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THEMATIC REPORT

Respect for the Rights of Persons in Need of International Protection at Border Crossing Points

Situation of 2024

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Human rights must be at the center of the implementation of policies to manage the needs of persons seeking international protection at the border of the Republic of Moldova!





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LIST OF ABBREVIATIONS:

UN	United Nations
UNCHR	UN Refugee Agency (Moldova) / United Nations High Commissioner for Refugees
UN CAT	UN Committee Against Torture
CPT	European Committee for the Prevention of Torture
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
PA	People's Advocate (Ombudsman)
OI	Ombudsman Institution (National Institution for the Protection of Human Rights)
MIA	Ministry of Internal Affairs
GIBP	General Inspectorate of Border Police
BP	Border Police
BCP	Border Crossing Points
BPS	Border Police Sectors
CIA	Chisinau International Airport
GIM	General Inspectorate for Migration
SIS	Security and Intelligence Service
NLAC	National Legal Aid Council
UA	Union of Advocates
PI	Police Inspectorate
CPB	Criminal prosecution body
GPO	General Prosecutor's Office

TERMS OF REFERENCE:

Asylum	a legal institution by means of which the State provides protection to a foreign national, recognizing his/her refugee status and granting humanitarian protection, temporary protection or political asylum.
Record at the border	data entered into the Integrated Information System of the Border Police on persons, means of transport and documents. The record at the border is a measure imposed based on the disposition acts of the competent bodies, such as ordinances of criminal prosecution body, acts of court, and acts of the bailiff. The existence of a record at the border shall be verified by the Border Police at the border crossing control, with appropriate measures being taken.
Deprivation of liberty¹	any form of placement of a person, on the order of any judicial, administrative or other body, in a state or private place of detention, which he/she cannot leave at his/her own will, as a punishment, sanction, procedural measure of constraint, security measure, and as a result of dependence on care provided or for any other reason.
Place of deprivation of liberty²	any place, facility or setting in which individuals are already or may be deprived of their liberty, places where the public authority consents to or accepts deprivation of liberty, etc.
Temporary protection	a procedure of an exceptional nature aimed at providing, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, an immediate and temporary protection to such persons, in particular where there is also a risk that the asylum system may not be able to manage such an influx without adverse effects for its efficient functioning, in the interest of the persons concerned and other persons seeking protection.
Displaced persons	third-country nationals or stateless persons who have had to leave their countries or regions of origin or have been evacuated, notably following an appeal by international organizations, and who are unable to return safely and sustainably due to the situation in that country, and who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments for international protection, in particular: (i) persons who have fled areas of armed conflict or endemic violence, and (ii) persons who are exposed to serious risks or who have been victims of systematic or generalized human rights violations.
Vulnerable persons	minors, including unaccompanied minors, persons with disabilities, elderly persons, pregnant women, single parents with minor children, victims of trafficking in human beings, persons suffering from serious medical conditions, persons with mental disabilities and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, as well as other persons who, due to a deficiency or insufficiency of personal capacities, are unable to protect their personal interests.
Return	the process of returning a foreign national by voluntary enforcement of the return decision or forced enforcement thereof: to the country of origin, to a transit country in accordance with readmission agreements or to a third country to which the foreign national voluntarily decides to return and to which he/she will be accepted.
Border area / green area	a 10 km wide territory from the state border inwards along the state border.

¹ Article 30 Law No. 52/2014 on the People's Advocate (Ombudsman), available at: https://www.legis.md/cautare/getResults?doc_id=141519&lang=ro

² General comment No. 1 (2024) on article 4 of the Optional Protocol (places of deprivation of liberty), available at: <https://docs.un.org/en/CAT/OP/GC/1>

I. Introduction

The protection of the rights of persons seeking international protection at the border is an essential commitment of the State, in accordance with international human rights norms and standards. Given the current geopolitical crises and increasing migration flows, it is imperative that States implement fair asylum procedures and prevent any inhuman or degrading treatment, in accordance with their international commitments. Migration management and refugee protection have become central issues on the global agenda, especially due to the increasing number of people displaced by conflict, persecution and climate change. International organizations, such as the United Nations, the Council of Europe, the European Union and the UN Refugee Agency, have developed specific standards and mechanisms for the protection of migrants and refugees.

The Republic of Moldova has faced a significant increase in migration flows in recent years, making it necessary to strengthen border protection mechanisms in line with international commitments, especially following the conflict in Ukraine. The significant increase in the number of persons in need of international protection has highlighted the need to strengthen border protection mechanisms to meet international standards. The humanitarian crisis has put additional pressure on the Moldovan authorities to adapt reception and management procedures for asylum seekers and to strengthen cooperation with national and international organizations.

Although the Republic of Moldova is not a member of the European Union, it has made important commitments in the field of refugee protection, ratifying the Geneva Refugee Convention and developing relevant international partnerships. Through the Association Agreement with the European Union, the country has set itself the objective of aligning its national legislation with European standards on migration and asylum. However, managing international protection remains a significant challenge. Administrative capacity is limited, and institutions such as the General Inspectorate for Migration and the Border Police have insufficient resources to efficiently process the applications for asylum. Infrastructure is poor, with refugee reception centers in need of upgrading to ensure conditions in line with international standards. Many asylum seekers face difficulties in accessing legal and social assistance, which hinders their effective integration and protection. In addition, inter-institutional coordination between government authorities, non-governmental organizations and international institutions needs to be improved to ensure a more effective response to refugee needs. In this context, monitoring compliance with state obligations becomes essential and national human rights institutions such as the Ombudsman Institution play a significant role.

The Ombudsman ensures the promotion and protection of fundamental human rights and freedoms, exercising its activity under Article 59¹ of the Constitution of the Republic of Moldova, Law No. 52 of April 3, 2014, on the People's Advocate (Ombudsman), the Principles Relating to the Status of National Human Rights Institutions (Paris Principles).

In this respect, the Ombudsman Institution, using its specific mechanisms, examines applications from persons who consider that their fundamental rights and freedoms have been violated, conducts regular preventive and monitoring visits to places of deprivation of liberty, issues reports and recommendations to the authorities concerned, etc. The Ombudsman's reports have become a source of reliable information for the ECtHR, UN CAT/ UN SPT/ CPT³ on the situation concerning the compliance by the Republic of Moldova with the commitments undertaken to protect and ensure the right to life, physical and mental integrity of persons; protection of asylum seekers or other forms of protection; victims of any form of violation of fundamental rights and freedoms, as well as access to effective remedies in

³ See CPT Standards "<https://www.coe.int/en/web/cpt/standards> RO

national courts, etc.

The Ombudsman contributes to the protection of human rights and freedoms by preventing violations thereof, monitoring and reporting on compliance with human rights and freedoms at the national level, improving legislation in the field of human rights and freedoms, international cooperation in this area, promoting human rights and freedoms and mechanisms for the defense thereof⁴. According to the Law, the Ombudsman has access to any registers, border crossing points, border police sectors, including in restricted areas, photography, data processing, conducting interviews with persons in custody or subject to other restrictions, etc. In addition, the Ombudsman Institution has extensive experience and expertise in the field of monitoring respect for human rights in the custody of law enforcement bodies and bodies responsible for deprivation of liberty. And, monitoring processes are independent, comprehensive, objective and based on methodologies adapted and standardized to the respective qualifications.

In 2020-2022, the employees of the Ombudsman Institution independently and as part of the multifunctional team conducted monitoring visits to BCP⁵ and BPS⁶ (Palanca, Tudora⁷, Ocnita⁸, Otaci⁹, Giurgiulesti¹⁰, Reni, Cahul, Ceadir-Lunga, Basarabasca¹¹, Criva¹²) preparing 7 visit reports with recommendations submitted to the GIBP and GIM. As part of torture prevention work, the Ombudsman and the Council for the Prevention of Torture are able to conduct preventive and monitoring visits at any time and to prepare reports with recommendations. The Ombudsman Institution notes the existence of documented gaps in the process of monitoring and enforcement of rights at the border concerning the access of aliens on the territory of the Republic of Moldova, procedures for their accommodation, transfer and effective protection, etc.

Since 2022-2024, the OI has launched a series of situation-specific reports on the level of assurance of the rights of displaced persons from Ukraine upon entry to and within the Republic of Moldova. The recommendations remain largely unimplemented. In addition, central authorities reacted differently to the Ombudsman's recommendations¹³.

In its annual reports, the Ombudsman has reminded the authorities of the necessity to assure the rights of foreign nationals and displaced persons and the efforts they have made for the first time¹⁴.

For 2024, the OI has proposed to conduct an independent assessment of the mechanism for assuring the rights of foreign nationals at border crossing points as part of the **Thematic Report "Respect for the Rights of Persons in Need of International Protection at Border Crossing Points"**. The Report only covers the Border Police component within the integrated state border management system. The assessment of the level of involvement of other authorities within the integrated border management

⁴ Law 52/2014 on the People's Advocate (Ombudsman), available at: https://www.legis.md/cautare/getResults?doc_id=141519&lang=ro

⁵ BCP: state border crossing point

⁶ BPS: Border police sector

⁷ http://ombudsman.md/wp-content/uploads/2020/07/Raport_vizita_PTF_24.06.2020_pe-site.pdf

⁸ http://ombudsman.md/wp-content/uploads/2020/07/Raport_vizita_PTF_Ocnita_Otaci_SPF_Ocnita_5.07.2020.pdf

⁹ http://ombudsman.md/wp-content/uploads/2022/11/Raport_vizita_PTF_Ocnita_Otaci_SPF_Ocnita_28.10.2022_pe-site-1.pdf

¹⁰ http://ombudsman.md/wp-content/uploads/2021/08/Raport_vizita_PTF_Giurgiulesti_31.07.2021-1-1.pdf

¹¹ http://ombudsman.md/wp-content/uploads/2021/11/Raport_vizita_PTF_Basarabasca_29.10.2021-1.pdf

¹² http://ombudsman.md/wp-content/uploads/2022/08/Raport_vizita_Criva-Mamaliga-1.pdf

¹³ <https://ombudsman.md/rapoarte/drepturile-persoanelor-straine/>

¹⁴ <https://ombudsman.md/rapoarte/anuale>

system will be carried out separately in other reports or activities of the Ombudsman. The context of this research was derived from the commitments of the institution according to the partnership with UNHCR Moldova (2023-2026) within the institutional project “Strengthening the Capacities of Ombudsman Institution in Protection and Promotion of the Rights of Refugees and Other Persons”. Findings of this Report belong exclusively to the Ombudsman.

The Report is one of the products developed in the context of Priority No. 8 “The person’s right to liberty and safety is ensured; torture and ill-treatment are eradicated” of the Strategic Development Program of the Ombudsman Institution for 2023-2030¹⁵. It is elaborated from the perspective of the Ombudsman’s prevention field. The observation includes gender-based approach, best interests of the child, protection of vulnerable groups and non-discrimination. The report is based on the findings of the analytical and monitoring process, including the analysis of applications examined by the OI, operational information and NHRIs practices based on international standards.

1.1. Aims and objectives of the Report

This Report is primarily *aimed* at providing an objective assessment of the mechanisms for the protection of the rights of persons in transit or apprehended at the borders of the Republic of Moldova. The focus is on analyzing access to asylum, temporary protection, detention conditions and Border Police practices. This Report also complements previous OI reports, highlighting achieved progress and remaining problems.

Objectives of the Report are:

- ✓ Monitor compliance with international standards and national legal framework on the rights of asylum seekers and refugees.
- ✓ Identify systemic gaps and problems in the process of managing migrants at the border.
- ✓ Issue concrete recommendations to improve reception and protection conditions and access to justice.
- ✓ Assess the needs of Border Police and other authorities involved in the migration process.
- ✓ Ensure the protection of both migrants and border staff involved in the management of the flow of people.

1.2. Research methodology

To assess respect for the rights of persons seeking international protection at the border and to identify existing problems, this report uses a research methodology based on multiple sources and data collection techniques. The methodology adopted combines legal analysis, direct observations, data review, interviews with stakeholders and the study of international practice to provide a clear and objective picture of the situation. This mixed approach ensures a rigorous, transparent and fact-based assessment of the situation at the border.

The thematic report is based on a comprehensive methodology, including, but not limited to:

- Analysis of the legal framework. One of the main components of the research is the analysis of the national and international legal framework to identify the extent to which the Republic of Moldova complies with international commitments in the field of refugee and migrant

¹⁵ Strategic Development Program of the Ombudsman Institution for 2023-2030, available at: <https://ombudsman.md/post-document/strategic-development-program-of-the-peoples-advocate-office-2023-2030-4/>

protection. In this regard, the following were analyzed: • Relevant international conventions and treaties, including the Convention Relating to the Status of Refugees (1951), 1967 Protocol, the European Convention on Human Rights, as well as UN and EU standards. • National legislation on refugee protection and asylum, in particular Law No. 270 on Asylum in the Republic of Moldova and Border Police regulations. • Judgments of the European Court of Human Rights (ECtHR) and other relevant case law on the protection of human rights at the border.

- Monitoring visits and direct observations. To have a detailed picture of the situation, monitoring visits were conducted between October 23 and November 15, 2024, at several border crossing points, including: 7 preventive monitoring visits to Ocnita BPS, Otaci BPS, Leova BPS, Basarabasca BPS, Costesti BPS, Leuseni BPS, Tudora BPS and 7 preventive monitoring visits carried out at Ocnita BCP, Otaci BCP, Leova BCP, Costesti BCP, Leuseni BCP, Tudora BCP and Palanca BCP within the GIBP. These visits aimed to: • Observe how asylum seekers and refugees are treated at border crossing points. • Assess the reception conditions and infrastructure of waiting centers and temporary detention units. • Identify possible violations of fundamental rights, including restricted access to asylum, inhumane accommodation conditions and arbitrary refusals of entry.
- Interviews and consultations with stakeholders. As part of the research, semi-structured interviews were conducted with different categories of stakeholders involved in border management and refugee protection: • Government authorities - representatives of the General Inspectorate of Border Police, of the General Inspectorate for Migration and of the Ministry of Internal Affairs. • International organizations and NGOs - UNHCR and local organizations providing assistance to asylum seekers. • Asylum seekers and migrants - anonymized interviews with persons who have crossed the border crossing points of the Republic of Moldova and encountered difficulties. • These interviews helped to identify challenges on the ground, discrepancies between legislation and its practical application, as well as administrative and legal obstacles affecting access to international protection. • Separately, the Ombudsman held a series of multilateral meetings with representatives of the Inspectorates of Police, Prosecutor's Office and LPAs of Otaci, Cantemir and Dubasari.
- Review of internal registers and data. During the monitoring visits, the following were studied: Registers of asylum applications submitted by asylum seekers, Registers of receipt and transmission of complaints, statements or other information concerning alleged acts of torture, inhuman and degrading treatment; Registers of refusal of entry into or exit from the country, Registers of records; Registers of reception-handover of children; Registers of reports on the reception-drop-off service; Registers of records of the banning of foreign nationals; handover-reception deeds of potential asylum seekers; information boards, internal instructions, etc. • Similarly, the information provided upon request by GIBP was studied.
- Assessment of material accommodation, detention and working conditions. The material conditions of apprehension, detention, specially equipped premises and living quarters for asylum seekers have been verified. Aspects related to the material conditions assessed included observations on the day of the visits. • If these have been improved during the preparation of the Report, the responsible authority will submit the relevant evidence. • The working conditions of BP employees have also been verified.
- Data analysis and comparison with international good practices. To contextualize the situation in the Republic of Moldova, the data collected has been compared with best practices in other European countries, analyzing models implemented in EU Member States such as France,

Serbia, Greece and Croatia¹⁶, as well as recommendations made by the Council of Europe, FRA (European Union Agency for Fundamental Rights)¹⁷ and the European Union Agency for Asylum¹⁸.

We appreciate the openness of the GIBP and the BP employees in the monitoring process and the efforts made by the Border Police staff, including in complex situations.

In this Report, we shall refer to the mechanisms for ensuring the rights of persons seeking international protection or apprehended at the border from the perspective of the human rights-based approach, the CPT standards relevant to the “police”¹⁹ field, taking into account, including one of the *de facto* powers of the BP to apprehend and hand over persons to the competent bodies and subdivisions. For the purposes of this Report, *apprehension* shall be deemed to be any activity by the BP to stop, search, apprehend for short periods or up to 6 hours or more persons, either for the purpose of ascertaining unclear circumstances or subsequent surrender or other actions, including criminal or misdemeanor detention.

We remind that the Ombudsman has previously had the opportunity to expound on the decision-making process of applying apprehension, detention of the person in police custody, escorting and transportation of the apprehended person and guaranteeing the rights of persons in custody in the Special Report “The Situation of Persons Detained and in Police Custody”, 2019²⁰. Following, we shall not return to the subject of apprehension by the border police and the commitments to provide guarantees upon apprehension, or this has been dealt with earlier in the special report cited above.

The monitoring period of this Study, includes the data reported by GIBP for the first 9 months of 2024 and the information analyzed in the de facto activity observation process conducted between October and November 2024 by the OI team.

The thematic report does not reflect the situation at the CIA BCP and BPS. These findings will be included in the next Monitoring Report on “Ensuring Access to International Protection and Procedures at the Air Border”²¹.

¹⁶ Croatia. National Report on the situation of human rights of migrants at the borders, 2021

<https://ennhri.org/wp-content/uploads/2021/08/Croatian-National-Report.pdf>

France. National Report on the situation of human rights of migrants at the borders. 2021.

<https://ennhri.org/wp-content/uploads/2021/08/French-National-Report-CNCDH.pdf>

Greece. National Report on the situation of human rights of migrants at the borders, 2021. <http://ennhri.org/wp-content/uploads/2021/07/Greek-National-Report.pdf>

Slovenia. National Report on the situation of human rights of migrants at the borders, 2021.

<https://ennhri.org/wp-content/uploads/2021/07/Slovenian-National-Report.pdf>

Serbia. National Report on the situation of human rights of migrants at the borders, 2021.

<https://ennhri.org/wp-content/uploads/2021/07/Serbian-National-Report-3.pdf>

¹⁷ EU Agency for Fundamental Rights (FRA) <https://fra.europa.eu/ro>

¹⁸ European Union Agency for Asylum (EUAA) https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-union-agency-asylum-euaa_ro

¹⁹ CPT Standards, extract from the 2nd General Report, published in 1992: <https://rm.coe.int/16806cea28>

²⁰ <https://ombudsman.md/wp-content/uploads/2019/06/Raport-Situatia-persoanelor-retinute-RO-Web.pdf>

²¹ <https://ombudsman.md/rapoarte/prevenirea-torturii/tematice/>

1.3. Justification of the topic - respect for the rights of persons in need of international protection at the border

The protection of persons in need of international protection at the border is an essential aspect of fundamental rights, based on internationally recognized principles. Under the Convention Relating to the Status of Refugees (1951) and the 1967 Protocol as well as other international regulations, States have an obligation to respect the principle of non-refoulement and ensure a fair trial for asylum seekers.

In the Republic of Moldova, the increased influx of refugees and vulnerable migrants has underlined the importance of strengthening border protection mechanisms. Factors justifying this include:

- Increase in the number of people seeking international protection - The conflict in Ukraine and other regional crises have led to an increased flow of vulnerable migrants.
- The need to align with international standards - The Republic of Moldova needs to implement EU norms and European Committee for the Prevention of Torture (CPT) standards to ensure fair treatment.
- Prevent human rights violations at the border - ECtHR practices highlight the risks associated with collective expulsions and degrading treatment of asylum seekers.
- Increase administrative and institutional capacity - Authorities need to improve their capacity to process applications for protection and identify vulnerable groups.

1.4. The mandate of the Ombudsman and his role in the protection of rights at the border

As independent bodies with a constitutional mandate, national human rights institutions (NHRIs) play a key role in monitoring, promoting and protecting these rights, particularly at the borders. At the same time, they help ensure accountability when violations occur. NHRIs' broad mandates give them a crucial role in any effective human rights accountability system²².

Ombudsman Institution (OI) as the only national human rights protection institution (and with constitutional rank) plays a key role in protecting the rights of persons at the border, acting as an independent national institution for the defense of human rights. Its mandate is established by Article 59¹ of the Constitution of the Republic of Moldova, the Law No. 52/2014 on the People's Advocate (Ombudsman), the Paris Principles, as well as in many other international instruments, which empower it to monitor the observance of human rights, including in places of detention, placement centers, sectors, and border crossing points.

Main activities of the OI at the border:

- Monitor respect for human rights - Assess how persons seeking international protection are treated.
- Preventive visits at border crossing points - Check reception conditions and document possible violations of migrants' rights.
- Issue recommendations to the authorities - Propose measures to improve the management of migration flows and compliance with international standards.
- Cooperation with international organizations and civil society - Cooperation with UNHCR, IOM, Council of Europe and other entities to protect the rights of refugees.

²² ENNHRI. Scoping paper "The role of NHRIs in upholding the human rights of migrants and asylum seekers in the light of recent EU developments", 2021. https://ennhri.org/wp-content/uploads/2021/09/Scoping-Paper_NHRIs_Human_Rights_of_Migrants.pdf

The OI has identified several problems in its monitoring work in 2019-2024, including: discriminatory treatment of some asylum seekers, inadequate conditions in reception centers and lack of effective mechanisms to identify vulnerable persons. It therefore made recommendations to improve access to information, ensure better conditions in accommodation and placement centers and train border staff on refugee rights.

By its activities, the Ombudsman Institution contributes to ensuring the transparency and accountability of the authorities in the process of managing migration flows, strengthening the protection of human rights at the Moldovan border.

1.5. The supremacy of human rights at the border

Respect for human rights at the border is a fundamental principle of international law, recognized by treaties and conventions to which the Republic of Moldova is a party. According to the European Convention on Human Rights (ECHR) and the Convention Relating to the Status of Refugees (1951), states are obliged to protect the fundamental rights of all persons on their territory, including migrants and asylum seekers, regardless of their legal status.

The concept of responsibility for human rights at the border implies that state authorities must ensure respect for fundamental human rights principles, even in situations of border control and migration flow management. This includes inter alia:

- Equal access to asylum procedures - All persons seeking international protection must have the opportunity to submit their application in a fair and transparent manner.
- Prohibition of forced return (non-refoulement) - No person shall be returned to a State where he or she would be in danger of being subjected to torture, inhuman or degrading punishment, in accordance with Article 3²³ and Article 5²⁴ of the European Convention on Human Rights and the UN Convention against Torture²⁵.
- Respect for human dignity - All persons at the border must be treated with respect, without being subjected to discrimination or institutional violence.

Ensuring the supremacy of human rights at the border is essential for the protection of asylum seekers and vulnerable migrants. The Republic of Moldova must strengthen monitoring mechanisms, train border authorities and implement effective complaint mechanisms to protect the rights of persons in transit. Only by respecting international standards and promoting a human rights-based approach, the State can guarantee a fair and transparent border management system.

²³ European Court of Human Rights Guide on Article 3 of the European Convention on Human Rights Prohibition of torture, 2022.

http://ier.gov.ro/wp-content/uploads/2018/11/Ghid_art_3_31_08_2022_RO.pdf

²⁴ European Court of Human Rights Guide on Article 5 of the European Convention on Human Rights: Right to liberty and security, 2023.

http://ier.gov.ro/wp-content/uploads/2024/03/COURT-3758111-v23-Case-law_Guide_Article_5_GTS_-_RO_update_31_08_2023.pdf

²⁵ UN Convention against Torture, 1984, available at:

https://www.legis.md/cautare/getResults?doc_id=115576&lang=ro

1.6. Monitoring the respect for human rights at the border

Monitoring the respect for human rights at the border is essential to ensure fair and transparent migration control according to international standards. International organizations such as the UN, the Council of Europe and the EU Agency for Fundamental Rights (FRA) underline the importance not only of NHRIs (such as in the Republic of Moldova - OI), but also **the existence of effective monitoring mechanisms, both internal, through the border police structures, and external, through the involvement of civil society and human rights defenders.**

The UN Manual on Human Rights Monitoring provides detailed guidance on human rights monitoring at borders, emphasizing the necessity of independent mechanisms, such as civil society, for documenting and reporting abuses including at the border²⁶.

Internally, the BP must have clear procedures for reporting and investigating incidents, enhancing transparency and accountability in the application of border control measures. The implementation of integrated systems for border security, which include human rights training for staff and effective mechanisms for oversight of interventions, contribute to reducing the risks of abuse. Fundamental Rights Report 2024 - The European Union Agency for Fundamental Rights (FRA) opinions emphasize that states must ensure robust mechanisms for the protection of migrants and asylum seekers at the border, including a clear process for documenting and investigating reported violations²⁷.

External monitoring, conducted by civil society organizations and human rights defenders, is equally important to prevent abusive treatment and violations of fundamental rights at the border. The Recommendation of the Council of Europe Commissioner for Human Rights – *“Protecting the Defenders: Ending Repression of Human Rights Defenders Assisting Refugees, Asylum Seekers and Migrants in Europe”* – underlines the necessity to involve and protect the work of organizations monitoring the situation of migrants and refugees at borders. States are urged to provide support and protection to human rights defenders involved in documenting abuses and to prevent any restrictive measures against them by guaranteeing them unrestricted access to detention centers and border crossing points to report violations of fundamental rights²⁸.

In this context, the role of national organizations for the protection of migrants’ rights is crucial, providing both legal support and mechanisms for reporting abuses. In the Republic of Moldova, specialized organizations such as the **Law Center of Advocates (CDA)** play a crucial role in monitoring and reporting on the situation at the border, facilitating migrants’ access to international protection and ensuring that asylum procedures are correctly applied. The CDA provides free legal aid to refugees, asylum seekers and other persons in need, thus contributing to strengthening human rights protection mechanisms. Through its work, the CDA supports transparency and accountability of authorities in the processing of migration cases and the application of legal procedures at the border.²⁹

At European level, the European Border and Coast Guard Agency (**FRONTEX**) has a key role in promoting, coordinating and developing European border management in accordance with the EU Charter of

²⁶ Manual on Human Rights Monitoring (Revised edition), 2011, available at: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/manual-human-rights-monitoring-revised-edition>

²⁷ European Union Agency for Fundamental Rights, Fundamental Rights Report, 2024, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2024-fundamental-rights-report-2024-opinions-ro.pdf

²⁸ Council of Europe, Protection of Migrant Rights Defenders, 2024, available at: <https://rm.coe.int/recommendation-protecting-the-defenders-ending-repression-of-human-rig/1680ae9b1c>

²⁹ <https://cda.md/>

Fundamental Rights. FRONTEX implements the concept of Integrated Border Management, which includes training staff in human rights and monitoring human rights compliance in border operations³⁰.

In this context, it is essential for the Border Police to strengthen and expand its partnerships with civil society organizations and international agencies to ensure effective monitoring and respect for human rights at the borders.

II. SITUATION AT THE BORDER OF THE REPUBLIC OF MOLDOVA

2.1. Flow of persons at the border

According to GIBP data, tens of thousands of people cross the state border every day³¹. The increased flow of people is recorded through the most popular BCPs, such as Leuseni BCP, Sculeni BCP on the outbound direction, and Palanca BCP, Tudora BCP, Otaci BCP, Criva BCP on the inbound direction. Since 2022, with the war in Ukraine, the BP has recorded a major influx of Ukrainian citizens entering *illegally* into the country, victims of trafficking in human beings³², victims of the consequences of the war, etc. They are apprehended and transferred to internal bodies for criminal investigation. A good proportion of Ukrainian citizens are targeted in criminal cases on charges of illegal border crossing or organizing illegal migration³³.

According to the GIBP Activity Note for 9 months, 2024³⁴, the BCPs recorded a 5.1% increase in the number of people, who crossed the border, compared to the same period of the previous year. For example, official GIBP data indicates that in the first 9 months of 2022, 2023 and 2024, there were 5.963.876, 7.193.235 and respectively 7.567.687 entries at the border of the Republic of Moldova, showing a progressive increase in the flow of persons:

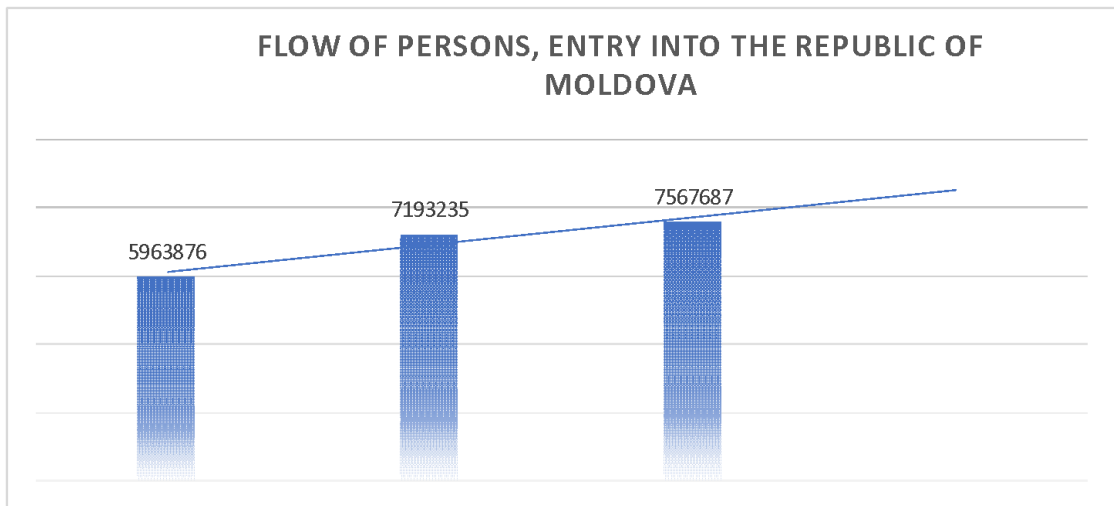
³⁰ <https://www.fronTEX.europa.eu/>

³¹ <https://border.gov.md/comunicate-de-presa>

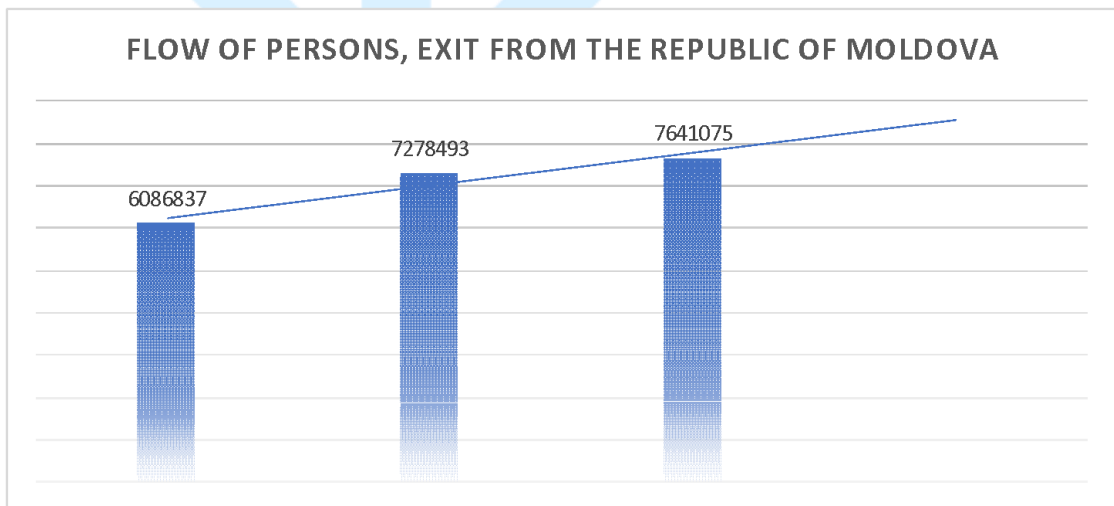
³² <https://procuratura.md/stiri-si-mass-media/comunicate-de-presa/ziua-europeana-de-combatere-traficului-de-persoane>

³³ <https://procuratura.md/stiri-si-mass-media/comunicate-de-presa/pedeapsa-cu-patru-ani-de-inchisoare-pentru-un-barbat-acuzat/> <https://procuratura.md/stiri-si-mass-media/comunicate-de-presa/grupare-infractionala-destructurata-trei-persoane-arestate/> <https://procuratura.md/stiri-si-mass-media/comunicate-de-presa/tentativa-de-migratie-ilegala-contracarata-la-frontiera-de>

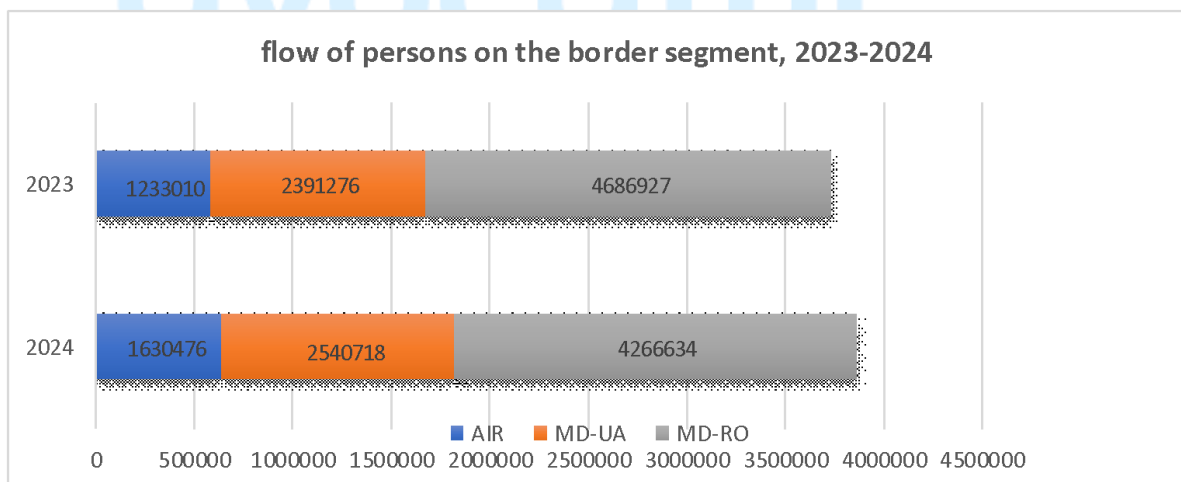
³⁴ GIBP Response No.35/3-9055 of November 15, 2024



The exit rate from the Republic of Moldova according to GIBP data is also high according to the chart below. Data presented do not include the nationality of persons: -



GIBP's analysis shows that the most crossings were recorded in the MD-RO sector (in 2023: 4.686.927 persons and in 9 months, 2024: 4.266.634). On the border segment with Ukraine, the flow for 9 months, 2024 is decreasing, while an increase is observed through CIA: -



2.2. Records at the border

According to the Law No. 215/2011 on the State Border (repealed as of 06/01/2025), a record at the border is the data entered into the Integrated Information System of the Border Police on persons, means of transport and documents that are in one of the situations provided for by the law and that are to be checked during the border crossing control in order to take the necessary measures³⁵.

The new Law on the State Border, however, stipulates that a record at the border is the data entered into the Integrated Information System of the Border Police on persons, means of transport and documents. The record at the border is a measure imposed based on the disposition acts of the competent bodies, such as ordinances of criminal prosecution body, acts of court, and acts of the bailiff. The existence of a record at the border shall be verified by the Border Police at the border crossing control, with appropriate measures being taken. The new Law expressly regulates the authority that can order records, in comparison to the repealed one. They can be: *on apprehension of the person/means of transport, restrictive* (persons are not allowed to enter or exit), *control* (subjecting persons/means or documents to a certain type of control), *of seizure* (documents/means of transport may be seized), *information* (information about the fact of crossing the border).

However, at the time of preparing the report, the OI requested the submission of data from GIBP on the records prior to the date of entry into force of the new Law. Respectively, the data presented below refer to the earlier period and are of greater significance to this study.

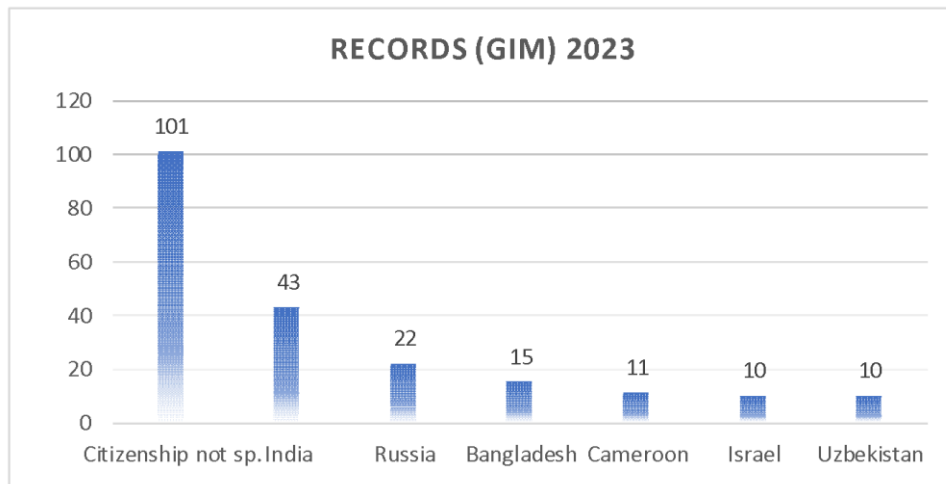
Therefore, according to BP data, during 9 months, 2024, through the Integrated Automated Information System of the Border Police **14935 records** were triggered (increasing): -

Triggered records	9 months 2022	9 months 2023	9 months 2024
TOTAL	8860	11793	14935
National records	7900	11199	14550
INTERPOL records	960	594	385

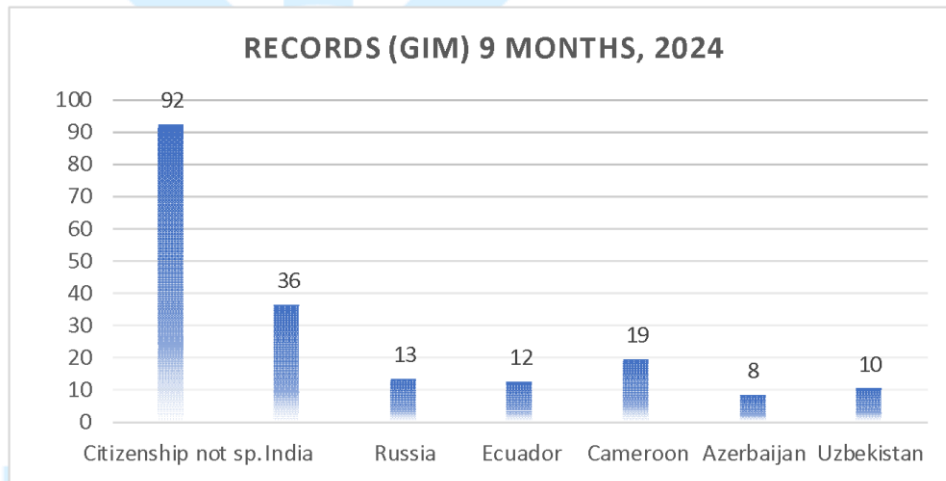
The same data, shows that the BP ordered ex officio **136 records in 2023** and **90 records in 9 months, 2024** against individuals.

At GIM's initiative, in 2023 there were **284 records** ordered against aliens and in the first 9 months of 2024 another **236 records**. In 101 cases the nationality of the persons was not specified, and from the data presented, the most records were applied to persons from India (43 persons), followed by Russia (22), Bangladesh (15), Cameroon (11), Israel and Uzbekistan (10 each) and the rest of other States (from 1 to 5): -

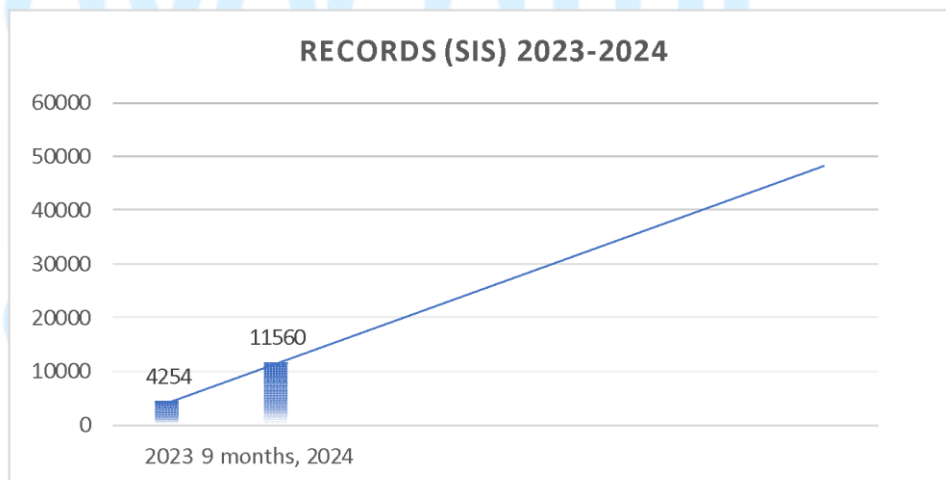
³⁵ Article 3 of Law 215/2011 on the State Border (repealed as of January 6, 2025), available at: https://www.legis.md/cautare/getResults?doc_id=139911&lang=ro#



In the first 9 months, 2024, the GIM ordered **236 records**, **92** of which did not indicate the nationality of the persons. India (36 persons) continues to be at the top of the records. Followed by Cameroon (19), Russia (13), Ecuador (12), Uzbekistan (10) and Azerbaijan (8) and other States: -



The highest rate of records was ordered at the Security and Intelligence Service initiative. In 2023, the SIS ordered **4254 records** and in 9 months, 2024 - **11560 records**. Intelligence Service does not indicate citizenship, nationality, and reasons:



2.3. Not allowing entry into the Republic of Moldova

According to Article 31 of Law 28/2024 on the State Border, persons and means of transport not meeting the conditions for entry into or exit from the Republic of Moldova shall not be allowed to cross the state border³⁶. Refusal of entry into or exit from the Republic of Moldova shall be ordered under the normative framework by the border guard, with the issuance of a reasoned decision, which shall be handed over to the person in respect of whom it was issued. The reasoned decision shall be drawn up by the border guard, who took the decision on a standard form approved by the Border Police. The Border Police shall keep records of the persons for whom a decision refusing entry into or exit from the Republic of Moldova has been issued.

The decision on refusal of entry into or exit from the Republic of Moldova can be challenged directly in court under the provisions of the Administrative Code, without prior procedure. Challenging the decision to refuse entry into or exit from the Republic of Moldova shall not suspend its enforcement. And, a person who has not been authorized to cross the State border shall be obliged to leave the BCP immediately.

Further, the legal framework establishes that the authorization to cross the state border consists in recognizing the legality of crossing the state border by persons, means of transport, crossing the state border of cargo and other goods. Decision to authorize a person to cross the state border is taken by border guards. Also, they are entitled to require justification of the purpose of entry of aliens, who are obliged to submit information and documents confirming the purpose of entry. Similarly, border guards may refuse to authorize border crossing or refuse entry to aliens who do not meet the entry conditions. Conditions of entry of aliens to the territory of the Republic of Moldova are stipulated in Article 6 of the Law on the Legal Regime of Aliens³⁷.

Therefore, an alien **may enter** into the Republic of Moldova only if:

a) he/she holds a valid travel document, recognized or accepted by the Republic of Moldova, unless otherwise stipulated by international treaties to which the Republic of Moldova is a party; b) he/she is in possession of a visa granted under the conditions of this Law or, as the case may be, a valid residence permit or identity card for refugees or beneficiaries of humanitarian protection, or confirmation of the right to stay on the territory of the Republic of Moldova, unless otherwise stipulated by international treaties to which the Republic of Moldova is a party; c) he/she submits documents justifying the purpose of entry as well as proof of adequate means of subsistence for the period of his/her stay and for the return to his/her country of origin or transit to another State which he/she is certain to be allowed to enter; d) he/she provides guarantees that he/she will be allowed to enter the territory of the State of destination or that he/she will leave the territory of the Republic of Moldova, in the case of aliens in transit; e) they are not included in the category of aliens against whom a ban on entry into the Republic of Moldova has been imposed or who have been declared as undesirable; f) he/she does not represent a danger to national security, public order and public health; g) a nominal record ban on entry into the Republic of Moldova has not been imposed and (h) the entry has been authorized under international obligations or in the case of a national interest determined by the Parliament or the Government.

In the same vein, aliens **are not allowed** to enter the Republic of Moldova under Article 8 of the Law on the Legal Regime of Aliens, if:

a) they do not meet the conditions for entry; b) international organisations of which the Republic of Moldova is a member or public authorities engaged in counter-terrorism activities report that they

³⁶ Law 28/2024 on the State Border, Article 31:

https://www.legis.md/cautare/getResults?doc_id=142194&lang=ro

³⁷ See Article 6 of Law 200/2010 on the Legal Regime of Aliens, available at:

https://www.legis.md/cautare/getResults?doc_id=146674&lang=ro#

finance, prepare, support in any way or commit terrorist acts; c) there are indications that they are members of transnational organized criminal groups or that they support in any way the activities of such groups; d) there are indications that they have committed or participated in the commission of crimes against peace and humanity or war crimes or crimes against humanity, provided for in international treaties to which the Republic of Moldova is a party; e) they have submitted false information when completing the documents for entry into the Republic of Moldova; f) they have violated the state border regime and the state border crossing point regime; g) if they have committed crimes during other stays in the Republic of Moldova or abroad against the State or a citizen of the Republic of Moldova and have outstanding criminal records; h) they have illegally smuggled or attempted to smuggle other aliens into the Republic of Moldova, or are involved in trafficking in human beings; i) they have unjustifiably violated the stated purpose of obtaining a visa or entering the territory of the Republic of Moldova; j) they have previously been removed from the territory of the country and have not reimbursed the expenses related to their removal; k) they are banned from entering the Republic of Moldova and l) they have exhausted the period of stay or residence on the territory of the Republic of Moldova granted by law.

Also, here, Article 23 of the new Law on the State Border stipulates that the BP **shall refuse entry** to aliens who do not meet the entry conditions in the following cases:

a) they do not hold a valid travel document; b) they hold a false (forged/altered) travel document; c) they do not hold a valid visa when required, a valid residence permit or a valid long-stay visa; d) they are in possession of false (forged/altered) visas or residence permits; e) they do not hold the appropriate documentation justifying the purpose and conditions of stay; f) they have already benefited from the right of residence of 90 days in any period of 180 days, taking into account the last period of 180 days preceding each day of residence, unless otherwise provided for in international treaties; g) they do not have sufficient means of subsistence appropriate to the period and conditions of their stay or the means to return to their country of origin or transit; h) they are persons subject to an alert issued in national databases to refuse entry; i) they are considered to be a threat to public order, national security, public health or international relations of the Republic of Moldova; j) they do not provide guarantees that they will be allowed to enter the territory of the State of destination or to leave the territory of the Republic of Moldova, in case of aliens in transit; k) they have submitted false information when completing the documents for entry into the Republic of Moldova; l) they have violated the state border regime and the state border crossing point regime; m) they have unjustifiably violated the stated purpose of obtaining a visa or entering the territory of the Republic of Moldova; n) a nominal record ban on entry into the Republic of Moldova has been imposed on them; o) they are banned from entering the Republic of Moldova; p) they have exhausted the period of stay or residence on the territory of the Republic of Moldova granted by law.

A careful analysis of the provisions of the two normative acts in force on the conditions for refusal of entry shows that **there is a serious discrepancy** between them. They may affect the assurance of the rights of aliens and make it difficult for border guards to take decisions.

For example, the Law on the Legal Regime of Aliens outlines 12 conditions for denial of entry into the country, and the Law on the State Border - 16 criteria. The latest Law, introduces new criteria such as *the existence of an alert in national databases; benefiting from the 90-day period within 180 days; failure to provide guarantees to leave the territory; nominal record; false travel document; lack of sufficient means of subsistence for stay and return*, which are not found in the Law on the Legal Regime of Aliens in force. At least 6 criteria are repeated in both normative acts. The others are interpretative and as long as both acts are in force can be applied by the BP at its discretion.

In our opinion, the new criteria introduced in the Law on the State Border on the one hand **hinder the access of aliens** to the Republic of Moldova. On the other hand, the BP has more possibilities to order refusal of entry, including of potential asylum seekers. For example, asylum seekers may

have to resort to irregular entry because of the risks in their country of origin, which requires the application of the principle of non-refoulement according to international standards. On arrival at the border, they may be refused entry on the grounds of presenting a false travel document (letter b, Article 23 of the new Law on the State Border) and be returned to the country at risk, without having the opportunity to apply for asylum. Here again, a potential asylum seeker, refugee, may not have sufficient means of subsistence and the BP will be obliged to refuse him/her entry under the new rules. Terms of *national alerts* and *nominal record* are not explained by the new Law, which may lead to various violations of human rights at the border.

Another reason for the violation of the right to defense/challenge of administrative decisions guaranteed by international standards is that the new Law obliges the border guard to issue the decision on the refusal of entry, which shall be **immediately enforced**. Even though, the Law allows challenging the decision directly in court, the alien is immediately removed from the BCP, having no real chance to wait for the court's solution/decision. Asylum seekers often have to suffer under this rule. The Ombudsman has previously reacted in some cases by recommending that the right to defense and the right to challenge the administrative act be fully guaranteed³⁸. Furthermore, the new Law worsens the situation of aliens, including potential beneficiaries of a form of international protection, by depriving them of the right to a full assessment of their situation.

Data on refusal of entry into/exit from the country are notified in the Registry **of decisions on refusal of entry into/exit** from the Republic of Moldova, available in the BCPs. BP employees shall fill in the essential data of the person refused entry into or exit from the country on a standard form "Decision on refusal of entry/exit of the person into/from the Republic of Moldova". This form is translated into English and Russian³⁹. The standard form provides that persons refused entry may challenge the decision within 30 days, in accordance with the administrative litigation procedure, at the competent Court (the physical address of the court is indicated). The person concerned may submit comments and apply/refuse to apply his/her signature. A copy of this document shall be sent to the person concerned. Apparently, the de jure procedure is complied with. However, the logical question arises as to the actual mechanism for challenging the decision to refuse entry into the country. Or, that decision is to be enforced immediately. We mentioned above that the person concerned is to leave the BCP immediately.

When asked about the physical access to the court for these persons, given the refusal of entry into the country, the BP employees pointed out that there is a possibility to lodge the challenge **online in court**.

However, in our opinion, this situation entails potential human rights risks related to access to justice and the right to a fair trial. Although persons refused entry have the right to challenge this decision, if the refusal limits their physical access to a court in the Republic of Moldova, **this may affect their ability to defend themselves effectively**. Although there is the option to lodge a challenge online, individuals may find it difficult to access the necessary documents or communicate effectively with lawyers and other authorities. If the persons refused entry include asylum seekers or persons in vulnerable situations, refusal without careful consideration of their situation may expose Moldova to the **risk of violating the principle of non-refoulement, which prohibits the return of persons to places where their life or freedom would be endangered**.

Another way to challenge the decision to refuse entry into the country is to submit an **online application to the GIBP**, requesting to examine the actions of border guards in the context of compliance with the

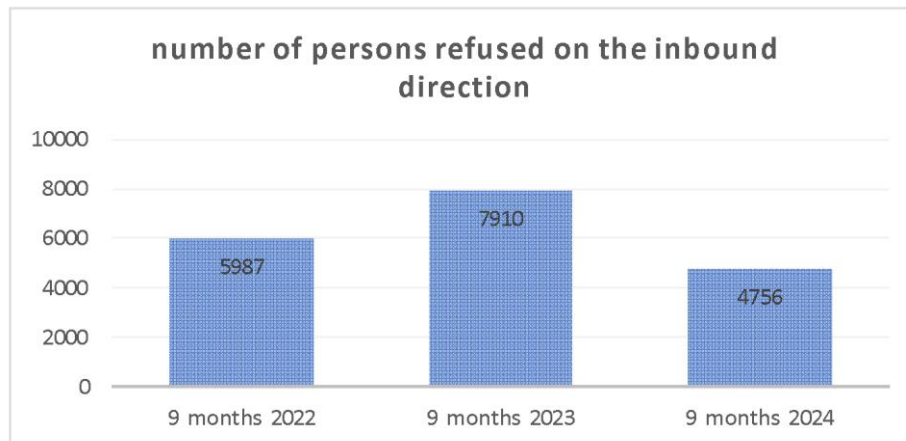
³⁸ <https://ombudsman.md/post-document/raport-tematic-accesul-persoanelor-straine-in-republica-moldova-prin-intermediul-ptf-aeroportul-international-chisinau-din-07-decembrie-2022-2/>
<https://ombudsman.md/post-document/raport-special-privind-evaluarea-procedurilor-de-preluare-a-cererilor-de-azil-in-punctul-de-trecere-a-frontierei-de-stat-aeroportul-international-chisinau-si-asigurarea-drepturilor-s-2/>

³⁹ GIBP Order No.482 of 10.07.2019 on the Regulation on the establishment of the procedure for refusal of entry into/exit from the Republic of Moldova

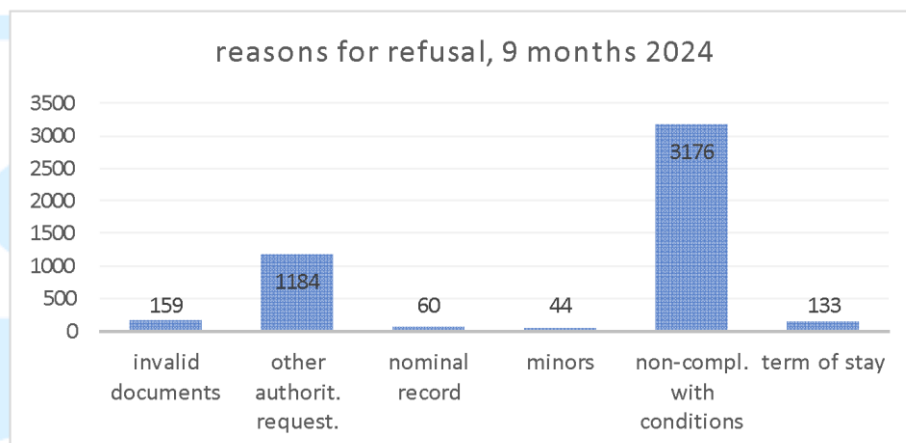
law and prevention of possible abuses. The person concerned is then informed electronically about the outcome of the examination. However, even this option seems inefficient, as the assessment is also carried out by Border Police representatives.

The fact that the review of decisions is conducted by the same structures that issued the initial refusal raises concerns about impartiality and objectivity. This can lead to a lack of confidence in the challenge procedure and the perception that there is no real way to correct potential errors or abuses, which is the case in several cases, including those examined by the OI.

According to GIBP data, **4756 persons** were not authorized to cross the state border in 9 months, 2024, a decrease compared to the same period, when 7910 measures of non-authorization of the state border were applied:



Among the reasons for the non-admission of aliens in the first 9 months, 2024, were reported (a) failure to comply with entry conditions (3176 persons), requests from auxiliary authorities (1184 persons), 159 persons were identified with invalid documents, 133 aliens had their term of stay violated, 60 persons were mentioned with a nominal record and 44 minors were not allowed entry because they did not meet the conditions for passage. These data refer to all BCPs:



In the same period, the GIBP issued 7 decisions on the application of the measure of refusal of entry into the Republic of Moldova and the courts - 5 such decisions.

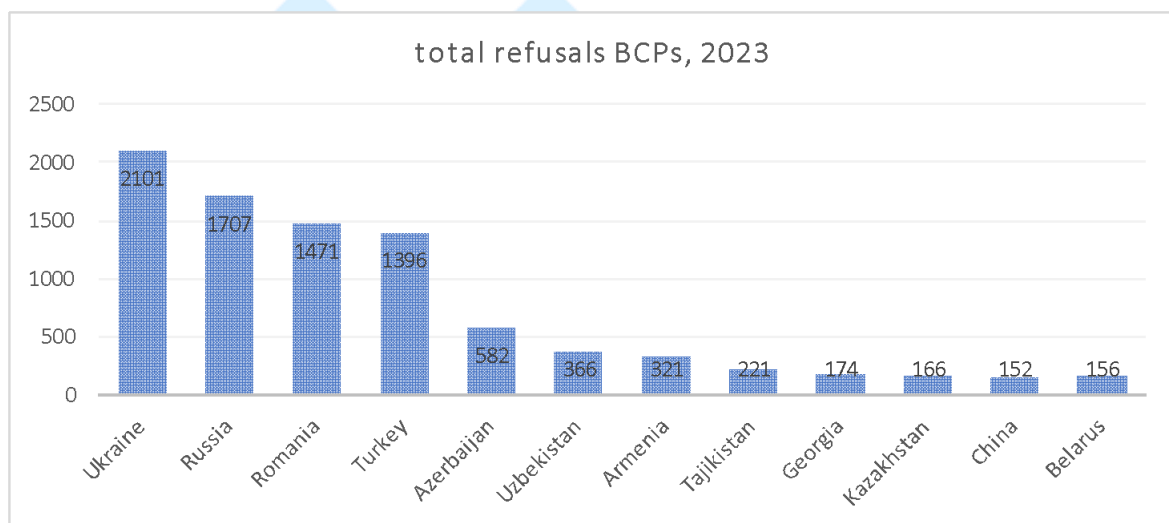
One remark noted is that the Information System of the Border Police **does not indicate the other legal grounds for refusal** of entry, such as:

(a) international organizations of which the Republic of Moldova is a member or public authorities engaged in counter-terrorism activities report that they finance, prepare, support in any way or

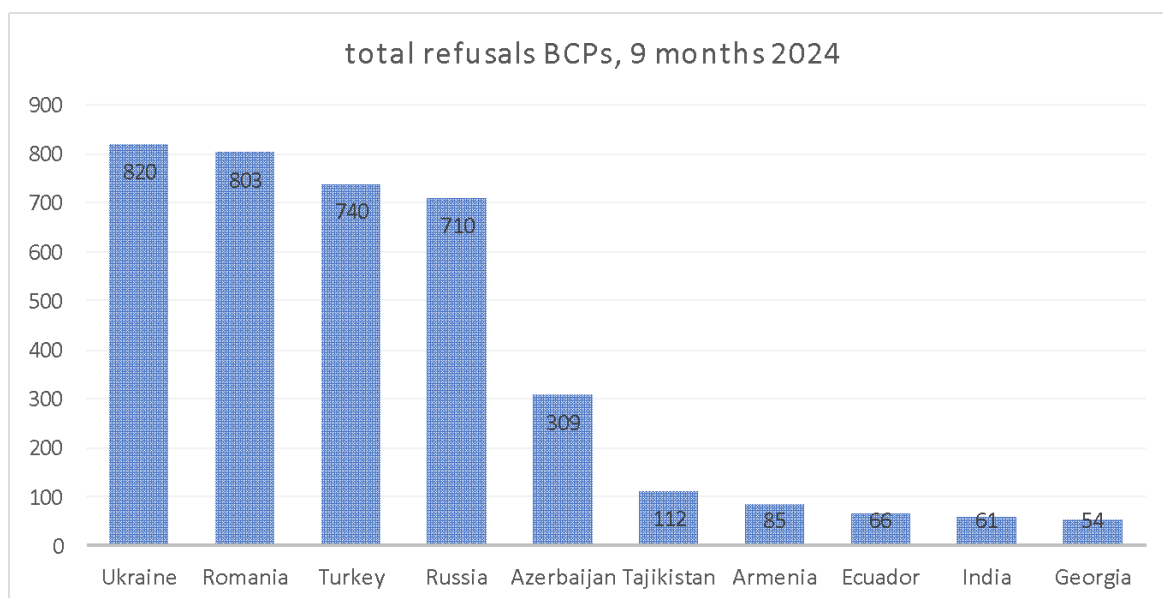
commit terrorist acts, (b) there are indications that they are members of transnational organized criminal groups or that they support in any way the activities of such groups, (c) there are indications that they have committed or participated in the commission of crimes against peace and humanity or war crimes or crimes against humanity, provided for in international treaties to which the Republic of Moldova is a party, (d) they have submitted false information when completing the documents for entry into the Republic of Moldova, (e) they have violated the state border regime and the state border crossing point regime, (f) if they have committed crimes during other stays in the Republic of Moldova or abroad against the State or a citizen of the Republic of Moldova and have outstanding criminal records, (g) aliens who have been refused entry to the Republic of Moldova on the grounds that they have illegally smuggled or attempted to smuggle other aliens into the Republic of Moldova, or are involved in trafficking in human beings, (h) aliens who have been refused entry to the Republic of Moldova on the grounds that they have unjustifiably violated the stated purpose of obtaining a visa or entering the territory of the Republic of Moldova, (i) they have previously been removed from the territory of the country and have not reimbursed the expenses related to their removal, (k) they are banned from entering the Republic of Moldova

Stricto sensu, the authorities **keep a limitative record**, compared to the grounds provided for by the above-mentioned normative acts in force. Most acts of refusal of entry are **applied by the BP** on the grounds of (a) failure to comply with entry conditions, (b) invalid documents on entry and (c) minors not complying with the conditions of passage. Likewise, measures of refusal of entry are ordered as **auxiliary services**, which presume *non-confirmation of the purpose of the journey, non-compliance with the status of the border sector crossing point, lack of visa, unaccompanied minor, damaged document*.

The BP data also show that according to the “**citizenship**” indicator, in 2023 refusal of entry was applied in 2101 cases for persons from Ukraine, 1707 - Russia, 1471 - Romania, Turkey - 1396 and others: -



The same data show that in the top 5 countries, according to the “citizenship” indicator in the first 9 months, 2024, Ukraine: 820 persons, Romania: 803, Turkey: 740, Russia: 710 and Azerbaijan: 309 persons: -



These figures do not show the situation at the CIA BCP and **contain no explanation** for the non-authorization of passage, especially of citizens from neighboring states (Romania and Ukraine) and especially of those from Ukraine, which is in an active war situation. However, in some explanations given to the visiting team, BP employees claimed that multiple verbal and written requests for non-authorization were received from the representatives of the Security and Intelligence Service. They also claimed that even though the SIS sends requests to the BP as a recommendation for non-admission, they fill them in order to avoid being subsequently drawn into service investigations (some of them, claimed that such situations exist/heard of). As a rule, the SIS requests arrive on the mobile phones via social media (Telegram, WhatsApp, Viber) of the BP employees. Some countries are included in the risk areas elaborated by the SIS, i.e., each BP employee has to inform the responsible person in charge of the respective service about entering into the Republic of Moldova by phone call or by sending a photocopy of the passport, and after the acceptance of the respective person, the BP employee can order the passage or refuse the person's passage. This "unwritten procedure" creates stress and confusion for the BP employees in the territorial BCPs and dissatisfaction for foreign nationals.

According to the Register of persons refused entry into or exit from the Republic of Moldova from all BCPs, **2613 persons were refused** entry or exit in 2023, and **1907 persons** were refused entry or exit in 2024, during the 9-month period. The information provided by the BP shows that neither in 2023 nor in 2024 **no final and irrevocable judgments** annulling the decisions on refusal of exit from/entry into the Republic of Moldova were issued by the national courts⁴⁰.

The same source shows that in 2023 for **78 persons** and in 9 months, 2024 for another **15 Ukrainian citizens were not allowed to leave** the Republic of Moldova under Article 12 of the Law on the Legal Regime of Aliens. Article 12 of this Law stipulates that an alien shall not be allowed to leave the country if he/she is serving a custodial sentence; a preventive measure has been ordered against him/her in accordance with the Criminal Procedure Code; medical restraining measures have been applied to him/her; he/she is prohibited from leaving the country or is under nominal record⁴¹.

⁴⁰ GIBP Response No.35/3-9055 of November 15, 2024

⁴¹ Article 12 of Law 200/2010 https://www.legis.md/cautare/getResults?doc_id=146674&lang=ro#

2.4. Illegal crossing of the state border

The Criminal Code of the Republic of Moldova provides for the **criminal punishment** for crossing the state border of the Republic of Moldova by circumventing or evading the control carried out at the border crossing in the form of a fine of up to 750 conventional units (about EUR 1940)⁴² or unpaid community service from 150 to 200 hours, or imprisonment for up to 2 years⁴³. The aggravating circumstance of this crime component provides for imprisonment of 5 to 8 years for acts accompanied by violence or the use of weapons. The criminal norm also provides for an exception, stipulating that the action of Article 362 **does not extend to foreign nationals who come to** the Republic of Moldova without an established passport or authorization in order to make use of the **right of asylum** granted by the Constitution of the Republic of Moldova, as well as to persons who are victims of trafficking in human beings.

Similarly, there is a **contravention sanction** imposed on individuals for violation of the state border regime, the border regime, the regime of the state border crossing point and the rules of crossing the state border (from MDL 300 to MDL 600 / EUR 15-30), including crossing the border through the BCP without a passport or authorization from the respective authorities (from MDL 600 to MDL 1500 / EUR 30 – 77)⁴⁴.

According to Article 6 of the Law on the Border Police, the BP shall, at the state border, detect contraventions related to illegal stay of aliens and illegal crossing of the state border by persons and means of transport, carry out special investigative measures, as well as conduct criminal prosecution.

De facto, the BP will initiate a criminal case on illegal crossing of the state border. And, if the person will apply for asylum, this case can be terminated. Such a situation occurs on a daily basis, in case of aliens, citizens of Ukraine, men aged 18+ who have circumvented the border control, entering the country through the border area (green area) fleeing from restrictions imposed on enlistment in the Ukrainian army, war, reunification with family or other justified fears.

Information about illegal crossings is recorded in the Registry No. 1 (R-1) of referrals of offenses or Register No. 2 (R-2) of other information about offenses and incidents (common database of the criminal prosecution bodies and the prosecutor's office). R-1 means the initiation of criminal case and the possibility of carrying out procedural actions, while R-2 - the possibility of formal extra-procedural checks without evidentiary value and only the compliance of the referral with the formal and content requirements⁴⁵. The BP also has the powers of a criminal prosecution body and official examiner.

BP data show that in 2023 in R-1, **3743 criminal cases** were initiated and in 9 months, 2024 - **4042 criminal cases** (increasing number): -

⁴² 1 conventional unit = MDL 50 (about EUR 2.5)

⁴³ Article 362 of the Criminal Code of the Republic of Moldova, available at:

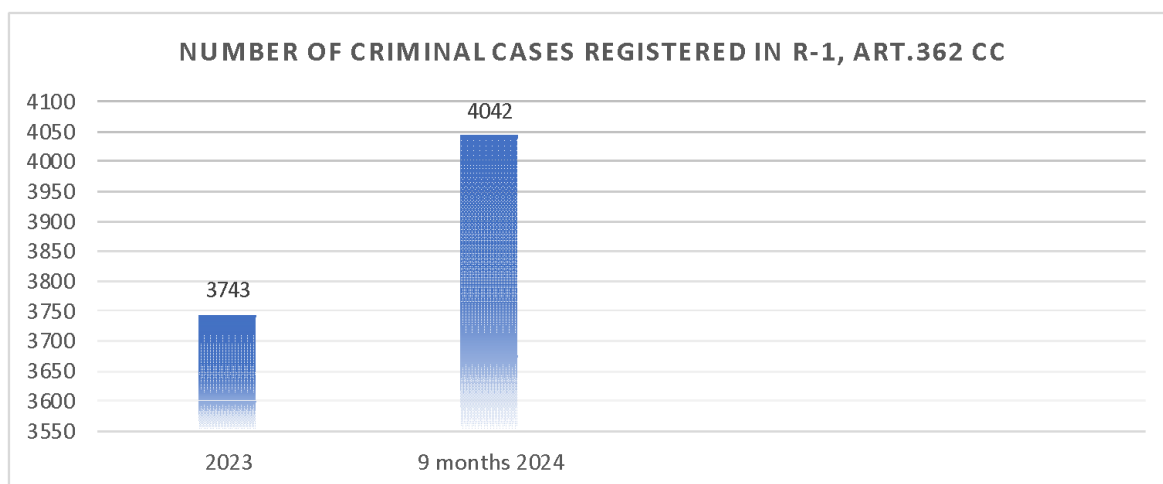
https://www.legis.md/cautare/getResults?doc_id=136064&lang=ro#

⁴⁴ See Article 332 of the Contravention Code, available at:

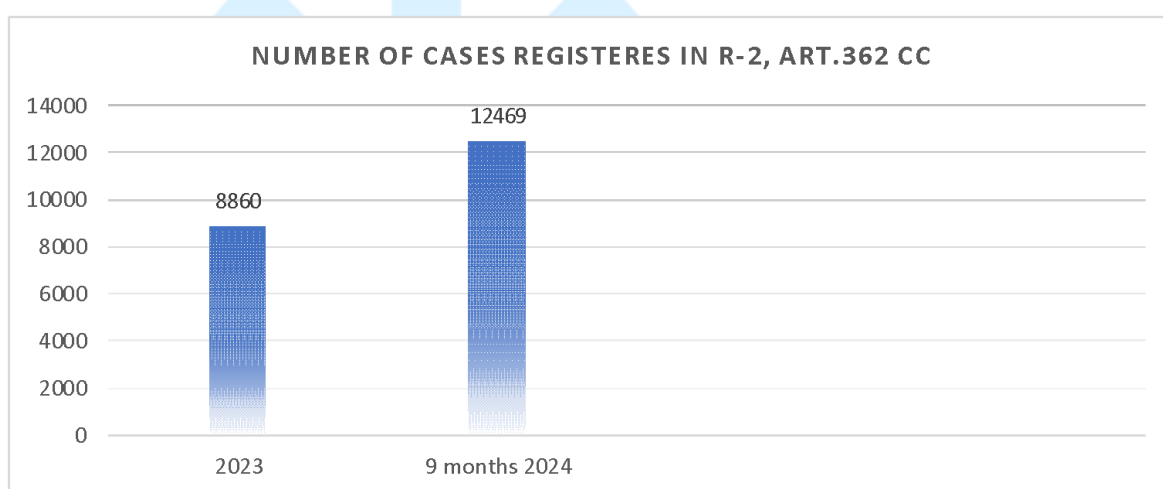
https://www.legis.md/cautare/getResults?doc_id=144731&lang=ro#

⁴⁵ Law No. 216/2003 on the Integrated Automated Information System for recording offenses , criminal cases and persons who have committed offenses , available at:

https://www.legis.md/cautare/getResults?doc_id=131035&lang=ro# and, Interdepartmental Order on the single record of offenses , criminal cases and persons who have committed offenses No. 121/254/286-0/95 from July 18, 2008

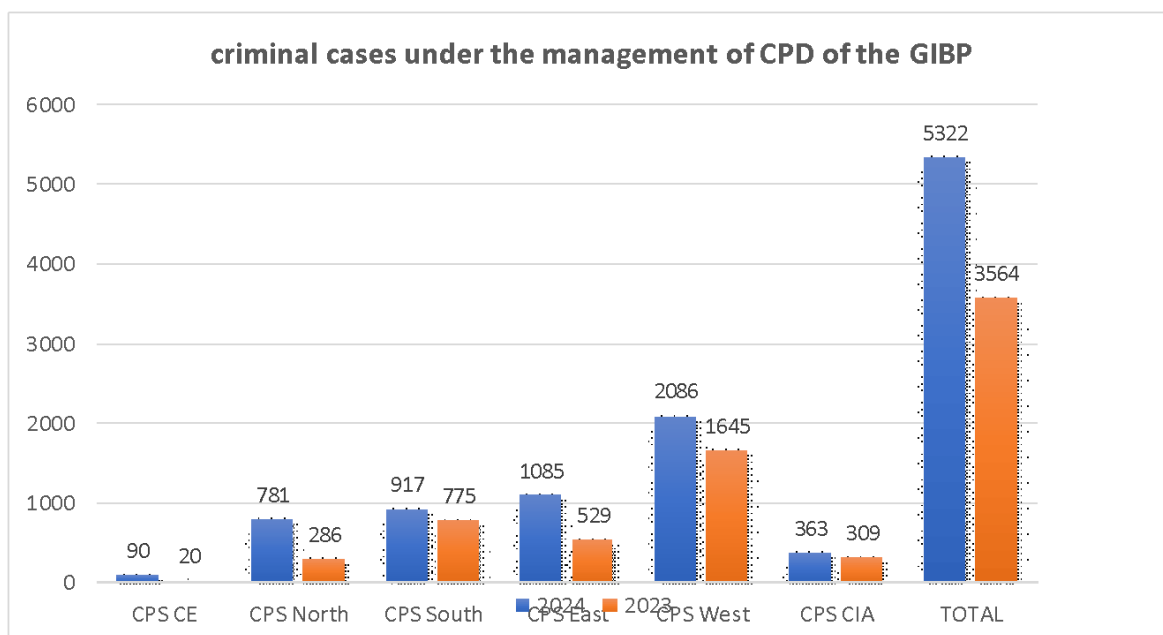


The same data show that in R-2 in 2023 there were registered **8860 cases**, and in 9 months, 2024 - **12469 cases** (increasing number):

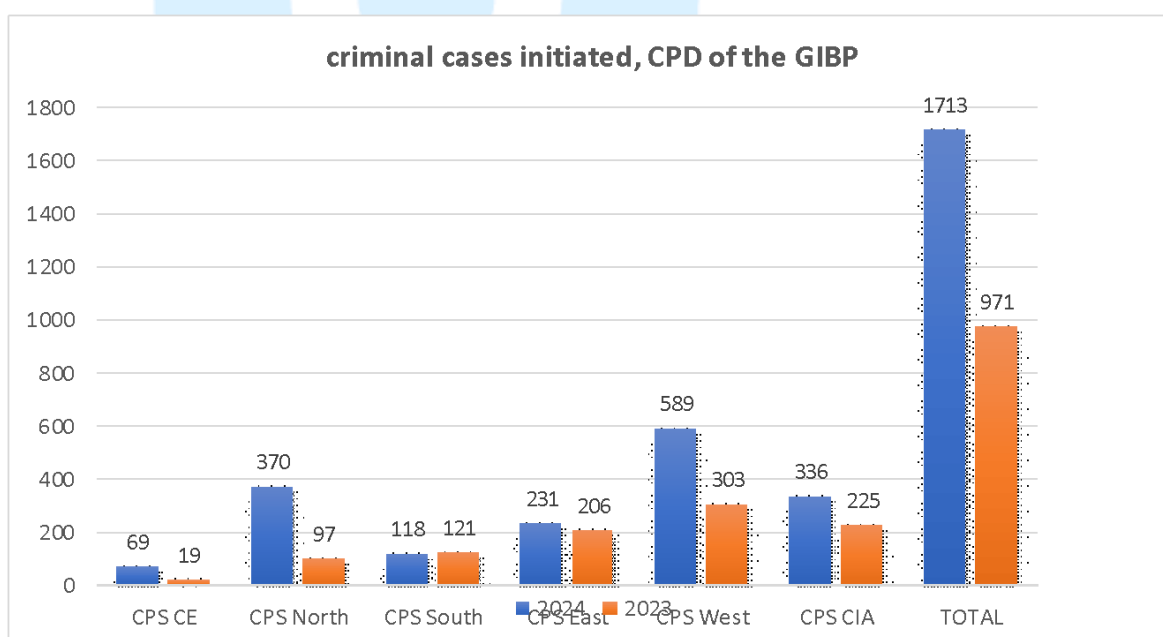


According to the Informative Note on the results of activity of the Criminal Prosecution Directorate (CPD) of the GIBP for the period - 9 months of 2024, we note that in 9 months of 2024, the criminal prosecution bodies of the BP had for examination under Article 274 of the Criminal Procedure Code - **5322 referrals registered in R-1**, of which in **1713 cases** the criminal prosecution was initiated and in **3497 cases** it was proposed not to initiate criminal prosecution.

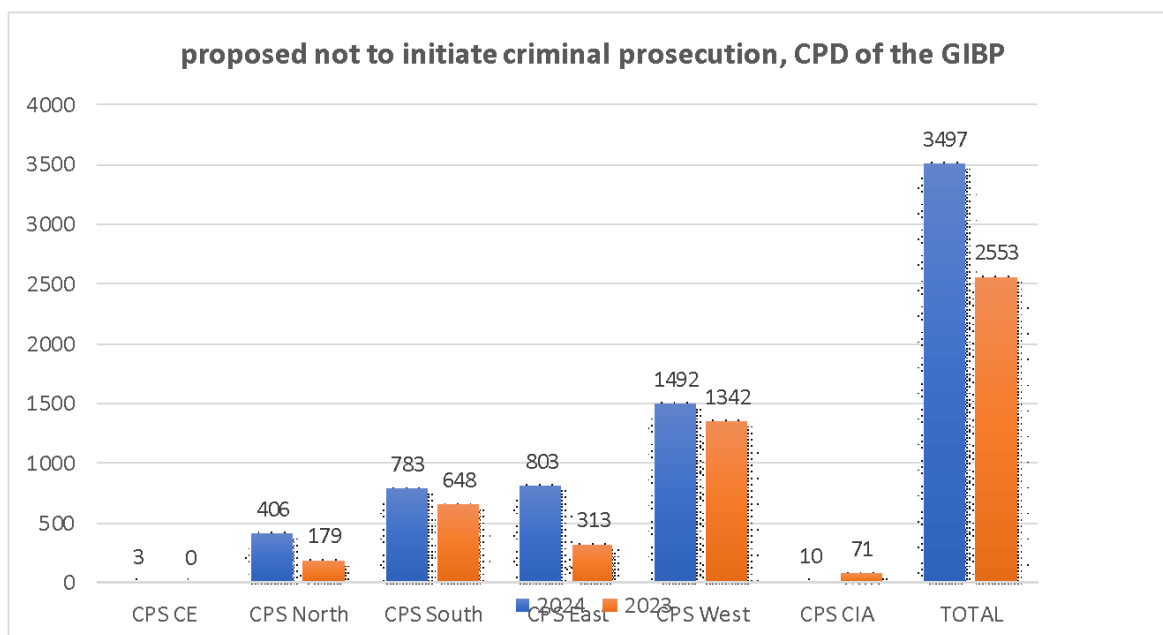
The highest number of registered referrals comes from the criminal prosecution bodies in the West, East, and South:



Criminal prosecution sections within the CPD of the West and North Directorates have ordered the initiation of criminal prosecutions in the most cases from 370 to 589 (see chart below). Overall, CPBs initiated significantly more cases in 2024 compared to 2023, with that indicator increasing:



Further, we observe an increase in the number of cases of non-initiation of criminal prosecution for objective or subjective reasons in all the CPD subdivisions of the GIBP:



The caseload for criminal prosecution officers is reported as **1 to 619 cases under** the management of an officer. The CPS of West CPD has the highest number of cases under management with 2086 cases. The yield of criminal cases for the **28 criminal prosecution officers** is **190.1 criminal cases**, of which 61.2 criminal cases were initiated and 124.9 criminal cases were proposed not to be initiated.

The same data shows that as of October 1, 2024, there were 1150 criminal cases in the management of criminal prosecution officers. 273 criminal cases were initiated for making, possession or use of official documents, false prints, stamps, or seals (Article 361 of the Criminal Code), **111 criminal cases initiated for illegal border crossing** (there are no specifications whether they refer only to displaced persons from Ukraine) and **698 criminal cases initiated for organizing illegal migration** (Article 362¹ of the Criminal Code).

The investigation time for criminal cases ranges from 1 month in 106 cases, 2 months - 94 cases, 3 months in 84 cases, more than 3 months in 48 cases and more than 6 months in 50 cases.

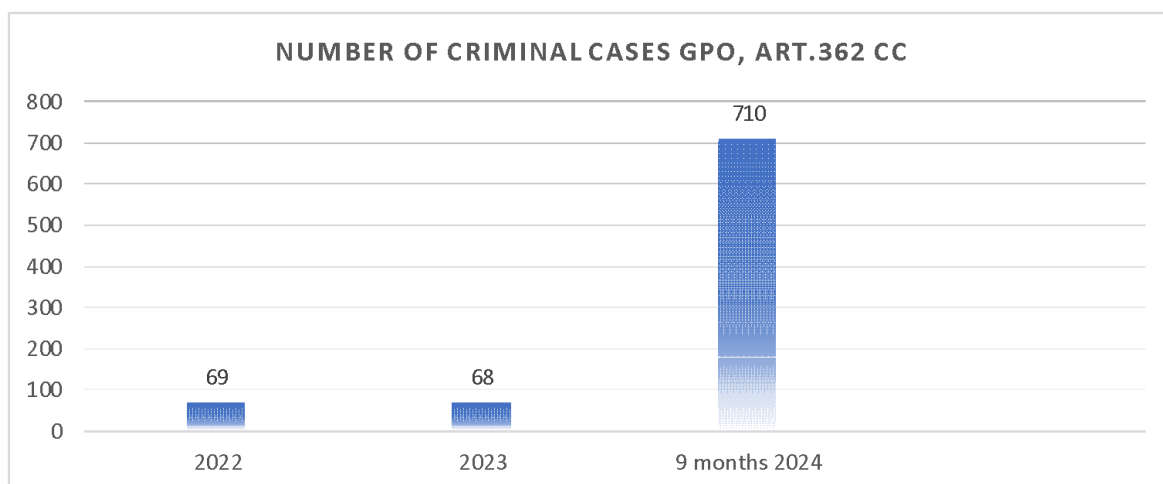
From the analysis of the Informative Note of the Ministry of Justice to the draft Government Decision on the amendment of the Criminal Code and Contravention Code submitted on July 27, 2022, to the criminal cases number compartment, we note that between 2018 and 2020, criminal prosecution for illegal border crossing was initiated in **804 cases**, of which 373 cases were initiated by the East CPD of the GIBP. By the end of 2020, criminal prosecution was terminated in 424 cases⁴⁶.

GPO statistical data on criminal cases initiated under Article 362 of the Criminal Code, which refers to persons from the territory of Ukraine, show a sharp increase in 2024 with 710 cases, compared to 2023 - 68 cases and 2022 - 60 criminal cases⁴⁷:

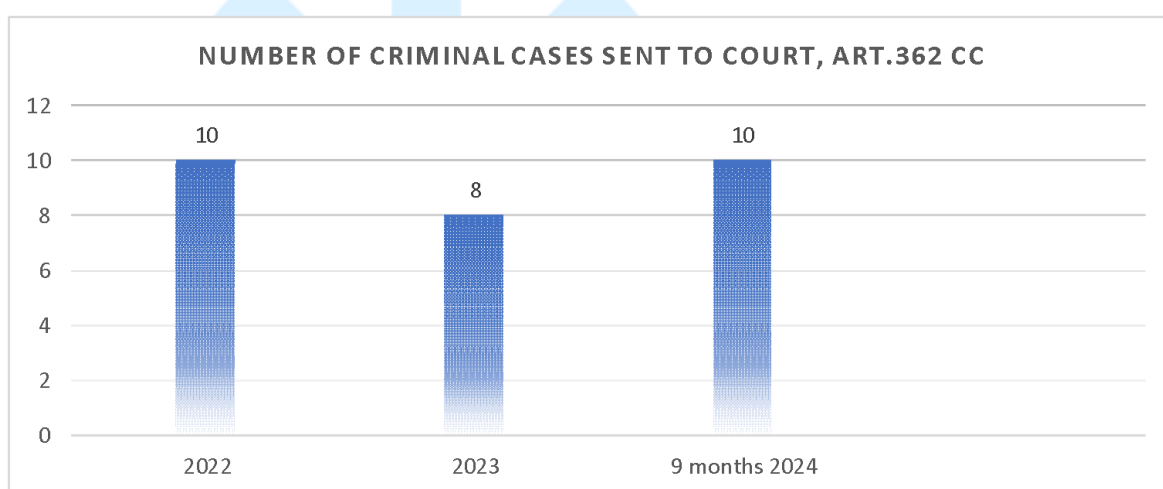
⁴⁶ Draft Government Decision on the amendment of the Criminal Code and Contravention Code, application no. 03/6691 of July 27, 2022, author Ministry of Justice, available at:

<https://cancelaria.gov.md/sites/default/files/document/attachments/533.pdf>

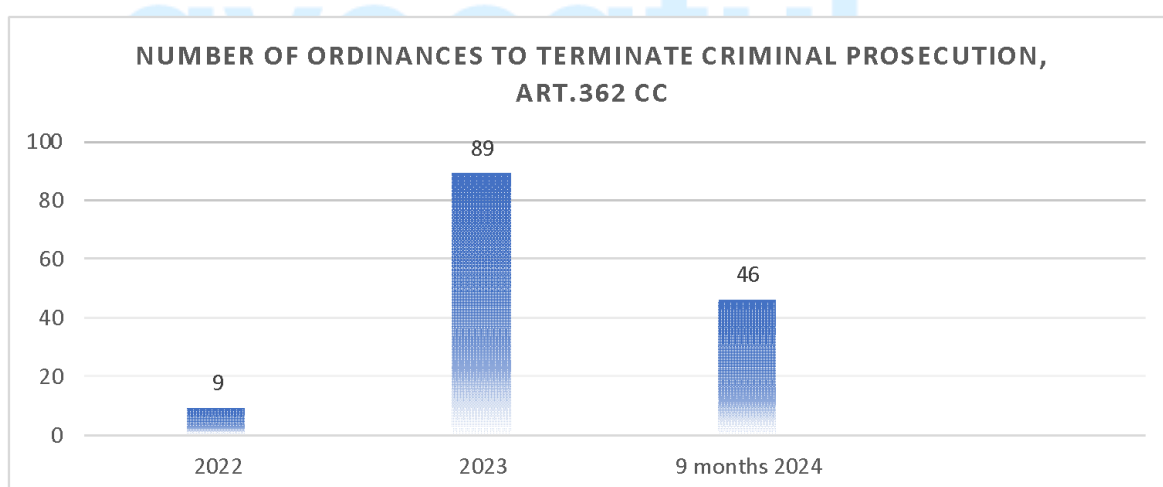
⁴⁷ GPO Response to OI of 06.11.2024



During the same periods, prosecutors referred to court in 2022 - 10 criminal cases, 8 in 2023 and only 10 cases in 9 months, 2024:



The same information shows that prosecutors terminated the criminal prosecution under Article 55 of the Criminal Code (exemption from criminal liability with holding liable for a misdemeanor) in 9 criminal cases initiated in 2022, in 89 cases initiated in 2023 and in 46 cases initiated in 9 months, 2024:



A comparative latent examination of the data on criminal prosecution under Article 361 of the Criminal Code reveals that this crime component was not so much in demand prior to the conflict

in Ukraine. The necessity of its application arose practically with the end of the exceptional state of emergency on December 30, 2023.

According to the GPO, with the expiry of the state of legal emergency regime ordered by the Decision of the Parliament No. 41 of February 24, 2022⁴⁸, a Circular No. 15-15d/24-170 of March 11, 2024, was issued, which stated that the responsibility for state border control is the mirror image of the obligations of migrants at the border - the basis of the principle “*no right without registration*”.

During the state of emergency, a special regime of entry and exit from the country was established (Article 2 of the above-mentioned Decision of the Parliament). And, by Provision of the Commission for Exceptional Situations of the Republic of Moldova No. 1 of February 24, 2022, it was noted that in accordance with Article 11 paragraph (5) of the Law No. 215/2011 on the State Border, Ukrainian citizens and Moldovan nationals **shall not be considered as illegally crossing** the state border on the Moldovan-Ukrainian segment [...]⁴⁹.

Our observations show that the GPO in 2022-2023 did not seem to be interested in criminal cases under Article 362 of the Criminal Code (only 137 cases in 2022-2023), because the CPBs of the BP had recorded in 2023-2024 over **7785 referrals in R-1** and **21329 referrals in R-2** during the same period, even though the Decision of the Parliament on the state of emergency stipulated the contrary. In 9 months, 2024, the GPO initiated **710 cases**, which is lower compared to the CPBs data of the BP, but quite high compared to the prosecutors’ effort in 2022 and 2023. A mathematical calculation, shows that at the moment, there should be **8495 criminal cases** initiated under Article 362 of the Criminal Code (710 GPO + 7785 BP). And, from the CPD data of the BP, it appears that at the moment, there **are only 111 criminal cases** and the GPO data shows **46 cases**.

Also, the GPO, in its circular, recommended the criminal prosecution bodies and prosecutors to initiate criminal proceedings against persons who circumvent the state border and **who did not immediately inform the authorities of the illegal crossing**. *Stricto sensu*, persons could be exempted from criminal liability only if they immediately applied for asylum at the border, and “temporary protection” was not considered by the GPO as a form of international protection.

Immediately, having learned about this violation of the rights of asylum seekers, the Ombudsman (at the Law Centre of Advocates’ referral) objected to **the practice of not recognizing temporary protection as a form of asylum**. The Ombudsman observed that by the statement on page 4 of GPO Circular No. 15d/24-170 of 11.03.2024 persons who circumvented border control for protection purposes were automatically subject to criminal liability unless they did not apply for asylum. This specification imputed to Ukrainian refugees in the opinion of the Ombudsman appears to be excessive and disproportionate and in contradiction with the principle of *non-sanction for illegal crossing for protection purposes*. Likewise, the fact of not immediately bringing it to the notice can be subjectively appreciated by any public/border police officer. In its objections, delivered on October 23, 2024, to the GPO, GIBP, GIM, the Ombudsman argued that in order not to create confusion of interpretation and the initiation of criminal prosecution as a form of sanctioning of displaced persons (*including because Ukrainian citizens may not know about this obligation, or may have justifiable fear of any police or uniformed officer once they are aware that they have “escaped” from Ukraine*) the present wording is to be readjusted or cancelled⁵⁰. It should be added that the GPO reacted promptly to the Ombudsman’s referral, recognizing temporary protection as a form of international protection. And the territorial prosecutors have claimed

⁴⁸ Decision of the Parliament No. 41 of February 24, 2022, on the declaration of the state of emergency, available here: https://www.legis.md/cautare/getResults?doc_id=130079&lang=ro

⁴⁹ Provision of the Commission for Exceptional Situations of the Republic of Moldova No. 1 of 24.02.2024, available at: https://gov.md/sites/default/files/document/attachments/dispozitie_cse_nr.1_24.02.2022.pdf

⁵⁰ Ombudsman’s objections to the practice of not recognising temporary protection as a form of asylum, available at: <https://ombudsman.md/post-document/obiectii-cu-privire-la-practica-nerecunoasterii-protectiei-temporare-ca-forma-de-azil/>

that in the last two years the workload on such cases has increased to about 50%, taking up about 35-40% of their workload, although most of these criminal cases are or will be dismissed or terminated. Similarly, the representatives of GIM and GIBP claimed that they are overburdened with this type of cases, and the MIA has initiated amendments to the legal framework and dialog with the stakeholders to remedy the above-mentioned situation.

However, persons who circumvent the border control, present invalid passports or enter irregularly are subject to criminal prosecution, because the domestic legislator, as yet, does not have a strong opinion on decriminalization of the criminal punishment of *illegal crossing the state border*.

We recall that in 2022, the MoJ (including at the proposal of the GPO) prepared a draft amendment to Article 362 of the Criminal Code, as follows⁵¹:

Article 362. Illegal Crossing the State Border

Crossing the state border of the Republic of Moldova by circumventing or evading the control conducted at the crossing thereof, accompanied by violence or committed with the use of weapons, shall be punishable by imprisonment for 5 to 8 years”.

That draft was aimed at streamlining the application of criminal punishment for crimes of illegal crossing the state border. The authors of the initiative, *we quote* [...took as a benchmark the rigor of the principle of expediency, noting that the continued maintenance of the act of illegal crossing the state border in the Criminal Code as a criminal offense, in the version incriminated by paragraph (1) Article 362, is not justified over time, has no positive impact on combating this phenomenon, has no influence on the effective punishment of the perpetrator and provides no assurance of achieving the purpose of criminal law, but, on the contrary, complicates the investigative process and involves considerable administrative resources. The draft aimed to amend the Criminal Code, but also to complete the Contravention Code, aiming at decriminalizing the prejudicial act currently indicated in paragraph (1) Article 362 of the Criminal Code, with the inclusion of the rule of illegal crossing the state border in the contravention normative, except for the aggravating component of paragraph (2) Article 362 of the Criminal Code. If this legal provision would constitute a misdemeanor, the process of documenting and sanctioning the perpetrator will be conducted directly at the checkpoint by a single official examiner, will reduce administrative costs, allow focusing the efforts of criminal prosecution officers, prosecutors, and judges on other more important aspects in the field of prevention and combating crime...].

Also then, the GPO proposed the decriminalization of Article 362 of the Criminal Code by introducing the contravention provided for in Article 331¹ of the Contravention Code “illegal border crossing”. Similarly, the prosecutors recommended the introduction of aggravating circumstances of the new offense in Article 362¹ of the Criminal Code, such as: “forgery of documents allowing the entry, stay and transit through the territory of the State or the exit from this territory of a person who is neither a citizen nor a resident of this State”; “if there was a danger of causing serious bodily injury or damage to health or death of the person”.

However, the draft **was not approved** by the Parliament of the Republic of Moldova.

Decriminalization of criminal legislation on illegal crossing of the state border, in the opinion of the authors, could be a prompt, optimal and fair solution to stop the high flow of criminal cases (over 21 thousand cases) that have no finality; to reduce *unjustified* applications for asylum; to increase the efficiency of the work of the GPO, BP and GIM for handling important cases of trafficking in human beings, weapons; to ensure the real right to asylum for displaced persons from Ukraine, etc.

⁵¹ Draft Government Decision on the amendment of the Criminal Code and Contravention Code, application no. 03/6691 of July 27, 2022, author Ministry of Justice, available at: <https://cancelaria.gov.md/sites/default/files/document/attachments/533.pdf>

In the meantime, **incidents** are taking place at the border **with tragic end** for people trying to circumvent the border control by water to Romania and fleeing Ukrainian law enforcement forces to the north and south or entering through the uncontrolled eastern part of the country (Transnistrian region): -

For example: in May 2024, a citizen of India reportedly drowned in the Dniester River following an attempt to cross the border outside the BCP⁵². On the night of June 24-25, 2024, a young Ukrainian drowned in the Dniester River while trying to flee from the Ukrainian patrol. Also then, 3 other young people were apprehended by the Ukrainian Border Guard Service and 5 young people were able to cross the Dniester River by swimming, being taken over by the BP. On the fact of organizing illegal migration, the BP opened a criminal investigation and apprehended a person alleged to be the co-organizer of the act of crossing the group of young Ukrainians to Moldova⁵³. And, in January 2024 as a result of firing of weapons by Ukrainian border guards on the Transnistrian segment of the border with Moldova one person died and another - seriously wounded, both natives of the Transnistrian region⁵⁴.

In the international experience, **many countries treat illegal border crossing as an administrative violation rather than a criminal offense**, emphasizing expulsion measures or administrative sanctions instead of custodial sentences. **Italy, Spain, Portugal, Belgium, the Netherlands, Switzerland, and Luxembourg** are examples of European countries that do not criminalize this act, but apply administrative sanctions, such as fines or return of migrants. Likewise, in **Canada, Mexico, Argentina** and **Brazil**, illegal border crossing is not considered a criminal offense but is dealt with through administrative immigration procedures. These countries prioritize measures **to manage migration flows**, focusing criminal sanctions on **human traffickers** and those who facilitate illegal migration for exploitative purposes⁵⁵.

In terms of **international standards**, the Protocol against the Smuggling of Migrants by Land, Sea and Air⁵⁶, supplementing the United Nations Convention against Transnational Organized Crime (UNTOC)⁵⁷, establishes a clear framework for managing illegal migration. **It helps to combat migrant smuggling and protect migrants' rights, but does not impose criminal sanctions on people who cross borders illegally.**

Article 5 of the Protocol provides that migrants should not be criminally sanctioned solely for the fact of having been the object of trafficking in human beings. This means that while States can take

⁵² GIBP Communiqué, May 14, 2024, available at: <https://border.gov.md/tragedie-pe-raul-prut-un-cetatean-indian-gasit-fara-suflare-tentativa-de-ajunge-ilegal-romania>

⁵³ Jurnal.md press release "Tragedy on the Dniester" available at: <https://www.jurnal.md/ro/news/c236434a125068b2/tragedie-la-nistru-10-tineri-ucraineni-au-incercat-sa-treaca-ilegal-frontiera-unul-s-a-inecat-impuscat-uri-si-retineri.html>

⁵⁴ NewsMaker press release "Government confirms border incident", available at: <https://newsmaker.md/ro/guvernul-confirma-incidentul-de-la-frontiera-in-care-un-locuitor-al-transnistriei-a-fost-impuscat-vom-oferi-suport-daca-vom-fi-solicitati/>

⁵⁵ For more casuistry, go to – i) https://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants-annex_en.pdf; ii) <https://worldpopulationreview.com/country-rankings/punishment-for-illegally-entering-countries>

⁵⁶ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, available at: https://www.unodc.org/documents/treaties/Special/2000%20Protocol%20against%20the%20Smuggling%20of%20Migrants%20by%20Land%2C%20Sea%20and%20Air.pdf?utm_source=chatgpt.com

⁵⁷ UN Convention against Transnational Organized Crime and Protocols thereto, available at: https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOL_S_THERETO.pdf

measures to control migration, sanctions should be directed against traffickers and criminal networks, not against migrants seeking protection or economic opportunities.

This approach reflects the fundamental principles of international humanitarian and human rights law, recognizing the vulnerability of migrants and the risks they face. In addition, the UN Human Rights Committee, through its interpretations of the International Covenant on Civil and Political Rights (ICCPR), emphasizes that States must avoid disproportionately punitive measures against migrants and ensure access to justice and protection from abuse.

2.5. Organization of illegal migration

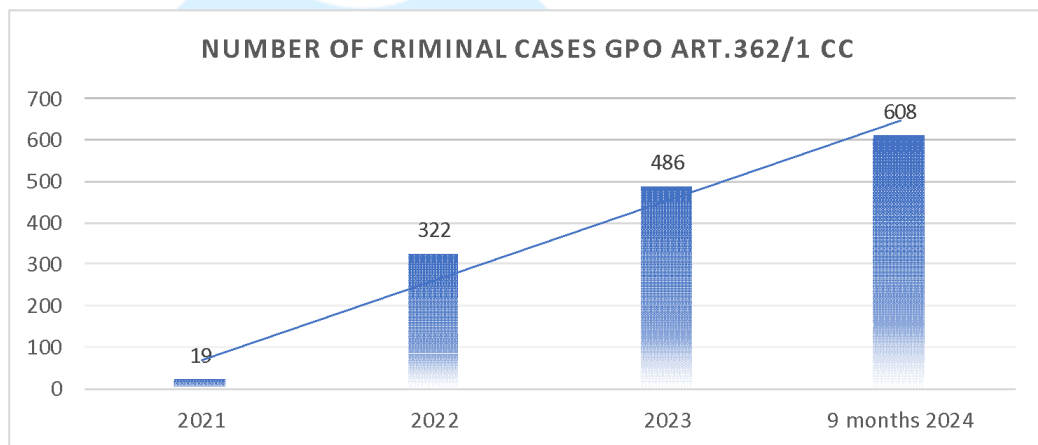
The national criminal legislation punishes individuals (including legal entities) by imprisonment of 2 to 12 years and a fine of 1000 to 8000 conventional units (from MDL 50,000 - MDL 400,000 / from EUR 2,500 to EUR 20,500) for organizing illegal migration⁵⁸.

The criminal offense is defined:

the organization in order to obtain directly or indirectly a financial or material gain from an illegal entry, stay, or transit on the state's territory or from an exit from this territory of a person who is neither a citizen nor a resident of this state

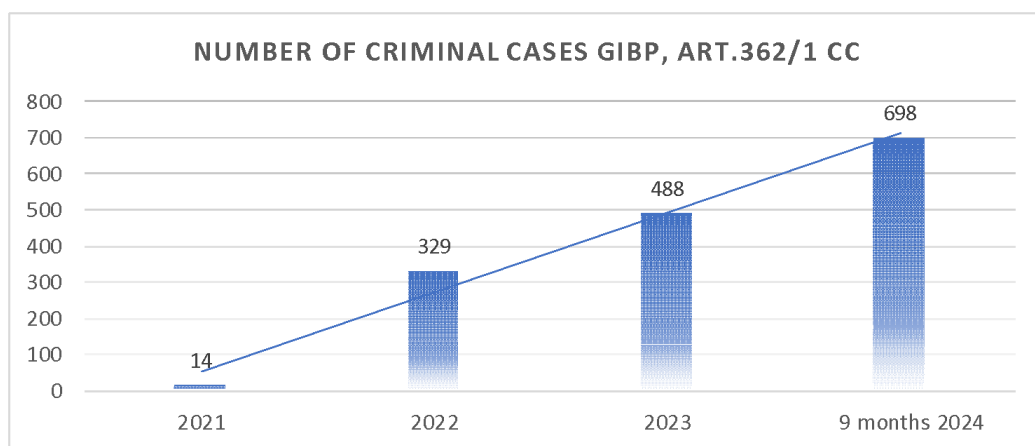
Likewise, the Criminal Code states that a **victim of illegal migration** shall be exempt from criminal liability for illegal entry, stay, transit through the state's territory or exit from this territory, as well as for the acts of possession and use of forged official documents for the purpose of organizing illegal migration.

According to the GPO data, the number of criminal cases for organizing illegal migration (including from Ukraine to Moldova) increased from **19 criminal cases** in 2021 to **608 cases** in 9 months, 2024: -

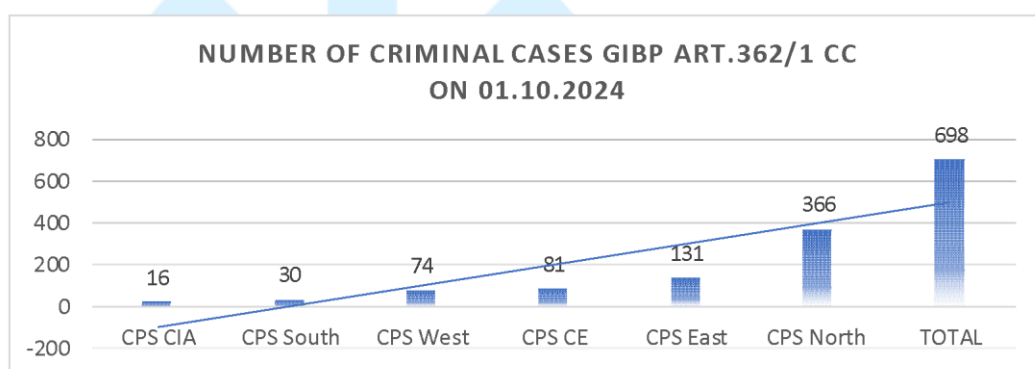


And, BP data show that the number of criminal cases initiated for organizing migration started considerably right with the influx of displaced persons from Ukraine, starting with 14 cases in 2021 and ending with **698 criminal cases** in 9 months, 2024: -

⁵⁸ See Article 362¹ of the Criminal Code, available at: https://www.legis.md/cautare/getResults?doc_id=121991&lang=ro



At the same time, **the CPD data of the GIBP** show that out of the 1150 criminal cases initiated and remaining in the CPB's management as of October 1, 2024, **698 criminal cases** related to the crime of organizing illegal migration:



The GPO and the BP have managed to unmask several operations of organizing illegal migration, both of nationals, including public officials, and citizens of other states. Most of the *organized illegal migration acts* are directed against Ukrainian male citizens who are potential applicants for international protection. They most often use the services of organizers because they are unable to cross the border legally and fear being returned. In a similar vein, we admit that if the state authorities will have an approach based on the real protection of refugees, then they can create safe routes to the country or ensure their transit to the EU. In addition, any effort by public authorities to effectively protect/ensure the right to asylum may lead to a decrease in border crimes. Given that the organization of migration has become *a thriving business* in the long term, it is unlikely that the authorities will succeed in combating this growing phenomenon. Here again, the authorities/law enforcement bodies have to decide whether the *transportation of displaced persons pro bono or for a fee as a form of support is a charitable act or is still a criminal offense*. The practice in other countries may not provide compatible solutions for the situation in Moldova. Therefore, state authorities must decide in the interests of both the state's security and asylum seekers.

Similarly, it must be emphasized that the responsible authorities and prosecution bodies **must not increase the number of criminal cases for illegal migration, so that, ultimately, people are forced to apply for asylum. The institution of asylum must not be used as a form of exemption from criminal liability and creating an illusion of illegal migration phenomena.**

We also note that there are no data available on the number of **victims of illegal migration** acquitted of criminal liability for illegal entry, stay, transit, or exit from the territory of the state, as well as for the offenses of possession and use of forged official documents for organizing illegal migration.

According to the US State Department's Trafficking in Persons Report (2024), the Republic of Moldova **does not fully meet** the minimum standards for the elimination of trafficking, but is making efforts to do so, remaining at Tier 2. The same report states that approximately 120 thousand refugees fleeing the Russian invasion of Ukraine remain in the Republic of Moldova and are highly vulnerable to trafficking. And official complicity in trafficking crimes continues to be a problem⁵⁹.

2.6. Situation of staff at the border

According to the Article 14 of the Law on the Border Police, the BP staff consists of civil servants with special status, civil servants and contractual staff (technical service and auxiliary).

The border guard is a civil servant with a special status employed in the Inspectorate, regional subdivisions and specialized subdivisions of the Border Police, holding special ranks and performing duties falling within the competence of the entity of which he/she is a part, in accordance with the normative framework, in order to implement the state policy in the field of integrated state border management, combating illegal migration and cross-border crime.

According to the Government Decision 1145/2018, the BP's limit manpower was set at the number of **3868 units**, including 228 units of technical service personnel, with an annual labor remuneration fund in accordance with the legislation⁶⁰.

At the outset, we note that the employees of the BP are making an enormous and commendable effort to fully accomplish the mission of the border police in the face of increased security risks. During our visits, all BP employees mentioned that they are *sufficiently motivated* to perform their duties inter alia with professional diligence. However, there is a shortage of qualified and skilled personnel (average officer staff). On the other hand, the salaries of about EUR 600 for managerial positions and about EUR 400 for executive staff are insufficient.

A rapid intervention in a significant budgetary increase in the salaries of BP employees is urgent. In the short term, the granting of specific bonuses to the basic salary for all BP employees is recommended as strictly necessary.

In the area of filling in the staff establishment plans with the existing positions, there has been a slight improvement in the BCPs/ BPs visited. However, the number of persons according to the duties assigned to each position should be about twice as high compared to the current situation.

The staff involved in the shift service work on a 12-24 and 12-48 schedule. This means that after a 12-hour shift, employees have 24 hours off, followed by another 12-hour shift, after which they have 48 hours rest before the next 12-hour shift.

On average, about 60% of the positions are occupied by men, and the rest by women in the BCPs/ BPs visited. The employees speak Romanian, Russian, Ukrainian for the most part, and English less frequently.

Among the impediments or challenges of BP employees exposed during the visits were: -

- ✓ insufficient remuneration compared to other similar positions and level of duties;
- ✓ high motivation but with elements of continuous burnout;

⁵⁹ <https://www.state.gov/reports/2024-trafficking-in-persons-report/moldova/>

⁶⁰ Point 2, Government Decision No. 1145/2018 on the organization and functioning of the General Inspectorate of Border Police, available at: https://www.legis.md/cautare/getResults?doc_id=145992&lang=ro#

- ✓ staff shortages or insufficient professional staff;
- ✓ understaffing during shifts (especially in BCP, only 2-4 staff);
- ✓ unsatisfactory working conditions (in particular office and BCP);
- ✓ lack of staff meals and/or compensation for meals;
- ✓ long distance between the employees' place of living and the BPS (the service is organized in shifts) many of the employees do not have personal transport, which leads to dependence on public transport, reduced flexibility and increased travel time;
- ✓ lack of compensation for employees' travel expenses to BPS and BCP and vice versa;
- ✓ exposure of staff to unfavorable weather conditions (such as rain, snow or intense sunshine) which seriously affect their health during work;
- ✓ need for training for new staff, in particular to improve communication with travelers;
- ✓ difficulties in investigating and documenting apprehensions related to the attempted organization of illegal border crossings, as well as the identification of persons crossing the border illegally;
- ✓ multiple disciplinary inquiries;
- ✓ verbal indications from representatives of security structures or officials to be dealt with as a matter of priority;
- ✓ overwork or exhaustion.

It should be noted that the Thematic Report's methodology did not foresee the assessment of the human resources component of the BP. The above-mentioned challenges derive from the observations of the visiting team and interviews with BP staff. These concerns may considerably affect the BP's commitment to respect fundamental rights at the border. Following this, the authorities need to pay increased attention.

III. ACCESS TO INTERNATIONAL PROTECTION AT THE BORDER

3.1. Right to international protection and State obligations

International protection is recognized globally and is intended for persons who, due to persecution, armed conflict or serious human rights violations, are unable to return to their country of origin. The Republic of Moldova, as a state party to the Geneva Convention Relating to the Status of Refugees (1951) and its Additional Protocol (1967), has undertaken the obligation to ensure effective access to international protection for all those who seek asylum.

This commitment is reflected in national legislation, in particular in the Law on Asylum, which sets out the procedural and material framework for refugee status, humanitarian protection and temporary protection. Also, the principle of non-refoulement, enshrined in national and international law,

guarantees that no person may be returned to a State where his or her life or freedom would be in danger.

The Border Police is the administrative authority, subordinated to the MIA, which exercises the powers and implements the state policy in the field of integrated state border management, combating illegal migration and cross-border crime in accordance with the Constitution of the Republic of Moldova, national legislation and international treaties to which the Republic of Moldova is a party⁶¹.

All BP activities are to be conducted based on principles, such as legality, impartiality, respect for fundamental human rights and freedoms [...].

The mission of the GIBP is to implement the state policy in the area of integrated management of the state border of the Republic of Moldova in order to achieve effective control of the state border by addressing the challenges related to risks and threats that may jeopardize national security, thus contributing to combating cross-border crime, ensuring a high level of security, with full respect for fundamental rights, while guaranteeing the free movement of persons⁶².

The BP plays a key role in enforcing these rules, with responsibility for allowing access to applicants for international protection and ensuring that they are treated in accordance with international standards. In exercising their duties, Border Police must respect the principles of legality, impartiality, and respect for fundamental human rights. The new provisions of the Law on the State Border, which entered into force in January 2025, reinforce these obligations by introducing clear mechanisms for monitoring respect for fundamental rights at the border, prohibiting discrimination and providing safeguards for vulnerable groups, including unaccompanied minors and victims of trafficking.

The regulatory framework indicates that the BP has a range of prerogatives that directly or indirectly address human rights protection and human rights commitments in its work, such as:

allowing or not allowing entry and exit; ensuring public security; ensuring the maintenance of the border regime and public order; authorizing crossing; ensuring international law order; issuing visas; combating cross-border crime and illegal migration; migration control; managing information systems; facilitating the international flow of persons; apprehending wanted persons; applying records; apprehending persons; stopping, controlling and detaining means of transport; conducting criminal prosecution and examining contraventions; undertaking judicial expertise; conducting special investigative measures; checking the documents of persons and means of transport; seizing illegal documents; construction and management of control and surveillance stations; use of special means of communication; access to the border area by patrols, including on private land; limiting the execution of works in the border area; application of traffic restrictions, including prohibition of movement; determining the duration of the stay of means of transport in international traffic; keeping records of persons; holding passenger information; use of mass media information; detention of vessels; use of weapons, means of equipment; use of physical force; use of service animals; etc.

At the same time, the border guard shall: -

(a) respect the Constitution and the laws of the Republic of Moldova, fundamental human rights and freedoms; (b) act with competence, responsibility, and dedication to ensure public order and peace, protect and promote the national values and interests of the Republic of Moldova, including in the event of a threat to life, health, and property; (c) respect the oath sworn and the rules of

⁶¹ Articles 1,2 Law No. 283/2011 on the Border Police, available at: https://www.legis.md/cautare/getResults?doc_id=144603&lang=ro#

⁶² Government Decision 1145/2018 on the organisation and functioning of the General Inspectorate of Border Police, available at: https://www.legis.md/cautare/getResults?doc_id=145992&lang=ro#

professional ethics; (d) be disciplined and vigilant, show initiative and perseverance, devote his/her professional activity to the competent, upright, correct and conscientious performance of the duties prescribed by law; (e) comply with the principles, rules, and regulations specific to the activity; (f) ensure the protection of state secrecy and other information with limited accessibility, the secrecy of sources of obtaining thereof, and maintain the secrecy of the work performed; (g) continuously improve his/her professional training; (k) show care and respect for all persons, especially vulnerable groups; (o) act with dignity in relation to the consideration and trust required by the profession of border guard.

Likewise, the border guard shall perform his/her professional activity in the interest and in support of the person, community and state institutions, exclusively under and in execution of the law, in compliance with the principles of impartiality, non-discrimination, proportionality, and gradualness (Article 12, point 7, Law on the Border Police).

The control over the BP activity is exercised by the Parliament, the President of the Republic of Moldova, the Government and the Ministry of Internal Affairs within the limits of their competences. And, the external public audit of the financial activity, the manner of formation, administration, and use of financial means is exercised by the Court of Accounts.

The new Law on the State Border (in force as of January 6, 2025) includes a Chapter entitled “Fundamental Rights at the Border”, as follows⁶³:

... guarantee the protection of fundamental rights at the border under the relevant European Union law and international treaties to which the Republic of Moldova is a party; setting up a mechanism to monitor respect for fundamental rights at the border; during border crossing control, persons shall be guaranteed respect for human dignity; prohibition of discrimination, except for the exclusion or inclusion of certain forms and methods of controls on the crossing of the state border with regard to persons; ensuring respect for the special needs of children, unaccompanied minors, persons with disabilities, victims of trafficking in human beings, persons seeking international protection and other persons in a vulnerable situation; ensuring respect for the principle of the best interests of the child; aliens who are not allowed to enter the territory of the Republic of Moldova shall be guaranteed fundamental rights; ensuring respect for the principle of proportionality and necessity; information on their rights to know about the purpose of the processing of biometric data, as well as the right of access, rectification, and deletion and proper administration thereof; in the case of persons apprehended at the state border, they shall be provided with information on their rights; the information procedure shall be conducted in an internationally spoken language, in any accessible format, according to individual needs; taking into custody in order to respect the rights of persons, including minors.

The above list is not exhaustive, as the BP as a state entity has a string of international commitments in its area of responsibility. Similarly, the list of fundamental rights at the border would need to be integrated into GIBP’s internal policies and processes, review of orders, previous instructions to be brought in line with the new Chapter effective as of January 6, 2025.

The **General Inspectorate for Migration (GIM)**⁶⁴ is at the heart of the international protection process. It is responsible for managing applications for asylum and ensuring the protection of persons seeking or benefiting from refugee status, humanitarian protection or temporary protection. The GIM is the authority that receives applications for asylum submitted both at the border and within the national territory, ensures the individualized assessment of each applicant and issues decisions on granting or

⁶³ Law No. 28/2014 on the State Border of the Republic of Moldova, available at: https://www.legis.md/cautare/getResults?doc_id=142194&lang=ro

⁶⁴ <https://igm.gov.md/legislatie/>

refusing international protection. In addition, the GIM manages accommodation centers for asylum seekers and refugees, coordinates integration programs and collaborates with international organizations, such as UNHCR and IOM, to ensure that the rights of persons under protection are respected. The GIM is also responsible for monitoring the situation of refugees and implementing support measures to facilitate their access to education, health care and employment. In the context of refugee flows generated by regional crises, the GIM has been instrumental in coordinating temporary protection for displaced persons from Ukraine, developing mechanisms for their rapid registration and providing them with the necessary documentation to benefit from the social and economic rights available in the Republic of Moldova.

State obligations in the field of international protection derive both from national legislation and from international treaties to which the Republic of Moldova is a party. These include ensuring effective access to asylum procedures, providing adequate reception conditions for asylum seekers, guaranteeing legal aid and protecting the rights of vulnerable persons.

Although the Republic of Moldova has made significant progress in ensuring access to international protection, there are still challenges in the correct and effective application of the legislation. Among the problems identified are the difficulties faced by asylum seekers at the border, the lack of a clear mechanism for the rapid assessment of applications for protection and the need to strengthen institutional capacity to effectively manage refugee flows. In some cases, persons intending to apply for asylum are returned without an individualized risk assessment, which may constitute a violation of Moldova's international obligations.

3.2. Access to asylum and other protection mechanisms

Access to asylum is a fundamental right guaranteed by international treaties and national law, based on States' obligation to ensure fair, efficient and transparent procedures for all applicants for international protection.

According to the Geneva Convention Relating to the Status of Refugees (1951) and the 1967 Additional Protocol (UNHCR), States are obliged to provide unhindered access to asylum procedures and to respect the principle of non-refoulement, which prohibits returning a person to a State where his or her life or freedom would be in danger.

The EU's Charter of Fundamental Rights also reaffirms this principle, emphasizing the need for effective protection mechanisms to guarantee access to an individualized and fair examination of each application for asylum.⁶⁵

Efficient, fair and transparent procedures. The international standards developed by the UN Refugee Agency (UNHCR) and the Council of Europe impose clear criteria for asylum procedures: they must be accessible, non-discriminatory, allow for the registration and prompt examination of applications, and ensure the right to information and legal aid. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (2019) sets out the obligation of States to provide asylum seekers with access to information about their rights, the possibility to challenge negative decisions and special safeguards for vulnerable groups, including unaccompanied minors and victims of gender-based violence.⁶⁶ In this context, the Council of Europe Guidelines on Human Rights-Compliant Asylum Procedures (2024) recommend Member States to implement independent mechanisms to monitor asylum decisions and prevent collective expulsions.⁶⁷ In addition, under Directive 2013/32/EU on

⁶⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT>

⁶⁶ <https://www.unhcr.org/sites/default/files/legacy-pdf/5ddfc47.pdf>

⁶⁷ <https://rm.coe.int/ensuring-human-rights-compliant-asylum-procedures/1680afd824>

common procedures for granting and withdrawing international protection, Member States are obliged to ensure that every asylum seeker is granted a personal interview, reasoned decisions in writing and access to an effective remedy⁶⁸.

The practice of other EU countries highlights models of good practice in managing asylum applications and other forms of protection. For example, **Germany** has introduced fast-track asylum procedures, which allow applications to be processed within a short timeframe, reducing uncertainty for applicants and optimizing administrative resources.

According to the **Asylum Information Database (AIDA)**, under the accelerated procedure, the Federal Office for Migration and Refugees (BAMF) must decide within 7 days after the asylum application has been submitted.⁶⁹

France operates a model of specialized administrative asylum tribunals, known as the Cour nationale du droit d'asile (CNDA), which provide a fast-track route for challenging negative decisions. The CNDA is a specialized administrative court competent to hear appeals against decisions of the French Office for the Protection of Refugees and Stateless Persons (OFPRA)⁷⁰.

The Netherlands emphasizes detailed individualized interviews, conducted with the support of qualified interpreters, to avoid misinterpretation of applicants' statements⁷¹.

Sweden also uses alternative methods of detention for asylum seekers, promoting placement in open centers, which facilitates integration and reduces the negative psychological impact on asylum seekers⁷².

In addition to asylum procedures, States are obliged to provide **access to other protection mechanisms** in line with international standards. EU Directive 2011/95/EU on minimum standards for the protection of refugees and beneficiaries of subsidiary protection emphasizes that persons who do not meet the criteria for refugee status may be granted humanitarian protection or temporary protection, depending on the individual risks they face.⁷³

In the Republic of Moldova, access to international protection is regulated by Law on Asylum No. 270/2008 and asylum procedures are managed by the GIM. Although the national legislation is aligned with international standards, there are challenges related to the excessive length of processing of applications, limited access to legal aid and difficulties in identifying interpreters for rare languages. Asylum is a legal institution by means of which the State provides protection to a foreign national,

⁶⁸ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0032>

⁶⁹ Country Report: Accelerated procedure, available at: <https://asylumineurope.org/reports/country/germany/asylum-procedure/procedures/accelerated-procedure/>

⁷⁰ <https://www.ofpra.gouv.fr/en/glossary/c?utm>. See Guide for asylum seekers in France, 2020, https://help.unhcr.org/france/wp-content/uploads/sites/87/2023/03/Guide_du_demandeur_d_asile_septembre2020_EN-1.pdf

⁷¹ Asylum procedures in the Netherlands, available at: <https://ind.nl/en/asylum-procedures-in-the-netherlands?utm>

⁷² Country Report: Alternatives to detention, available at: <https://asylumineurope.org/reports/country/sweden/detention-asylum-seekers/legal-framework-detention/alternatives-detention/?utm>

⁷³ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals [...], available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0095>

recognizing his/her refugee status and granting humanitarian protection, temporary protection or political asylum⁷⁴.

The Law on Asylum, provides that the competent authorities shall ensure access to the territory of the Republic of Moldova of any foreigner situated at the border, upon written or verbal expression of his/her will, from which it follows with certainty that the latter seeks protection of the Republic of Moldova. Asylum-seekers shall not be sanctioned for illegal entry or stay on the territory of the Republic of Moldova. Such persons shall be treated in accordance with international human rights standards and pursuant to the provisions of the Law on Asylum.

At the same time, staff responsible for receiving asylum applications will respect the rights of asylum seekers. The Republic of Moldova is also implementing the mechanism of temporary protection for displaced persons from Ukraine⁷⁵, allowing them access to social and economic rights. However, challenges persist in relation to registration, documentation and effective access to benefits, previously noted by the Ombudsman.

To ensure efficient, fair and transparent procedures, the Republic of Moldova must strengthen administrative capacity, reduce the time it takes to examine applications and improve applicants' access to legal aid. Independent monitoring of international protection decisions and the introduction of alternatives to detention of asylum seekers could also improve the national protection system.

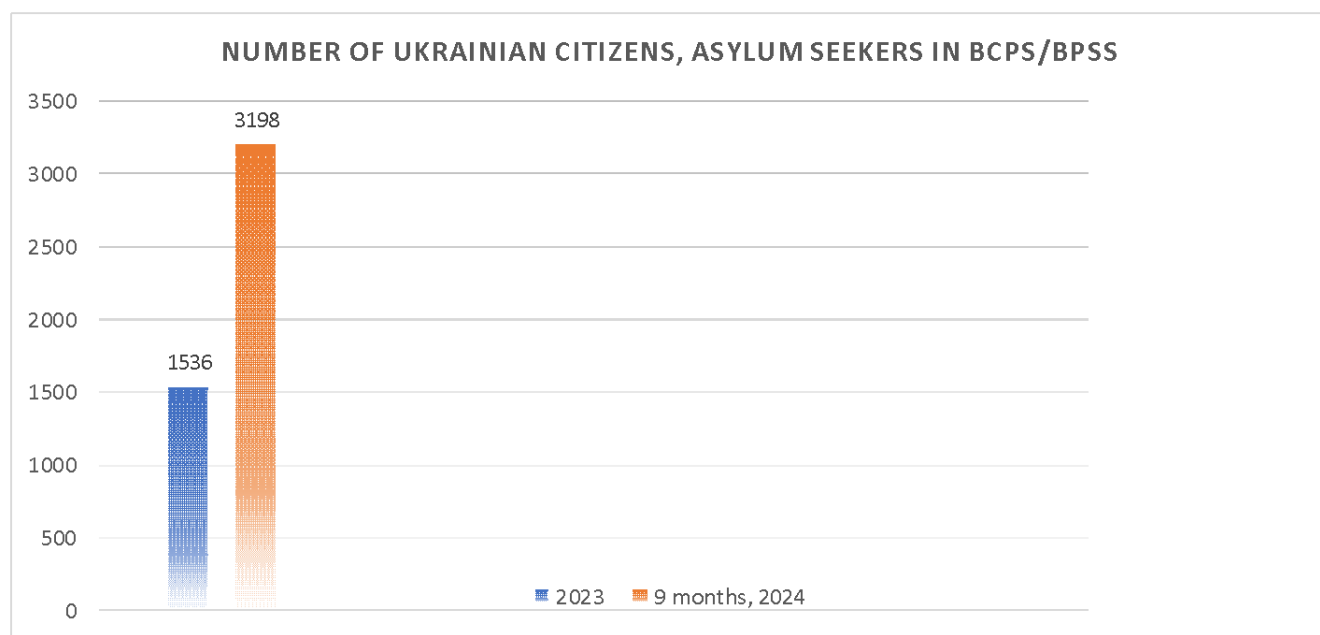
3.3. Applications for asylum at the border

According to the data presented by the GIBP, in 2023, 1536 citizens of Ukraine applied for asylum at the BCPs/BPSs. And in 9 months, 2024 that number increased to 3198 asylum applications at border crossing points and border police sectors: -

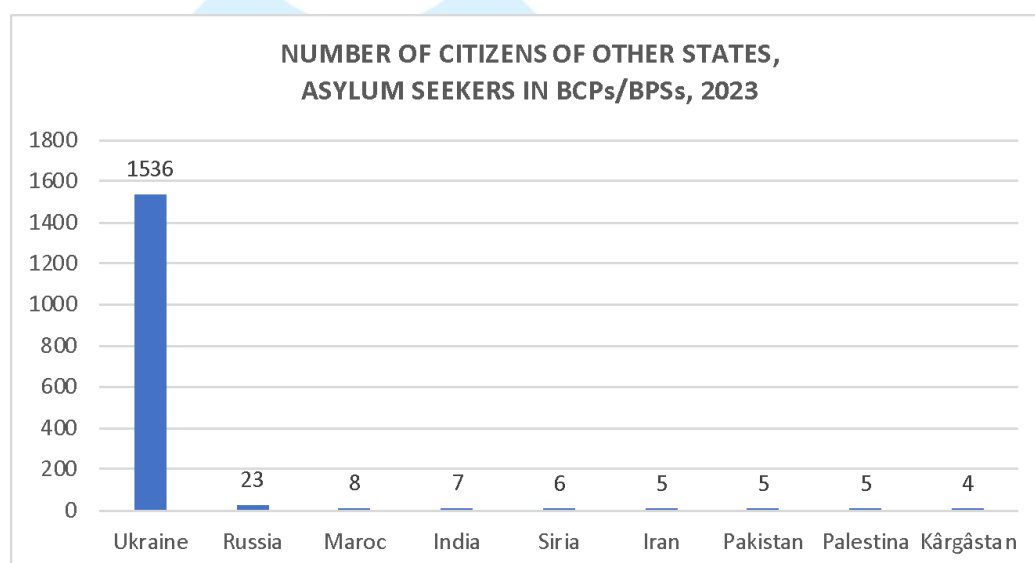
avocatul
poporului
OMBUDSMAN

⁷⁴ Article 3 of Law 270/2008 on Asylum in the Republic of Moldova (in force at the time of drafting the report), available at: https://www.legis.md/cautare/getResults?doc_id=144620&lang=ro#

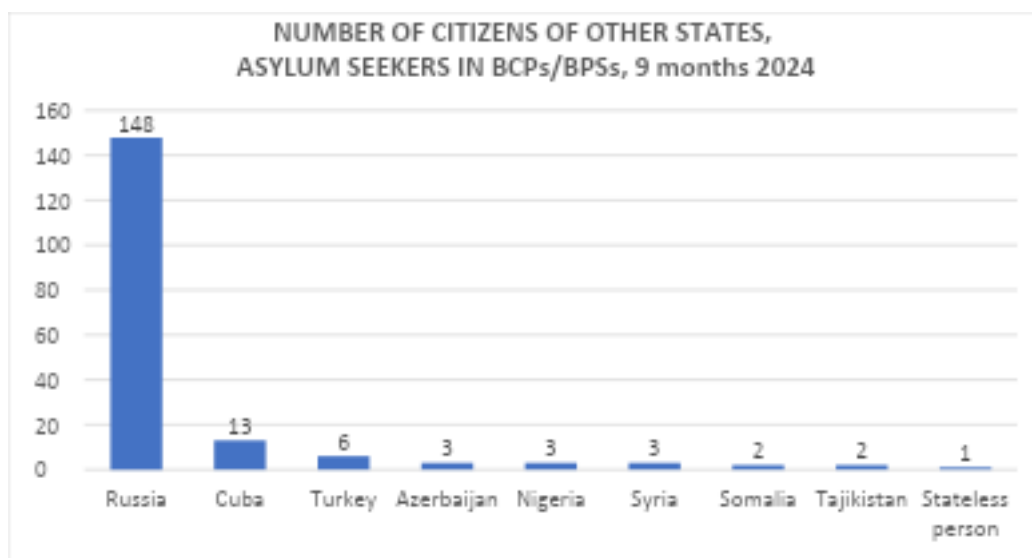
⁷⁵ https://www.legis.md/cautare/getResults?doc_id=142062&lang=ro#. See also, <https://help.unhcr.org/moldova/ro/temporary-protection/>



In 2023, the same data show that, apart from Ukrainian citizens, 23 citizens of the Russian Federation, 8 citizens of Morocco, 7 citizens of India, 7 citizens of Tajikistan, 6 citizens of Syria, 5 citizens of Pakistan, 5 citizens of Palestine, 5 citizens of Iran, 4 citizens of Kyrgyzstan, 3 citizens of Belarus, 3 citizens of Uzbekistan, 2 citizens of Azerbaijan, and one each from Georgia, Armenia, Cameroon, Lebanon, Nigeria, and Iraq applied for asylum in the BCPs/BPSS. No asylum applications were registered from stateless persons: -



In 9 months, 2024 the number of Russian citizens applying for asylum increases to 148 applications submitted to the BCPs/BPSS. Other citizens who applied for asylum according to BP data are 13 citizens from Cuba, 6 from Turkey, 3 from Syria, 3 from Azerbaijan, 3 from Nigeria, 2 from Somalia, 2 from Tajikistan, 1 from Iran, 1 from Morocco, 1 from Colombia, 1 from the USA and 1 from Lithuania. Similarly, one stateless person applied for asylum at the border: -



An examination of the data shows that the number of citizens of the Russian Federation applying for asylum in the BCPs has increased compared to the previous year. The actual number of asylum applications may be much higher, but in the absence of contrary evidence, we will use only these data.

During the on-site visits, especially in the West, BP employees emphasized that there is a high tendency of asylum applications from citizens of the Russian Federation residing in Ukraine with/without valid/expired passport who wish to go to the Embassy of the Russian Federation in Chisinau to pick up their passport or the corresponding documentation. Crossing with an invalid passport is not allowed by the BP under the Law on the State Border and the Law on the Legal Regime of Aliens. This is why many foreign nationals apply for asylum in order to avoid criminal liability and to secure access to the territory for documentation. Subsequently, people who have submitted these asylum applications for a few hours give up asylum. This is a situation that is as bizarre as it is real, but which has no solution, as long as national legislation provides for access to the territory only with valid papers. The authors mentioned above that *invalid documents* should not be grounds for refusing entry. Access conditions in such situations should be subject to alternatives, especially when we have an active war in the neighboring country and civilians are at continuously increased risk (including the possibility of losing documents or procuring false documents to reach a safe country). In concreto, the person with invalid papers enters the territory anyway through the asylum institution. The Ombudsman understands here that there are security risks, but the interest in the protection of beneficiaries of international protection is clearly greater.

Among other preconditions that could impose obstacles to the admission of potential asylum seekers to the territory would be the **timing** of the asylum application itself and whether the **BP employee is authorized** to decide on asylum applications. The Law on Asylum stipulates *stricto sensu*, that the BP is one of the competent authorities to receive asylum applications and that the BP will only grant the person access to the territory after informing the GIM. Similarly, the special law provides for 2 types of manifestations of forms of protection: verbal and written. For the written procedure, the BP will send the person a standard application form which he/she will fill in. The asylum application is submitted in person by the foreigner as soon as he/she appears at the BCP. This implies that the BP is only involved in receiving the application and informing the GIM about the asylum applications at the border. The BP does not have to decide on the verification of entry conditions for asylum seekers, which would be contrary to two other special laws on the state border and on the legal regime of aliens. **As a rule, BP employees check whether aliens fulfil the conditions for entry into the territory on the basis of the last-mentioned special laws, and only after assessing the aliens can they grant the asylum application. These observations derive from a number of applications to OI and other organizations.**

This form of verification is important in the context of national security, except that in the case of an asylum application, the role of the BP is expressly limited to taking the asylum application, without going into the substance and examining the individual case. Only the GIM can decide on the admissibility of such an application. The BP cannot decide this at the border. However, as per point 10 of the GIBP Instruction No. 1260/2023 *“the expression of a desire for international protection is not presumed after expression in a distinct form. The term “asylum” should not be used expressly, the defining element is the expression of fears about what might happen on return”*. This instruction also sets out the process for the identification of potential asylum seekers by BP employees⁷⁶. This order stipulates that the BP employee must conduct an initial assessment of asylum applications and identify potential asylum seekers, which in our opinion is contrary to the provisions of Articles 52, 54 of the Law on Asylum. During our visits, we observed that BP employees have different views on the admission of aliens to the territory, even though they are guided by the same legal framework. Some of them mentioned that imperfect legal framework, verbal orders, SIS recommendations and GPO resolutions would be among the main impediments to the full realization of asylum seekers’ rights.

Next, we note that there is no procedure for verbal manifestations of asylum. Although, the Law on Asylum provides for the *verbal* or *oral* form as specified in Instruction 1260/2023, a mechanism to record, determine and register such type of applications does not exist.

In our opinion, the BP employees **are not in charge of verifying the grounds/reasons** for which foreigners apply for asylum at the border. *Stricto sensu*, BP employees are **only responsible for receiving** asylum applications.

It should be noted that the records of asylum applications at the border are kept in the **Registries of asylum applications** submitted by asylum seekers. The information is entered whenever standardized asylum applications are submitted to the BCP. Similarly, BP employees inform the Regional Directorates dispatch and GIM. According to Article 54 of the Law on Asylum, asylum seekers are picked up by the GIM from the BCP within 24 hours of being informed. The handover-reception of asylum seekers takes place by means of a handover-reception deed, which both representatives of the BP and the GIM must enter. A copy of the handover-reception deed shall remain in the BCP or BPS. Similarly, minutes are drawn up to ascertain the fact of the submission of asylum applications at the border. Although the Law on Asylum stipulates that applications are submitted at the border, during our visits we observed that the Register of Asylum Seekers is in physical format either at the BCP or in the BPS. Where there is no such register in physical format, it was mentioned that the respective data are immediately transmitted to the BPS or the BCP, which notifies them accordingly. It is certain that in all the BCPs visited there are standard models of applications, leaflets, and a record of handover-reception deeds and that data is collected including in a centralized way. The BP must understand that the record of asylum applications must be properly notified in the Register of Asylum Applications, in particular as a mechanism to protect the BP employees from possible charges.

Direct observations, show that some Registers of Asylum Applications are accurately kept, others the reverse. Some Registers have notified the data by the same person in the same style (as if they were written in one day), others - by different persons with different signatures. Most crucially, the Registers do not fix the **time of handing over to the GIM** (with some minor exceptions), **nor does the GIM fix the time of taking over** the asylum seekers from the BPS/BCP (although it is in the interest of this institution). GIM cannot verify the GIBP on this process. Data recording is a subjective process and depends largely on the commitment of each BP employee to his/her work. Some BPSs/BCPs have no asylum applications registered, although they have multiple cases of illegal crossings by Ukrainian men through the green area seeking asylum.

⁷⁶ GIBP Order No.1260 of 28.12.2023 on the procedure of reception of asylum applications submitted by foreigners at the state border of the Republic of Moldova.

Another omission observed is the failure to record the duration of the asylum seeker's placement or stay in the BPS/BCP, which makes it impossible to observe whether the 24-hour time limit is respected. However, all the interviewed BP employees mentioned that the duration of placement is minimal and that the GIM takes them within the 24-hour time limit. Also, the BP transports asylum seekers to the Regional Directorates of the GIM when there are more than 3 persons and the GIM has no capacity cars. However, in the handover-reception deeds it is specified that the asylum seekers have been handed over to the BPS/ BCP and not to the regional directorates. If this practice exists and is appropriate in order not to keep asylum seekers in BCPs/BPSs that do not have accommodation, this process should be laid down in a joint instruction of the GIBP and GIM in particular to avoid risks.

In other situations, asylum seekers are *asked* to travel to Chisinau, Cahul and Balti on their own from the BCP or BPS, in which case the BP employees issue them provisional certificates and collect their passports. However, in the asylum seekers' handover-reception deeds, it is mentioned that these persons have been handed over to the GIM of the BPS/BCP. People's Advocate team has witnessed such cases.

If, GIM and GIBP are not able to ensure the handover-reception of the increased number of asylum seekers, one solution would be to exclude this rule from the special Law and adjust practices.

3.3. Non-refoulement

Asylum seekers, beneficiaries of international and temporary protection, have the right not to be returned or expelled according to the regulations of national legislation.

The BP claimed in its response to the Ombudsman as well that in 2023-2024 it **did not return any Ukrainian citizens** to the Ukrainian Border Guard Service.

Here again, we reiterate our firm position to the BP not to allow any person to be returned to the country/region from which he/she has fled/ come for protection.

The situation of other foreign persons has not been included in this monitoring. Likewise, this report does not include the work of other national bodies with such powers.

3.4. Access to temporary protection

Temporary protection is a form of protection of an exceptional nature, aimed at providing, in the event of a mass and spontaneous influx of displaced persons who are unable to return to their country of origin, immediate and temporary protection to such persons, if there is a risk that the asylum system may not be able to process this influx without adverse effects for its efficient functioning, in the interest of the persons concerned and other persons in need of protection. Temporary protection is a form of asylum⁷⁷.

The same Law stipulates that the competent authorities shall ensure access to the territory of the Republic of Moldova to any foreigner situated at the state border, upon written or verbal expression of his/her will, from which it follows that he/she seeks the protection of the Republic of Moldova.

⁷⁷ Article 3, Law 270/2008 on Asylum in the Republic of Moldova, available at: https://www.legis.md/cautare/getResults?doc_id=146837&lang=ro#

The concept of “temporary protection” provided for by national legislation corresponds to the Council of Europe Directive of 20 July 2001 on minimum standards for giving temporary protection [...]⁷⁸.

By the Government Decision No.21/2023, it was established to grant temporary protection to displaced persons from Ukraine. Temporary protection shall be granted to the following categories of persons: (1) Ukrainian citizens residing in Ukraine before February 24, 2022, (2) Ukrainian citizens who were on the territory of the Republic of Moldova before February 24, 2022, (3) stateless persons and nationals of third countries other than Ukraine who were beneficiaries of international protection or equivalent national protection in Ukraine before February 24, 2022, and who are unable to return safely to their country or region of origin, and (4) family members of the groups of persons mentioned in points (1), (2) and (3).

According to GIBP’s response of November 15, 2024, in 2023 and 9 months of 2024, **there were no requests for temporary protection registered** within the subordinate subdivisions.

The BP is not authorized to take applications or facilitate temporary protection and cannot be charged with the obligation to keep any records in this regard. However, BP employees are often approached by foreign arrivals from Ukraine in particular, regarding solutions for offering temporary protection. Also, there have been identified cases where the “BP” mark is affixed to the passport of Ukrainian citizens by BP employees in order to keep a record of the period of their entry/exit (45 or 180 days). The mechanism of calculating the 180-day period remains unclear.

From discussions with BP employees, most of them confirmed that foreigners encounter a number of problems in accessing temporary protection, but also in meeting all the requirements laid down. Many displaced persons mention to them that they do not want to stay in the country, but to rest for a few days and then continue their journey to EU countries, for which they do not need temporary protection. Others argue that they require some form of protection, but to be able to move freely whenever they need to enter and leave Ukraine, even though the law only allows them one entry-exit. Often, displaced people encounter minor problems, which BP employees have to solve. GIM representatives are not in all BCPs.

According to point 12 of the Government Decision No. 21/2023 on granting temporary protection to displaced persons from Ukraine, in the registration process of documentation with identity documents, the beneficiary of temporary protection **must confirm the address of domicile/temporary residence in the Republic of Moldova**. Therewith, in order to register on the platform: www.protectietemporara.gov.md, the displaced person from Ukraine must have a Moldovan mobile phone number connected to the Internet in order to receive the password to access the online registration form. These *unjustified* requirements, according to some BP employees, create difficulties, particularly for male refugees who have crossed the border through the green area and need immediate protection. The criteria for access to temporary protection, the most appropriate form of protection, is limited and practically impossible for these persons, the interviewed employees argued.

Among the proposals that would facilitate access to temporary protection put forward during the visits were - offering temporary protection to displaced persons immediately at the BCP. BP staff also supported the need for the presence of GIM representatives in each BCP, so that they could immediately deal with the problems of foreigners in the BCP.

GIM data, shows that as of December 30, 2024, **84360 persons** had pre-registered for temporary protection, of which 66224 identity documents of beneficiaries of temporary protection were issued.

⁷⁸ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, available at: <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex:32001L0055>

During the same period, **607 Ukrainian citizens** were registered in the asylum system (1 refugee, 203 beneficiaries of humanitarian protection and 403 asylum seekers). More than 3823 Ukrainian citizens had the right of temporary residence and another 3048 citizens had the right of permanent residence on the territory of the Republic of Moldova⁷⁹.

3.5. Access to defense and access to information

There are no lists or contact details of the Union of Advocates, NLAC⁸⁰ in the BCPs/BPSs, nor are people provided with lists of contact details of lawyers. Access to a state-guaranteed lawyer is only provided at the regional subdivisions (Regional Directorates) in the case of conducting criminal or misdemeanor prosecution actions. According to the interviewed BP employees, there were no cases of requests for lawyers in the BPSs/BCPs. However, upon request, they can provide such support.

The Ombudsman argues that the lack of these essential resources can seriously affect people's ability to understand and exercise their rights in legal asylum procedures and to benefit from adequate protection in dignified and safe conditions.

It should be noted that point 31 of the GIBP Instruction No. 1260 of 2023 on the procedure of reception of asylum applications submitted by foreigners at the state border of the Republic of Moldova states that asylum seekers are entitled to free legal counselling at NLAC, tel. +373 22 496953, 496339, 310065. However, the BCP/BPS do not keep any record in this respect, and the instruction is for BP employees.

In our opinion, for a better assurance of the right to defense (not necessarily only in the case of a criminal prosecution) the active NLAC data should be displayed in the BCP and BPS, in the places for interviews, detention, and asylum rooms. This action is not a fad, but rather an additional safeguard to prevent forms of abuse by BP employees.

The Law on the Legal Regime of Aliens provides the same procedural rights for aliens in court proceedings. Likewise, they benefit from free legal aid or on a contractual basis from lawyers, as well as other authorized persons in the manner established by the Law No. 198-XVI from July 26, 2007 on State-Guaranteed Legal Aid. The latter norm extends the right to state-guaranteed legal aid to stateless persons (not only foreigners) in proceedings or cases falling within the competence of the public administration authorities and courts of the Republic of Moldova. At the same time, the Law guarantees access to qualified legal aid irrespective of the level of financial means of foreigners, in proceedings concerning the application or extension of the measure of placement in public custody⁸¹.

Essential information, which should be available in several languages, is lacking in the BPS, in transit areas as well as in accommodation rooms for asylum seekers. This lack may limit their access to essential information about available rights and procedures, preventing them from receiving adequate services in an efficient way. Here again, we recall the lack of translation of official web pages into languages spoken internationally or accessible to vulnerable groups, which makes it difficult to find the necessary information and to lodge complaints.

3.6. Access to the Ombudsman

Foreign nationals are entitled to submit applications to the People's Advocate and foreign minors - to the People's Advocate for Children's Rights in cases of violation of their legitimate rights and interests

⁷⁹ <https://igm.gov.md/protectia-internationala-si-documentarea-ucrainenilor-in-republica-moldova-13/>

⁸⁰ <https://cnaigs.md/ro/>

⁸¹ Law No. 198/2007 on State-Guaranteed Legal Aid, available at: https://www.legis.md/cautare/getResults?doc_id=141538&lang=ro#

on the territory of the Republic of Moldova, in accordance with the legislation on the People's Advocate⁸².

It should be noted that in some BCPs/BPSs there are posters with the contact addresses of the Ombudsman Institution and post boxes for sending letters. The mechanism for addressing a foreigner held in police custody to the Ombudsman is still not clear, how it is ensured de facto. The GIBP keeps no such records. There is no type of applications, information sheets on the right to address to the OI, registers of applications in the BP subdivisions⁸³.

The application to the People's Advocate shall be submitted before the expiry of one year from the day of the alleged violation of the rights of the petitioner or from the day when the petitioner did learn of the alleged violation.

The application can be submitted in person at the Ombudsman Institution's headquarters or representative offices (Balti, Comrat, Varnita and Cahul) or by mail⁸⁴, online⁸⁵, e-mail (secretariat@ombudsman.md) or another communication mean. The application may also be submitted by a representative of the person whose rights have been violated, by a non-governmental organization, trade unions or other representative organization on his/her behalf. We note that the application on behalf of a person in detention [...], including at the border police, is not subject to censorship and shall be sent by the administration of the institutions concerned to the Ombudsman in a 24 hours term.

Applications addressed to the Ombudsman shall be exempt from the state fee. It is important that the application addressed to the Ombudsman indicates: (a) name, surname and domicile of the petitioner and, where appropriate, the name, surname of the person whose rights have been violated; (b) a brief description of the matter circumstances; (c) the name of the authority or the name and surname of the person or the name and surname of the responsible official following whose actions and/or inaction took place the violation of the rights and freedoms, in the case when this person is known; (d) signature and date of the application. Where the facts alleged in the application have been the subject of examination by other authorities, copies of the responses of the respective authorities shall be attached to the application⁸⁶.

3.7. Complaint mechanism

Aliens shall be entitled to effective remedy by the competent courts of law and other public authorities against acts violating their rights, freedoms and legitimate interests⁸⁷.

At the monitored BCPs there are information boards and posters available at entry and exit, providing information in languages accessible to various categories of persons, including Romanian, Russian, English, Turkish, Ukrainian, and others. These boards include details of access to important institutions such as UNHCR, Ombudsman Institution, GIBP, GIM and Law Centre of Advocates, facilitating guidance and information to refugees or asylum seekers. There are also clear instructions on how to lodge complaints through the European Agency FRONTEX, and for people who speak Romanian, information about the police and border police is displayed.

⁸² Article 84¹³ of Law 200/2010 on the Legal Regime of Aliens, available at: https://www.legis.md/cautare/getResults?doc_id=146674&lang=ro#

⁸³ GIBP Response of 19.11.2024

⁸⁴ <https://ombudsman.md/despre-noi/oficiul-avocatului-poporului/directiile-de-suport/>

⁸⁵ <https://ombudsman.md/cereri/depune-o-cerere/>

⁸⁶ Articles 19-20 Law 52/2014 on the People's Advocate (Ombudsman), available at: https://www.legis.md/cautare/getResults?doc_id=141519&lang=ro#

⁸⁷ Article 84¹² of Law 200/2010 on the Legal Regime of Aliens, available at: https://www.legis.md/cautare/getResults?doc_id=146674&lang=ro#

Petitions to the BP can be delivered to the GIBP headquarters, 19 Petricani Street, Chisinau as per Administrative Code. The petition shall contain (a) the name and surname of the petitioner; (b) the petitioner's domicile or headquarters and postal address if a reply is requested by this means; (c) the name of the public authority; (d) subject of the petition and the grounds thereof; (e) signature of the petitioner or his/her legal representative or authorized representative, and in the case of petitions submitted electronically - electronic signature⁸⁸.

In the BCPs/some BPSs, there is information on the GIBP hotline⁸⁹, anti-corruption hotline⁹⁰. On some posters, the contacts of the regional directorates or the MIA and GIBP management can be identified. The visiting team has been assured that foreign persons placed in detention/asylum seekers' rooms have access to personal telephones and can make calls. No stationary telephones are provided in the BPSs for making calls during their placement (24 hours and more). However, post boxes are installed for letters and complaints. Most of the BP employees mentioned that they provide assistance to all persons in need, without being reluctant to their requests, including on their own account.

During our visits, many of the foreign persons we interacted with mentioned that the behavior of BP employees was dignified and respectful. Some of them mentioned that they did not know and were not clear why they were held in police cells, what their fate would be next, and that they had little information.

Foreigner citizens are guaranteed the right to seek protection at diplomatic missions of their countries⁹¹. There is no contact list of embassies and consular offices or diplomatic missions available in the BCP/BPS. According to BP employees, this right is ensured in the Regional Directorates, where foreign persons detained for interview or criminal prosecution are referred.

IV. DETENTION AND APPREHENSION OF MIGRANTS AT THE BORDER

⁸⁸ <https://border.gov.md/ro/petitii-sesizari-si-reclamatii>

⁸⁹ Green Line +373-22-259-717

⁹⁰ Anti-Corruption Line Internal Protection and Anti-Corruption Service of the MIA "1520"

⁹¹ Article 84¹³ of Law 200/2010 on the Legal Regime of Aliens, available at: https://www.legis.md/cautare/getResults?doc_id=146674&lang=ro#

4.1. Apprehension of persons at the border

As we mentioned above, a highlighted challenge is the fact that the **special Law on Border Police does not provide for the powers to apprehend persons** (except for those who are wanted or in other cases provided for by the legislation). The BP has the obligation to apprehend, at the request of the competent authorities, wanted persons if they evade prosecution or criminal punishment, as well as to apprehend persons in other cases provided for by law⁹².

Although, the BP performs a series of actions that derive from the actual apprehension of persons in the border area, during the ensuring and maintenance of public order, combating crime and illegal migration, special investigative measures, criminal prosecution, etc. - this express obligation is not guaranteed by the framework legislation, even though Article 273 of the Criminal Procedure Code provides for the BP as an ascertaining body⁹³. At the same time, the special law mandates the BP employees with the right to bear weapons and application of force and special means during police work. The reasons for *circumventing* the express mention of the right or obligation to apprehend persons of the BP remain unclear.

However, the GIBP is part of the police corps, and in case of war part of the national defense. In peacetime, the BP performs police duties. And from the text of the special Law, it is clear that the BP has powers to stop, check, apprehend, transport, take immediate decisions, apply weapons and use of force, etc. In the present text, apprehension includes any restriction of free movement, including of a criminal and non-criminal nature, of persons. During this period, the apprehended person is held in BP custody. Thereafter, the BP bears responsibility for his/her life, safety, and security. Any apprehension must be justified and necessary, and if it lasts longer than the minimum necessary, the person must be guaranteed access to basic facilities (water, food, toilets, access to luggage, interpreter, lawyer, etc.), safety and guarantees against forms of abuse (defense, non-maltreatment, medical care, etc.).

The findings of the monitoring team show that in the BCPs/BPSs persons apprehended are initially documented and then forwarded to the Regional Directorates. However, the BCPs/BPSs **do not keep a written record** in a Register of the dates, period of apprehension and detention of the persons concerned. According to the employees of the BP, as per special Law, the BP is not an apprehension institution like the national police and has no such prerogatives. Although, in practice, persons are apprehended on a daily basis at the border, border area or other places, the BP does not have a clear regulation in this respect.

In our opinion, as stated in previous reports, the BP must have defined processes and keep a record of apprehended persons (regardless of the duration) in order to better protect employees and prevent abuse. On the other hand, any person has the right to know the apprehending institution, duration of apprehension, initial charges and to challenge these one-person or collegial administrative decisions.

In this vein, the BP needs to restructure its processes to ensure better protection for everyone, including in the context of the increased flow of people.

It should be noted that the **apprehension of migrants and refugees at the border is considered a temporary measure and should be used only in strictly necessary cases, according to international standards**. These standards emphasize the principles of proportionality and legality, requiring States to limit the use of apprehension and provide viable alternatives for vulnerable groups.

⁹² Letter b, point 4, Article 6 of Law 283/2011 on the Border Police:
https://www.legis.md/cautare/getResults?doc_id=144603&lang=ro#

⁹³ Article 273 of the Criminal Procedure Code, available at:
https://www.legis.md/cautare/getResults?doc_id=146153&lang=ro#

In this regard, there are several **international recommendations** that call on States to respect the principles of human rights and safeguards in the process of apprehending persons at the border:

- **The Global Compact for Safe, Orderly and Regular Migration (2018)** emphasizes the need to avoid coercive measures and promote alternatives to detention, such as community-based monitoring. The document draws attention to migrants' right to protection and respect for humanitarian principles⁹⁴.
- **The Report of the United Nations High Commissioner for Refugees**, questions relating to refugees, returnees and displaced persons and humanitarian questions (UN Resolution 77/198 of 2022) - reaffirms the principle that detention of asylum seekers should be avoided. States are encouraged to apply individual assessment mechanisms before resorting to detention and to prioritize the protection of refugees' fundamental rights.⁹⁵
- **Human Rights Council** - Human Rights Violations at International Borders: Trends, Prevention and Accountability (2022) draws attention to the fact that apprehending migrants at the border can lead to serious human rights violations, including unlawful deprivation of liberty, abuse, and lack of access to justice.⁹⁶
- **The Report of the Special Rapporteur on the Human Rights of Migrants** (2022) highlights the disproportionate use of detention and the need for alternative measures based on human rights protections. It recommends that detention should be an exceptional measure, justified only in well-documented situations.⁹⁷
- **Standards of the European Committee for the Prevention of Torture (CPT Standards)**, relating to the detention of migrants and persons in police custody⁹⁸.

European Court of Human Rights (ECtHR) has played a crucial role in setting standards on the apprehension and detention of migrants, with a series of judgments reaffirming states' obligations to respect their fundamental rights: -

- In case of *M.S.S. v. Belgium and Greece (2011)*, the ECtHR found that Belgium had violated the rights of an asylum seeker by returning him to Greece, where conditions in reception centers were inhuman and degrading. The judgment also clarified states' obligations on the principle of non-refoulement, emphasizing that migrants cannot be sent to a state where they could be subjected to inhuman treatment⁹⁹.
- The ECtHR has also intervened in the protection of migrant minors, as in *Rahimi v. Greece (2011)*¹⁰⁰. The Court found that placing an unaccompanied minor in administrative detention

⁹⁴ Global Compact for Safe, Orderly and Regular Migration (2018) <https://docs.un.org/en/A/RES/73/195>

⁹⁵ Resolution 77/198 - Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions (2022)
<https://www.unhcr.org/sites/default/files/legacy-pdf/63be99554.pdf>

⁹⁶ Human Rights Council - Human Rights Violations at International Borders: Trends, Prevention and Accountability (2022) <https://docs.un.org/en/A/HRC/50/31>

⁹⁷ <https://docs.un.org/en/A/77/189>

⁹⁸ CPT Standards, available at:

https://www.coe.int/en/web/cpt/standards?p_p_id=com_liferay_journal_content_web_portlet_JournalContentPortlet_INSTANCE_rmo9MHZGnI46&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&com_liferay_journal_content_web_portlet_JournalContentPortlet_INSTANCE_rmo9MHZGnI46_languageId=ro RO#police

⁹⁹ [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-103050%22\]}](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-103050%22]})

¹⁰⁰ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-550%22%5D%7D>

without adequate support constituted a violation of Article 3 of the European Convention on Human Rights, which prohibits inhuman and degrading treatment. Greece was condemned for lack of child protection measures and poor conditions in detention.

- In *Khlaifia and Others v. Italy* (2016)¹⁰¹, the ECtHR found that the migrants were detained in inhumane conditions and did not have access to an effective remedy. The Court criticized the arbitrary detention and the lack of transparency of the Italian authorities in the management of the migrants, thus reinforcing the standards on the right to an effective remedy.

4.2. Conditions of apprehension and detention

As stipulated by the Law on the Border Police, the BP is **obliged to apprehend only wanted persons and in other cases provided for by legislation**. The BP does not have any express legislative powers to ensure detention of persons apprehended at the border, although it does apprehend persons. In the same vein, the Regulation on the Organization and Functioning of the GIBP **contains no provision** concerning the powers of the BP as regards apprehension and detention. Not even the obligation provided for by Article 6, paragraph 4, letter b) of the special Law, is included in the provisions of the Regulation concerned¹⁰².

At the same time, the National Police¹⁰³ has these powers. According to Article 21 of the Law on Police Activity and Police Officer Status, in the field of maintaining, ensuring and restoring public order and security, protection of the rights and legitimate interests of the individual and the community, the police shall have the following duties:

k) to ensure the detention of persons apprehended in temporary detention isolators, as well as their escort;

p) to apprehend and detain in specially established places aliens who have entered the territory of the Republic of Moldova illegally, are illegally present and are subject to expulsion;

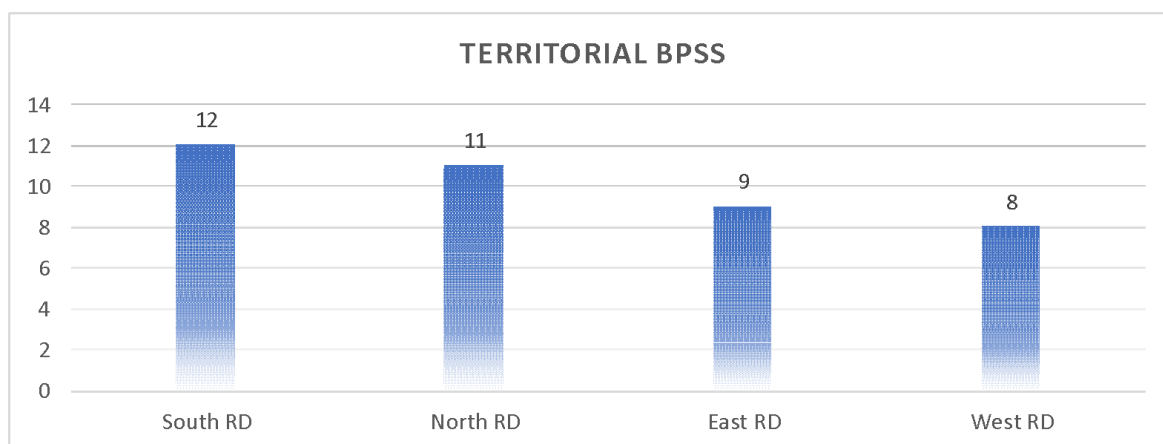
Stricto sensu, only the national police are in charge of apprehending and detaining aliens who have entered illegally, are staying illegally and are subject to expulsion. Therefore, it follows that the BP has no powers to apprehend and detain aliens who have entered illegally or to expel them. The BP must hand them over to the police. However, the national police should work jointly with the border police during border patrols, checks in the BCP, etc., so that the police can perform their duties of apprehending aliens. Similarly, it should be noted that the **National Police** does not have any “*specially established places*” for the detention of aliens, except for 14 isolators for preventive detention in which all suspects are held.

According to the BP organizational chart, the North Regional Directorate has 11 BPSs, the South Regional Directorate - 12 BPSs, the West Regional Directorate has 8 BPSs, the East Regional Directorate - 9 BPSs. Similarly, there is the Chisinau International Airport BPS. In total: **41 border police sectors**: -

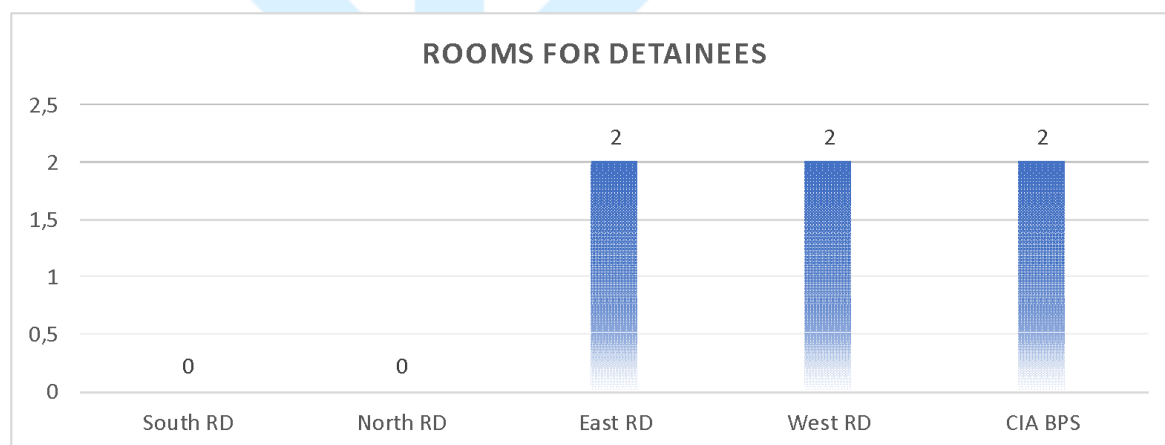
¹⁰¹ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-170054%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-170054%22]})

¹⁰² Government Decision 1145/2018 on the organization and functioning of the General Inspectorate of Border Police, available at: https://www.legis.md/cautare/getResults?doc_id=145992&lang=ro#

¹⁰³ Law 320/2012 on Police Activity and Police Officer Status, available at: https://www.legis.md/cautare/getResults?doc_id=141605&lang=ro#



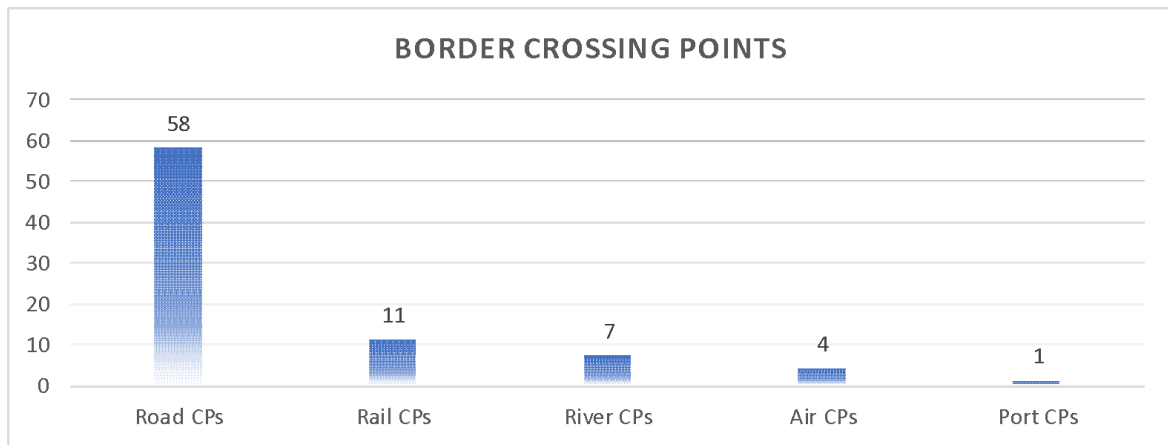
The North and South Regional Directorates **have no space** or rooms for persons detained in the BPSs, while the West and East Regional Directorates **have two rooms each**, which are managed by the Customs Service. Similarly, the CIA BPS **has 2 rooms** for detention. In total, according to the information provided to the OI by the GIBP, the BP **has only 6 rooms** for detainees out of 41 BPSs:



At the same time, according to the Rules of Regime at State Border Crossing Points (in force as of January 6, 2025), there are **58 road crossing points** open to international, interstate and local traffic; **11 rail crossing points**; **7 river crossing points**; **4 air crossing points** and **1 port crossing point**¹⁰⁴:

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¹⁰⁴ Government Decision 862/2024 for the implementation of the provisions of the Law No.28/2024 on the State Border of the Republic of Moldova, available at: https://www.legis.md/cautare/getResults?doc_id=146588&lang=ro



According to the Technical rules for equipping the BCPs (point 7), taking into account the existing infrastructure of the BCPs, they shall be equipped with:

- ✓ **rooms for asylum seekers** separately for both sexes, equipped with minimum hygienic conditions,
- ✓ **rooms for control in the second line,**
- ✓ **rooms for detained persons** (equipped with furniture, drinking water supply, separate toilet, waste collection bin and medical kit) and
- ✓ **rooms for isolation of persons suspected of infectious and contagious diseases** (equipped with furniture, drinking water supply, separate toilet, waste collection bin and medical kit).

From until 2024, the Customs Service¹⁰⁵ was responsible for equipping road crossing points. And since 2025, the Customs Service has been providing BP with rooms for border crossing control, as well as for detained persons and asylum seekers. The Border Police¹⁰⁶ is responsible for equipping these rooms. Respectively, the BP is to take over the management, maintenance, construction and equipping of the BCPs with (a) rooms for asylum seekers [...], (b) rooms for control in the second line, (c) rooms for detained persons [...] and (d) rooms for isolation of persons suspected of infectious and contagious diseases [...].

During the visits conducted, none of the BCPs had the 4 rooms (except for some that had either rooms for asylum seekers and for control in the second line, or only one of the mentioned rooms). According to BP employees, among the reasons for the non-implementation of the Government Decision on the rules for equipping the BCPs in force since 2017 were the lack of rooms and the disinterest of the Customs Service in ensuring the respective commitments.

The visiting team monitored some rooms for holding persons. For example, at “Leuseni-Albita” BCP there is a “waiting” room for detained persons, equipped with bars, 2 entrances, video surveillance, a table, and a sofa. Due to staffing shortages in general and the lack of such a position, there is no staff to physically supervise this room. Prior to the visit, a person apprehended by Leuseni BP employees left

¹⁰⁵ Point 13 The rules for equipping the BCPs, Government Decision 297/2017 for the implementation of Law 215/2011 on the State Border of the Republic of Moldova, available at: https://www.legis.md/cautare/getResults?doc_id=146362&lang=ro#

¹⁰⁶ Point 15 The rules for equipping the BCPs, Government Decision 862/2024 for the implementation of the provisions of the Law No.28/2024 on the State Border of the Republic of Moldova, available at: https://www.legis.md/cautare/getResults?doc_id=146588&lang=ro

this makeshift room without informing the staff and went in an unknown direction. The incident was handled quickly, and the person was apprehended in the border area shortly afterward.

In other BCPs, employees work with detained persons in their (equally insufficient) offices or makeshift spaces. Afterward, they are transported to the Regional Directorates or handed over to the institutions that have ordered search measures, etc. Usually, some employees claimed that this process does not last more than 3 hours, others, however, mentioned that the detention period exceeds 3 hours and depends on how quickly the requested institutions react. BP employees also claimed unequivocally that they face all challenges as part of police work, and that they strive to ensure that every person is treated with dignity.

In five out of seven BPSs visited there were rooms for apprehension and detention of detained persons (Tudora 1 BPS, Tudora 2 BPS, Ocnita BPS, Leova BPS and Costesti BPS - used for apprehensions, stationing and asylum seekers). The accommodations varied. For example: at Ocnita BPS, the detention room had 2 beds and was on the same hallway as the room and accommodation for asylum seekers. The room was damp, without adequate lighting¹⁰⁷. Ocnita BP employees mentioned that this room is not used. Records of detained persons are not kept. At Tudora-1 BPS one of the renovated rooms for asylum seekers is used. Tudora-2 BPS has a 2x2 m space used as (1) a room for preventive body control and (2) a room for detainees. This room has only a table, a thermal agent battery and artificial light (which is connected from outside the space). Access to this room is limited by a padlocked barred door. At the Leova BPS there is a room used for detention, interviews, which has a desk, 2 small sofas, a cupboard for documents. Leova BP employees claimed that this room is used as a waiting space rather than for detention. Costesti BPS has a bedroom with 3 beds and a room on the second floor with 10 beds, which is used in case of need for any major situations (detention, placement, rest, waiting, asylum seekers). Due to the lack of a register of the persons placed in these rooms, it was impossible to ascertain the mechanism for actually ensuring fundamental guarantees. However, the BP employees mentioned that they report all deductions to the Regional Directorates through the dispatch and do not keep a written record. And, in some BCPs, they mentioned that they make the respective entries in the Register of records.

Most BPSs are located in the immediate vicinity of the BCP. The BPSs headquarters were built as barracks type, however, have not been revitalized for decades. Respectively, all the old buildings are in need of total rehabilitation, reconstruction and re-planning so as to ensure dignified working conditions for staff and persons in custody. Some of the BPSs have premises, but cannot be used due to lack of repair and accommodation required. Other BPSs were capital renovated 5 years ago. The visiting team was assured that funds for capital renovations are planned annually, including from external sources.

It should also be mentioned here that the BCPs and BPSs are unable to provide food for detained/accommodated persons during administrative procedures, because there is no such budget line. Usually, the BP employees provide the foreign nationals with food, or go with them to nearby stores, where they buy the necessary food from their own sources. Some BCPs/BPSs do not have bathing facilities, which creates hygiene difficulties. Detainees can typically be held in the BPS for 1 to 20 hours.

Detainees have access to **medical care** only if they present accuses or are in pain. In such cases, staff will call 112. **Medical examination** of detainees whether they have injuries is not carried out. Most of the BP employees claimed that they have not had any cases of detained persons falling ill in practice and that they will immediately call the emergency services in such cases. It remains unclear, the mechanism of intervention in case of detaining a person with injuries, self-harm or suicide attempts, as well as the protection of employees. Different answers to this question were given by employees.

¹⁰⁷ file:///C:/Users/User/Downloads/raport_vizita_ptf_ocnita_otaci_spf_ocnita_28.10.2022_pe-site-1.pdf

The lack of clear mechanisms to record and control detained persons, along with inadequate accommodation and treatment conditions, poses risks to the respect of their fundamental rights. Persons who have been detained do not benefit from an adequate regime and the lack of a register to monitor them may lead to risks of abuse or violation of their rights.

Detention of migrants and refugees is considered an extreme measure that should only be applied in clearly defined circumstances and for a limited period of time. Thus, there are several relevant **international recommendations** on the approach to detention of refugees and migrants:

- Human Rights Council - Report on the Rights of Migrants (2023) recommends states to limit the use of administrative detention and to ensure that all detained persons have access to a fair trial and legal aid. It emphasizes detention conditions and the protection of vulnerable groups such as minors and women.¹⁰⁸
- Human Rights Council - Intersessional Panel Discussion on the Rights of Migrants: prevention and accountability for human rights violations in transit (2024) emphasizes that detention should only be used as a last resort. States are urged to implement independent mechanisms to monitor places of detention to prevent abuse and inhuman treatment.¹⁰⁹
- General comment No. 1 (2024) of the UN Subcommittee on Prevention of Torture analyses the detention of migrants in the context of places of deprivation of liberty. The document emphasizes the importance of independent oversight to prevent degrading treatment and imposes strict standards for the protection of detained persons.¹¹⁰
- Council of Europe Recommendation CM/Rec (2022)17 aims to protect migrant, refugee and asylum-seeking women and girls, emphasizing that their detention should be avoided in all circumstances. The document recommends special protection measures for pregnant women and mothers with children.¹¹¹

4.3. Accommodation conditions for asylum seekers

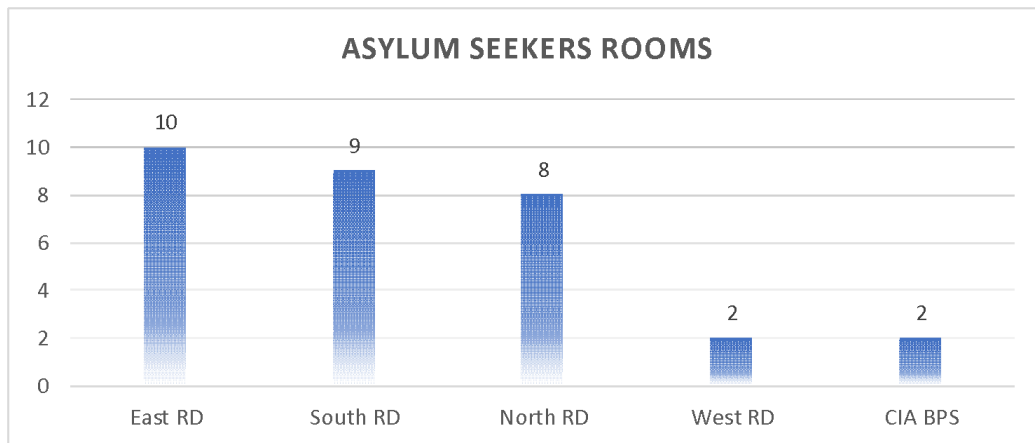
According to the GIBP data, there are **31 rooms** for asylum seekers in the **41 sectors** of the Border Police. The most asylum seekers' rooms are in the BPSs of the East Regional Directorate with 10 rooms, followed by the South Regional Directorate - 9 rooms, 8 rooms in the BPSs of the North Regional Directorate and 2 rooms each in the West Regional Directorate and the Chisinau International Airport BPS:

¹⁰⁸ Report of the Secretary-General, Human rights of migrants, 2023, available at: <https://docs.un.org/en/A/HRC/54/81>

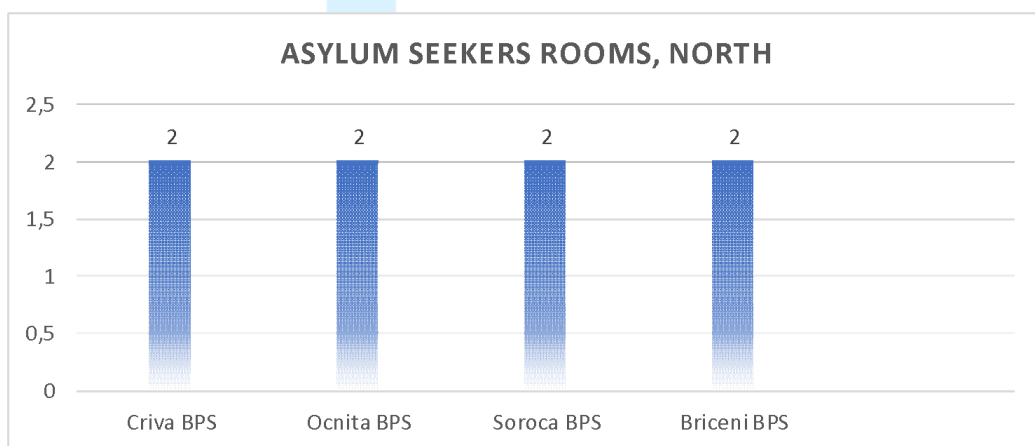
¹⁰⁹ Report of the Office of the United Nations High Commissioner for Human Rights, Intersessional Panel Discussion on the Human Rights of Migrants, available at: <https://docs.un.org/en/A/HRC/57/32>

¹¹⁰ UN Subcommittee against Torture, General comment No.1, 2024: <https://docs.un.org/en/CAT/OP/GC/1>

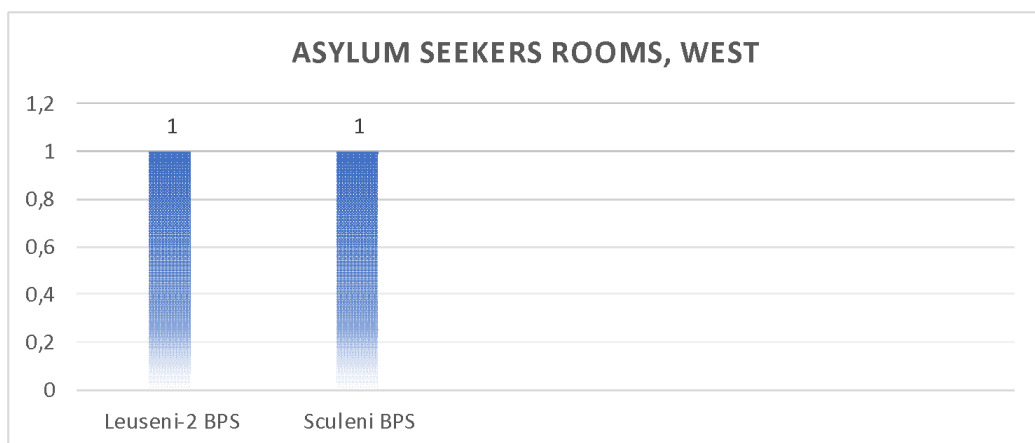
¹¹¹ Council of Europe, Protecting the Rights of Migrant, Refugee and Asylum-seeking Women and Girls, 2022, available at: <https://rm.coe.int/prems-092222-gbr-2573-recommandation-cm-rec-2022-17-a5-bat-web-1-/1680a6ef9a>



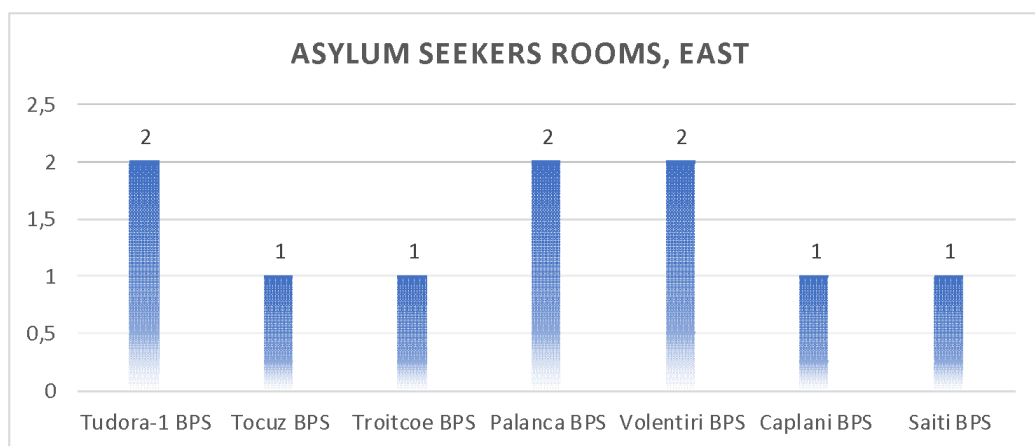
In the North Regional Directorate, only **4 out of 11 BPSs** have rooms for asylum seekers:



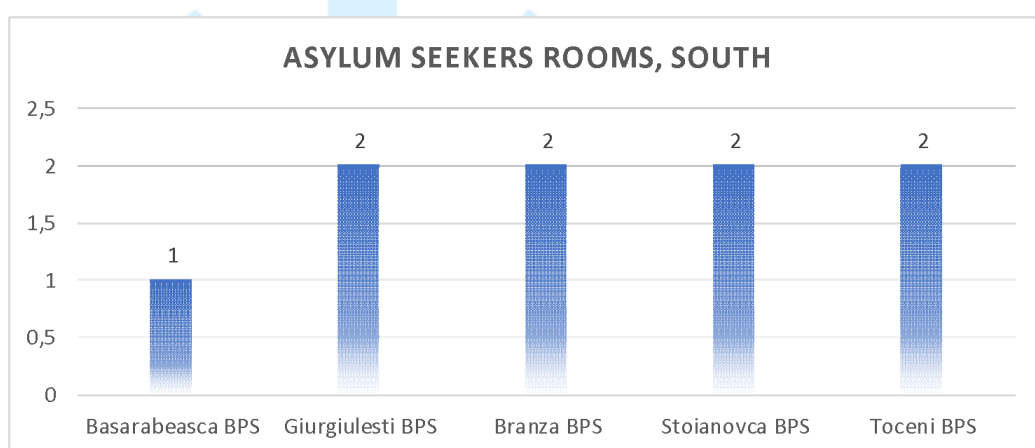
The West Regional Directorate **has 8 BPSs**, of which **only 2 BPSs** have rooms for asylum seekers: -



The East Regional Directorate has **9 BPSs**, of which **7 BPSs** have rooms for asylum seekers: -



South Regional Directorate has the largest number of BPSs, of which **only 5 BPSs** have rooms for asylum seekers:



As a rule, each room for asylum seekers has at least 2 bunk beds.

Construction and fitting out of these rooms were largely financed thanks to the financial support of the UN Refugee Agency, other development partners and the state budget via the GIBP.

The Ombudsman has previously had the opportunity to observe the material accommodation conditions for asylum seekers in some BCPs/BPSs during his monitoring visits or within multifunctional teams (UNHCR, CDA, GIM, GIBP and OI) and has prepared reports on this matter¹¹². GIBP responded promptly to the Ombudsman's recommendations to remedy the situation to the extent possible.

Therefore, the material accommodation conditions for asylum seekers following the visits carried out between October and December 2024 range from unsuitable to dignified. Some examples are given below:

¹¹² <https://ombudsman.md/rapoarte/prevenirea-torturii/rapoarte-de-vizita/>

<p>Costesti BPS</p>	<p>Material accommodation conditions for asylum seekers (October 2024). Findings from the visit-</p> <p>According to data from the Register of Asylum Seekers at Costesti-Stanca BCP, in 2022 there were 114 registered asylum seekers, 62 men and 52 women. In 2023, the total number of applicants fell to 23, including 13 women and 10 men. For 2024 (up to the date of the visit) 31 applicants were registered, including 5 women and 26 men. As regards minors at risk, according to the Register of reception-handover of children, 10 children were registered in 2022, 12 children in 2023 and 2 children in 2024 (up to the date of the visit).</p> <p>According to the data available at Costesti BPS, there are no registrations of asylum seekers, which indicates a lack of direct documentation in this sector. Employees ensure that all relevant information on asylum seekers is registered and managed exclusively at the BCP, including cases of illegal crossings, which are recorded at the BCP and subsequently transmitted to the BPS. However, the monitoring team did not identify any records of illegal crossings in the BPS, and other essential registers, such as the entry-exit register, register for documenting injuries, register for seeking legal aid or lawyers and register for applying physical force, are missing from the sector's records. The BPS notifies the GIM, which, as per procedure, picks up the detained persons within 12 hours and transfers them to the territorial offices for documentation and accommodation.</p> <p>Material conditions of the BPS for asylum seekers are extremely poor. It has two bedrooms: the first has three single beds and the second has ten beds, both in an unsatisfactory state with worn mattresses. There are no lockers or areas to store personal belongings. The walls are damp and old wooden windows let in cold air. The heating system is autonomous. Sanitary facilities are located on the first floor (only one toilet), while the bedrooms are on the second floor, which makes access difficult for people with special needs and beyond. Temperature in the bedrooms is extremely low and the bathrooms are in poor condition, with damaged wall and floor tiles, faulty taps and a lack of privacy or separation by gender. Although there is sufficient natural and artificial light, there is no place to eat meals or store procured food, and meals are not provided by the border police sector.</p> <p>Information on the rights of asylum seekers, including the right to legal and other counselling, is not available on entry to the sector. Medical examinations are carried out only in exceptional cases and upon request of the 112 service. According to staff, the number of persons accommodated is usually small and detentions do not last more than 12–20 hours. However, the existing conditions urgently need to be improved in order to ensure that people are both materially and informationally secured. There is no access to library, TV/radio or free Internet.</p>
<p>Basarabeasca BPS</p>	<p>Material accommodation conditions for asylum seekers (October 2024). Findings from the visit</p> <p>The Border Police Sector manages 2 rooms for the temporary placement of asylum seekers or persons under temporary protection, located on the second floor, but without adapted access for persons with special needs. The first room includes six beds in a space of less than 10 square meters, with eight lockable lockers to store personal belongings. The second room also has six beds in an even smaller space of less than 8 square meters, but only two lockers. This disproportion between the number of beds and the number of lockers indicates an impractical and non-functional organization. There is a common toilet and shower area.</p> <p>The bathroom is in a poor state of repair, with damaged ceilings, water leaks and obvious signs of damp and moisture, and is also affected by low temperatures. Although natural and artificial lighting is adequate, these conditions affect the internal climate. In contrast, the beds are equipped with orthopedic mattresses, pillows and clean</p>

	<p>blankets, thus maintaining an acceptable level of comfort. The overall conditions of the rooms are assessed as satisfactory, although major improvements could considerably increase the quality and safety of the space offered to applicants. The roof is in need of repair. Asylum seekers are not provided with food by the BPS, they are taken by the employees of the police sector to nearby grocery shops to procure food.</p> <p>According to the Registry of asylum applications submitted by asylum seekers, 181 refugees from Ukraine have applied for a form of protection. All asylum seekers are men who crossed the border through the green area. There is no access to library, TV/radio or free internet.</p>
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Leuseni BCP	Material accommodation conditions for asylum seekers (October 2024). Findings from the visit -
	<p>In 2022, 31 asylum applications were registered. In 2023 another 5 asylum applications registered. And in 2024, the data were not yet confirmed. Applications for asylum are handled exclusively within the “Leuseni-Albita” BCP, with no applications registered through the green area. Most applicants are citizens of Ukraine, including women, men, and children. There is a specially equipped room for asylum seekers in the BCP, which includes: 3 beds, 2 tables, 5 chairs, toilet and shower, a metal cupboard compartmentalized in 3 sections. It has been renovated with European funds. There is no access to library, TV/radio or free internet.</p>

Ocnita BPS	Material accommodation conditions for asylum seekers (October 2024). Findings from the visit -
	<p>The BPS has 2 rooms for asylum seekers and a separate room for detained persons. Each room for asylum seekers is equipped with: two bunk beds and one chair and table each. The windows are small, “oberliht” type, with bars, providing a limited source of natural light. Although there is artificial lighting, bulbs are missing or defective in some rooms, which affects visibility conditions, particularly when there is insufficient natural light.</p> <p>The bathroom and toilet are shared, and a room for asylum seekers has a separate toilet inside it, divided by partitions about 1 meter above the floor and a door. This configuration, however, does not provide privacy and limits hygiene. The shower is functioning, but no hot water was available at the time of the visit. All rooms show signs of damp and the bathroom is moldy, altering air quality and hygiene in general, despite cosmetic repairs. The persons accommodated are able to store their belongings in the specialized storage room. Food is not provided by the BPS, but at the request and from the applicants’ own resources, they can be transported by the BPS to the nearest shop to procure the necessary food. There is no access to library, TV/radio or free internet.</p> <p>According to the Registry of asylum applications submitted by asylum seekers (it does not have a number and opening date), 684 Ukrainian refugees from Ukraine have submitted applications for a form of protection between 01.01.2023 and 22.10.2024. All asylum seekers are men who crossed the border through the green area. No person was returned to Ukraine. According to the Register, not all the cases noted indicate: time of registration of the application; time of informing the GIM and time of taking over by the GIM.</p>

Leova BPS	<p>Material accommodation conditions for asylum seekers (November 2024). Findings from the visit -</p> <p>Leova BPS is not renovated. There is 1 makeshift room for asylum seekers and 1 room for documenting illegal border crossers.</p> <p>Material conditions for asylum seekers are unsatisfactory. They are provided with a shared room with a single bed and shared hygiene facilities, which contribute to a poor living experience. During the visit, serious problems such as damp and an unpleasant odor in the room were noted, and the temperatures inside are very low, affecting their comfort and health. It is also important to note that the BPS does not provide food for the applicants, who have to take care of their own nutrition, which can be an additional challenge in their precarious situation. There is no access to library, TV/radio or free internet.</p> <p>The currently low number of asylum seekers may seem favorable, but this creates significant challenges for BPS and BCP structures. However, in the event of mass migration or in exceptional situations, these crossing points are not prepared to cope with a major influx of refugees. Thus, the lack of adequate infrastructure and the necessary resources could lead to inefficient management of the increased flow of persons, which could have negative consequences for the asylum process and the assistance provided to applicants.</p>
Tudora-1 BPS	<p>Material accommodation conditions for asylum seekers (November 2024). Findings from the visit</p> <p>“Tudora-1” BPS is located in Tudora Village, Stefan Voda District, in a mixed border area with Palanca BPS. In 2019, “Tudora-1” BPS was completely renovated, for which the facilities were significantly improved. The Sector is equipped with workspaces, rest, and recuperation areas for shift staff, full sanitary facilities (toilets, showers) and gender-segregated changing rooms - all these improvements are a positive aspect.</p> <p>In 2023, approximately 600 asylum applications were registered. In 2024, up to the time of the visit, 291 asylum applications were registered when crossing the border through the “green area” and 180 at the border crossing point. Two separate registers for asylum applications are managed in the Border Police Sector: one for persons crossing the border through the “green area” and applying for asylum, and another for applications submitted by asylum seekers in the BCP.</p> <p>Within the police sector, there are 3 separate rooms for asylum seekers (for men, women, and minors), each equipped with a sanitary facility (toilet and bathroom sink). Each room has a shower cubicle. Access to these rooms is restricted by barred and locked doors. There is a kitchen in this hallway. The rooms are furnished with double beds, a table and 2 stools. Natural light floods in through large windows fitted with blinds. The windows are protected with metal bars on the outside. The rooms are also equipped with a fire prevention system.</p> <p>The BPS provides no food or personal hygiene pack for asylum seekers. They are taken to nearby shops to buy food or necessities. In certain situations, difficulties arise due to the lack of a currency exchange point in the locality, which makes it impossible for asylum seekers to procure the necessary products. There is no access to library, TV/radio or free Internet.</p> <p>If the 3 accommodation rooms are occupied, the asylum seekers are transferred to the Olanesti BPS, located 15 km away, for temporary accommodation. This transfer may create additional difficulties in terms of transportation and accessibility for the applicants.</p>

	<p>We can note that, according to the data provided by the GIBP, the Olanesti BPS is not in the list of sectors that have accommodation for asylum seekers. However, BP employees from Tudora and Palanca BPS/BCP claimed that they transfer asylum seekers to this sector. Here, we mention that the GIBP is to verify this aspect.</p>
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Palanca BCP	<p>Material accommodation conditions for asylum seekers (October 2024). Findings from the visit -</p> <p>The “Palanca-Maiaki-Udobnoe” BCP has 2 rooms on the third floor for the accommodation of asylum seekers (one for women and one for men). According to the information provided by the BCP, these rooms are managed by the Customs Service and were not used for the accommodation of asylum seekers. If necessary, asylum seekers are transferred to the Olanesti BPS for accommodation.</p> <p>Note that Palanca BCP is under joint border control (with Ukraine), which may jeopardize the safety of asylum seekers displaced from Ukraine.</p>
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In our opinion, all future BPSs and BCPs must have sufficient premises for the temporary accommodation of asylum seekers (including beneficiaries of temporary protection, humanitarian protection). These premises must be properly equipped with the necessary facilities (including for vulnerable groups), minimum accommodation, food, water, shower, emergency medical care, telephone call, access to lawyers or diplomatic missions, translator, and clear information about their rights, obligations and administrative process.

4.4. Recording and reporting incidents

As mentioned above, in many BPSs/BCPs there are problems with keeping written records of data, information, and recording of incidents. Although, all of them claimed that in case of border incidents these are immediately reported to the dispatch, where the respective events are recorded and reported to the prosecutor or GIBP management immediately.

In some BPSs, Registers of complaints of acts of torture were observed (which did not contain entries from the moment of their issuance). Similarly, BP employees do not record in the registries cases of application of physical force and special means. These facts are documented at the Regional Directorates after the report to the dispatch. All of them mentioned that they are aware of the obligation to file reports on behalf of the hierarchical chief and prosecutor in the event that force is applied.

Similarly, the shift heads claimed that they are aware of the task of reporting to OI the incidents at the border, as requested by the People's Advocate in 2020. Another form of reporting is to draw up a **detailed report** on the activities conducted at the end of each shift. These reports are official service documents and are kept in the BPS archive.

However, we believe that one of the mechanisms to protect employees against forms of abuse is **to record and report all incidents** at the border to the prosecutor's office (deaths, suicide attempts, self-harm, attacks on the border guard, detention of the person with injuries, application of force and means against the person, etc.), if necessary, to the Ombudsman Institution. This should be a systemic process, properly organized. Similarly, employees must have safeguards against retaliation in case of reporting. Given that the number of cases of illegal crossing and organization of illegal migration is increasing significantly, this mechanism to protect employees against unjustified complaints is extremely important and is to be implemented by the GIBP as soon as possible.

Also, here, we note that BP employees are to be provided with as many practical physical training courses as possible on the application of firearms, use of force and means; negotiation and conflict management; non-discrimination and human rights; mechanisms to prevent forms of abuse, etc. The attitude towards training must be appropriate.



avocatul
poporului
OMBUDSMAN

In the light of the findings of the Thematic Report, the People's Advocate (Ombudsman), being guided by the provisions of paragraph 2, Article 24 of the Law No. 52 of 03.04.2014 on the People's Advocate (Ombudsman):

RECOMMENDS

To the MINISTRY OF INTERNAL AFFAIRS:

1. Examine in detail the Thematic Report and develop, in collaboration with the relevant institutions, a Plan to implement the recommendations, including a clear mechanism for monitoring and reporting regularly to the Ombudsman Institution on progress.
2. Support the General Inspectorate of Border Police (GIBP) in identifying the necessary financial resources to improve the working conditions and remuneration of staff, including by adjusting the remuneration policy and granting bonuses for employees in border areas at increased risk.
3. Initiate the process to review the regulatory framework in order to eliminate contradictions between the Law on the State Border, Law on the Legal Regime of Aliens and Law on Asylum in the Republic of Moldova, ensuring consistency in the application thereof, in particular on entry into and exit from the country.
4. Propose to the Government and Parliament that terms such as "national alert", "nominal record", "international obligations" and "national interest" be clarified in the legislation so that they are clearly defined and uniformly interpreted by the applicable institutions.
5. Initiate an inter-institutional analysis to review the regime of apprehension and detention of aliens, setting out the exact tasks of the GIBP and other relevant institutions, as well as clear coordination mechanisms.
6. Initiate the process of decriminalization of illegal crossing of the state border (Article 362 of the Criminal Code) for asylum seekers, in line with international standards and avoiding criminal sanctioning of refugees who cross the border seeking international protection.
7. Decide on amending the restrictive provisions of paragraph 1, letters a and b), Article 23 of the Law on the State Border, so that the application for asylum will not be prevented by the lack of valid documents or sufficient financial means, or hold a forged or altered travel document in order to guarantee the rights of potential asylum seekers.
8. Decide whether to annul or suspend the application of paragraph 2 Article 23 of the Law on the State Border, which provides for "immediate implementation of the decision on refusal" in order to guarantee the fundamental right to challenge the administrative decision.
9. Clearly decide on the conferral of powers of apprehension and detention to the GIBP, by stipulating them in an explicit normative framework, in order to eliminate the current vagueness on the responsibilities of this institution.
10. Initiate inter-institutional consultations to create a clear mechanism for challenging administrative decisions on refusal of entry, ensuring that they can be reviewed by an independent court before enforcement.
11. Support the modernization of the infrastructure of border crossing points by creating specially equipped premises for:
 - Asylum seekers - separate rooms in line with international standards;
 - Control in the second line - spaces adapted for detailed checks;
 - Detained persons - rooms meeting minimum standards for detention conditions;
 - Persons with contagious diseases - isolated rooms to prevent the spread of infection.

To the GENERAL INSPECTORATE OF BORDER POLICE:

1. Develop a Plan to implement the recommendations of the Report and ensure that the Ombudsman Institution is regularly informed about the measures taken.
2. Make an effort to identify financial resources for the effective remuneration of Border Police employees, including by granting specific bonuses to the basic salary of all Border Police employees.
3. Improve the IT systems used at the border to allow the recording and analysis of all grounds for refusal of entry so that they comply with the legislation in force and can be effectively challenged.
4. Ensure that asylum seekers are not interviewed on the grounds of their application for asylum by border guards, limiting themselves to the registration of the application and complying with the principle of unhindered access to international protection.
5. Keep detailed records of persons apprehended, detained and asylum seekers, including the exact time of their apprehension and transfer to the General Inspectorate for Migration (GIM), in order to ensure transparency and respect for fundamental rights.
6. Ensure that no asylum seeker is returned before his/her application has been assessed, in particular in the case of Ukrainian citizens who entered the territory of the Republic of Moldova irregularly.
7. Display clear information at all border crossing points on the rights of asylum seekers, access to legal aid and available complaint mechanisms.
8. Implement a real and efficient mechanism for submitting complaints in all BCPs/BPSs, ensuring easy access to secure mailboxes, envelopes, pens, and stamps required for sending petitions.
9. Ensure that all use of force, special means and cases of ill-treatment are separately documented and reports are centralized and analyzed in order to prevent abuses.
10. Cooperate with the Ministry of Internal Affairs to accelerate the modernization of border police sectors so that their infrastructure is in line with international standards.
11. Develop standardized procedures for the apprehension of migrants at the border so as to ensure procedural safeguards and effective control of this process.
12. Improve inter-institutional cooperation with the General Inspectorate for Migration so that the transfer of asylum seekers and detained persons is carried out as quickly as possible without undue delay.
13. Set clear criteria on the use of the record at the border, so that restrictive measures are applied in a transparent and justified manner, avoiding unjustified interference with the fundamental rights of individuals.

Thematic Report is public.

Annexes

Annex 1

Photo_OI_asylum seekers room_Ocnita BPS



Annex 2

Photo_OI_asylum seekers room_Basarabeasca BPS





avocatul poporului OMBUDSMAN

Photo_OI_detention and interview space_Leova BPS

