorized by the ruling of the judge from the Chisinau Court, Ciocana district, Igor Batalai, on August 23, 2017 within the criminal record.

§171. Head of the Stationary Psychiatric-Legal Expert Department for Arrested Persons, Legal-Psychiatrist Expert, explained: *"On August 23, 2017 at about 3 PM, in the special department of the Psychological and Forensic Expertise Service FC, was recorded the criminal case no. 2017481228 of accused Braguta A. According to the ruling of the Chisinau Court on 23 August 2017, 10.00 am, Judge Igor Batalai ordered the accused's admission to the psychiatric-forensic expertise under stationary conditions starting August 23, 2017. Then, at 04.50pm by telephone, I was informed by nurse that the national Braguta A. was brought at the admission, by the collaborators of detention center from Tighina Street (PDC). From the nurse I found out that Braguta is in serious condition with bodily harm visible on the body, in dirty clothes, with a smell of urine, in a state of psychosis. I was contacting medical care by phone, receiving information and giving recommendations. Thus, the national A. Braguta, was hospitalized, washed, changed in clothes and placed in the ward. The next day, on August 24, 2017, at 8.00 am, when I came to work, I examined the patient and found that Braguta A. was in bed, **in a somatic, stenotic, weakened state, with visible bodily harm, in an acute state of mental disorder**, namely: he always spoke something inappropriate, did not react to the questions I asked, stared at one point, held his hands up and gestured with them, did not want to eat or drink water. As a result of Braguta's psychiatric-forensic examination, the bodily harm he had, had been entered in the medical record and in the report of legal expertise. In the criminal record were annexed photos of the extracts from the Psychiatric Hospital from Balti that showed chronic mental disorder.*

*At 9.00, the patient with all the papers was presented to the Psychiatric-Legal Expert Committee for the elaboration of the Judicial Psychiatric Expert Report, composed from 2 experts, Angela Anton and myself, doctor Elena Mardari. Considering that at that time, the department did not have the conditions for antipsychotic and **somatic** treatment that Braguta A. needed, I have personally called (to urgently grant the appropriate medical assistance) the Head of the Provisional Detention Center (PDC), from where Braguta was brought; the special department and the medical department of Penitentiary 13".*

§172. At discharge, the doctors said: *"He walked on his feet with the help of his collaborators."*

§173. According to the assessment of Andrei Braguta, the diagnosis was *„chronic mental disorder - schizophrenia, paranoid form. Paranoid hallucinatory syndrome".* The doctor, Mardari Elena, in the annex record of Andrei Braguta checked the recommendation *"requires the psychiatrist's supervision in the penitentiary, presents psychotic mental disorders"*. The doctor also reported that the legal expertise report was ended on 28.08.2017 and picked up by CPB of DCP of PI Ciocana on 29.08.2017. At the same time, the doctor informed that in the Forensic Center there are no conditions for treatment of patients in case it is necessary to provide the somatic treatment.

§174. The People's Advocate requested the copy of the Judicial Expert Report of August 24, 2017, but the Forensic Center did not present it, referring to Article 212 of the Criminal Procedure Code,

Article 39(8) of the Law on Judicial Expertise and Statute of the Judicial Expert No.68 of 14.04.2016<sup>52</sup>.

### **Conclusions:**

- ✓ The People's Advocate does not know the cause of death.
- ✓ Although doctors from the stationary forensic expertise department for arrested persons mentions details of bodily harm and somatic state of patient Braguta A., they did not call the emergency medical service 903.
- ✓ FC doctors did not notify the prosecutor about the visible body injuries detected at the time of A. Braguta's hospitalization on 23 August 2017<sup>53</sup>.
- ✓ On August 24, 2017 the psychiatrist expert, at first contact with the patient, observing the body injuries and the somatic state of Andrei Braguta, would not prioritize the severity of the patient's state of health by subjecting him to forensic psychiatric assessment and only subsequently announcing the organs in custody of which he was, about the need for hospitalization and the provision of specialized medical services, thus prolonging the the critical condition and not receiving the necessary medical assistance.
- ✓ CPH misinterpreted the ruling of examining magistrate: *hospitalization in the medical institution - Clinical Psychiatric Hospital for psychiatric expertise in stationary conditions for a period of 30 days starting August 23, 2017 until September 22, 2017, 10, according to the Law no. 68 of 14.04.2016 on the judicial expertise and status of the judicial expert.*
- ✓ CPH does not have possibilities and conditions of somatic inpatient treatment during the time of being of the person subjected to psychiatric legal expertise.
- ✓ The report of psychiatric forensic expertise is submitted only to the ordinator of the expertise, under the art. 36 of the Law no. 68 of 14.04.2016 on the judicial expertise and status of the judicial expert.
- ✓ The transfer to P16 of Mr Andrei Braguta took place on the basis of the referral of the doctor from the stationary psychiatric-forensic assessment department for arrested persons.

### **4.7. National Center of Pre-hospital Emergency Medical Assistance**

§175. According to the information presented by the Head of NCP EMA, sorting of the phone calls is made by the Dispatcher located on Toma Ciorba no.1 Street, Chisinau. NCP EMA works under order no. 85 of the Ministry of Health of 30.03.2009 "On the organization and functioning of the Emergency Medical Assistance Service of the Republic of Moldova"<sup>54</sup>. The service itself was reorganized in 2015, but the order was not changed. Audio copies of telephone calls were issued by prosecutors on September 1, 2017.

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<sup>52</sup> "The release of copies from the expert's reports to other persons may be done only with the written consent of the examining magistrate or body examining the case."

<sup>53</sup> <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353245>

<sup>54</sup> <http://old.ms.md/public/info/Ghid/instruire/amu/>

§176. During the stay of Andrei Braguta in PDC, the collaborators of detention center were asked for urgent medical assistance. From the medical records of the emergency medical service results:

- 16.08.2017 – at the first request, the doctor determined the major psychiatric emergency, without giving the treatment according to the established clinical picture. Thus, the clinical picture does not correspond to determined diagnosis and therapeutic tactics (the given treatment). There are no recommendations. The record indicates that the patient refuses to sign.
- 18.08.2017 – 2nd degree emergency. The clinical picture in the medical records does not correspond to the established diagnosis, indicates the withdrawal state, which is considered as a psychiatric emergency, and the patient receives inappropriate treatment. Doctors indicate information based on assumptions. There is nothing written in the space where the patient was going to sign.
- 22.08.2017 – emergency of the major degree. Diagnosis - Syndrome Delirium(acute confusion state). Transport to the Clinical Psychiatric Hospital was not possible because the escort chief refused to escort him. The doctor did not clearly indicate medical history and clinical description.
- 23.08.2017 – emergency of the major degree. Similarly, it is recommended to transport the patient to the Clinical Psychiatric Hospital, but the transportation is not possible. There is no data on the use of any medicine.

#### *Conclusions:*

- ✓ Lack of recommendations and specialized treatment have led to severe worsening of the health status, in contrast to the medical emergency level / degree.
- ✓ Lack of the measures taken to transfer the patient to a specialized medical institution for the necessary medical services led to the worsening of the state of health of Andrei Braguta.
- ✓ The medical record does not indicate the patient's actual condition. Doctors have not objectively described the actual clinical condition of the patient.

#### *Recommendations:*

- 1) The People's Advocate recommends NCPEMS to develop the National Clinical Protocol on Medical Assistance in Psychiatric Emergencies with indication of the action algorithm and the full medical management of emergency cases, including the determination of recommendations.

## GENERAL RECOMMENDATIONS

Authority/ authorities	Recommendations:
<b>MJ</b> <b>MHLSP</b> <b>DPI</b>	<p>To identify a medical documentation mechanism or procedures in the absence of detainee's consent or refusal to declare about the origin of the injuries.</p> <p>To improve and streamline the reporting system on ill-treatment and torture, so as to have a better sense of the facts.</p> <p>To examine and provide forensic documentation of acts of torture, inhuman or degrading treatment in accordance with the provisions of the Istanbul Protocol.</p> <p>To identify, record, report and document cases of ill-treatment in accordance with the provisions of Interdepartmental Joint Order No.969 of 20 March 2014 for the approval of the Regulation on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman or degrading treatment.</p> <p>Avoid refusal to receive in penitentiaries due to lack of medical records and to comply with the provisions of art. 200 of the Execution Code and paragraph 18 of the Statute of execution of sentences by convicted persons.</p> <p>To make records of the refusal to receive in the penitentiary or the criminal prosecution detention center in the context of providing guarantees against ill-treatment.</p> <p>To ensure that detainees / convicts are admitted to the place of execution of the sentence / arrest warrant, including on holidays and over the day schedule in the manner provided in paragraph 19 of GD 583, in particular P13.</p> <p>To identify a clear mechanism about the involvement of prison officers and domestic and civilian medical services in the case of serious states of health of detainees.</p>
<b>MIA</b> <b>GIP</b>	<p>Identify a framework regarding food supply (food, water) to detainees, until their placement in the detention center.</p> <p>To identify a mechanism regarding training of psychiatrists, psychologists, or other specialists in the detention of high-risk individuals.</p> <p>To ensure that all facts and circumstances are properly documented in the process of apprehending individuals in order to prevent any form of abuse as well as compliance with the guarantees during detention by police officers.</p> <p>To identify a mechanism of institutional cooperation in the case of detention of persons with mental disabilities upholding the right to personal data, privacy, etc.</p>
<b>MHLSP</b> <b>DEM</b>	<p>To ensure individual patient record and evidence for primary or urgent medical examination, whether specialized in the police or in the penitentiary system, in order to prevent and combat torture and ill-treatment</p> <p>To pay increased attention, including in the medical examination if patients ,brought by police and / or penitentiary staff, have bodily harm, physical and mental illness, etc.; as</p>



	<p>appropriate, doctors shall report the cases to the prosecutor's offices.</p> <p>DEM doctors or those involved in the primary medical examination of the detainees/ persons brought by the police employees should give, as appropriate, decisions regarding the placement of patients for admission to a medical institution in case of serious diseases, the treatment of which is impossible / inadmissible in detention center or penitentiary conditions.</p> <p>To set up a new function in the DEM, psychiatrist, for examining mental health behavior and mental health of patients as defined by the World Health Organization</p>
<p><b>MHLSP</b>  <b>RND</b>  <b>Mental Health Centers</b>  <b>PMSI " Institute of Emergency Medicine"</b></p>	<p>To develop a Clinical Protocol to determine the disease and its nature, with a precise algorithm determining the actions of the medical staff, including the patient's refusal to examine and to collect the biological samples.</p> <p>To create a unique database of patients diagnosed with mental illnesses, accessible to the medical system (profile, civil and penitentiary)</p> <p>To ensure a cooperative mechanism between primary and outpatient care, in particular the Community Mental Health Centers, with the sharing of information on specialized provided healthcare, ensuring the confidentiality of the patient's medical data and ensuring the continuity of the provision of medical services.</p> <p>To review the normative acts and to implement the current legislation on the provision of medical assistance to people with mental illnesses at different levels of healthcare according to the current requirements of providing mental health services.</p> <p>To perform the medical examination in strict compliance with the provisions of the Law no.173 of 06.12.2001 on the control and prevention of alcohol abuse, illicit drug use and other psychotropic substances.</p> <p>To examine the psychological state of people subjected to narcological expertise in accordance with the clinical picture of patient behavior according to the provisions of the Government Decision no. 296 of April 16, 2009 regarding the approval of the Regulation on blood alcohol level testing and medical examination for determining the state of intoxication and its nature.</p> <p>To develop duties of the psychiatrist-narcologist within the RND in accordance with the purpose and objectives of the medical institution and the normative acts in force as appropriate, employing sufficient medical staff.</p> <p>To ensure that healthcare workers pay more attention to the presence of ecchymosis, injuries, especially the behavior of police officers to examine the intoxication status with the prompt notification of territorial prosecutors and their entry into a Special Register.</p>



	To ensure that the health professional and the heads of the public medical and sanitary institutions uphold the normative acts for granting the medical assistance to the population.
	To verify periodically compliance of the legal established mechanism of prescribing psychotropic preparations and their evidence.
	To develop a methodology for referring cases to different stages of providing healthcare to patients with mental illness.
	To include in the team of Emergency Receiving Department within the PMSI Institute of Emergency Medicine a psychiatrist or a specialist with competence in the examination of persons with psychiatric condition.
	To adjust the Rules of Procedure of the PMSI Institute of Emergency Medicine, the Rules of Procedure of the Emergency Medicine Department and the doctor's job description in this department, so that the patient can benefit from all the investigations and be properly diagnosed according to the normative acts in force.
<b>MHLSP CPH</b>	To adjust the internal regulations of the Clinical Psychiatric Hospital in such a way that the registration of the requests submitted to the institution should contain data on the actions taken and their motivation.
<b>MHLSP FC</b>	To have a mechanism of co-operation between FC and emergency medicine to intervene or request intervention in case of acute illness of patients who are to be forensic examined by FC employees during their examination.
	To counter the practice of telephone guidance regarding the later displacement of patients under examination in FC contrary to the provisions of court rulings.
	To lay down in the internal regulations and job descriptions of the legal experts the obligation to communicate about the cases of ill-treatment, bodily harm, the somatic state of the beneficiaries brought for forensic expertise.
	To organize within the FC a department / ward for the provision of somatic static treatment during the presence of the person undergoing psychiatric legal expertise.
	To create the FC activity regulation, also to lay down the purpose and objectives of the services and measures insurance the health of the persons subjected to psychiatric expertise.
<b>MHLSP NCPEMS</b>	To develop a Clinical Protocol on Medical Assistance in Psychiatric Emergencies with references to the action algorithm and full medical management of emergency cases, including the determination of recommendations.
<b>GIP PD Chisinau</b>	To reassign people at risk of suicide, with inappropriate behavior, disorder or disability in conforming, accessible and

**PDC  
NIP**

safe cells that provide protection and supervision during placement in the detention center.

To identify the material resources needed for accommodation of detention centers with specially designed spaces to ensure detention in accordance with the needs of persons with mental or physical disabilities, disorders, violence or risk of self-mutilation and suicide.

To ensure the necessary supervision during the detention of the above-mentioned persons and to request the intervention of specialists when it is required.

To document cases of ill-treatment, aggression, violence between detainees, refusal to supply, attorney, bath or other facilities or other incidents in the place of detention.

To inform the People's Advocate electronically about cases of ill-treatment, aggression, violence between detainees, refusal to supply, attorney, bath or other facilities and other incidents in the place of detention.

To organize jointly with MHLSP a common mechanism regarding escort for the necessary medical assistance if the DEM team finds incurable diseases.

To train PDC staff and Escort Service regarding exceptional actions and behavior in crisis situations, especially with deviant behavior or disorders in terms of human rights approaches.

To train police employees regarding communication with people who have hostile / bullying behavior.

To lay down in the internal regulations provisions regarding the detention of persons with physical or mental disabilities, surveillance, medical, accommodation, as well as the behavior of the police employees or their security and supervision.

To complete personnel in PDC/ pre-trial detention centers with doctors, escort, guard and surveillance, psychologist, social worker, technical staff, etc.

To develop clear instructions regarding the interference of police officers in cases of preventing, combating violence among detainees, so that parties should be entitled to fundamental rights and freedoms.

## Maze „Braguta”





