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SITUATION OF PERSONS APPREHENDED AND HELD IN POLICE CUSTODY

SPECIAL REPORT

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Chisinau, 2019

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List of abbreviations

ECHR – Convention for the Protection of Human Rights and Fundamental Freedoms
CCP – Code of Criminal Procedure
ECtHR – European Court of Human Rights
GPI – General Police Inspectorate
GIC – General Inspectorate of Carabineers
MIA – Ministry of Internal Affairs
PAO – People's Advocate Office

Introduction

The safety of person is not a negotiable condition, and shall be provided to every human being, regardless of his/her procedural status at a particular moment, throughout the interaction between the judicial and coercive bodies of the state. In other words, the restriction of certain rights imposed by the condition and procedural status does not allow, *inter alia*, disregarding the safety of the person. Restriction of the right to liberty can have irreversible 'side effects', which are totally contrary to human rights protection rules. When the health condition of a person apprehended and placed in police custody seriously worsens, or this extreme measure is applied to him/her in violation of his/her human dignity, or the apprehended person remains uninformed of the reasons for the apprehension or is not offered the possibility to contact his/her relatives, there is an abuse in each of these situations with all its moral and legal consequences.

Since apprehension, remand and imprisonment are extremely severe state interferences with a fundamental right, the mechanisms used for their application are (or should be) regulated by extended legal provisions, which are also clear and determine the scope of interference and the ways of ensuring the respect for the rights of the person who was apprehended, arrested or sentenced to imprisonment.

Even though apprehension is a short lasting measure, by its nature it is a deprivation of liberty, and the Police is not only a state authority entitled to undertake it, but is also a guarantor of the legality and the reasonableness of application of this procedural measure of constraint. Thus, for the Police employees, apprehension also implies a number of obligations that concern the rights of the appended person. If they are not respected or are respected only formally, the legal consequences are serious for all directly or indirectly involved subjects: the police officer, the prosecutor, the suspect, the injured person, the state and society in general.

It seems that apprehension in the Republic of Moldova is a well-regulated measure, and procedural safeguards fully comply with the international standards applied in the case where the right to liberty is restricted. However, at a closer look, this statement is only partially true, especially

when the applied techniques and operating procedures are considered. Any action taken in connection with apprehension should be clear and standard in nature: from the decision to apply this measure, to the escort, transport and placement in detention. There is an obvious lack of consistency, a poor management and a shortage of human resources and of funding in this area. The procedural provisions are not consistent with the operational management. This problem shall be urgently resolved: it shall be understood and hence addressed as a whole and in multiple sectors. Although the key to success lies with the Police, it is unlikely that we will progress without an open dialogue and cooperation with civil society, the academic environment, the public health system, the justice system and the People's Advocate.

As the *Code of Criminal Procedure* is not able to regulate in details all the above-mentioned stages of the apprehension, in order to meet the ECHR requirements to the legality of preventive detention, some regulatory acts subordinated to the law have also been developed and adopted.

To this end, on 30 March 2018, through GPI Orders No. 193, 194 and 195 the *Standard Operating Procedure for the placement of the apprehended person in the temporary detention isolator,* the *Standard Operating Procedure for the escort and transport of the person deprived of his/her liberty* and the *Standard Operating Procedure for apprehension* were approved. It seems that these acts are applied in parallel with the *MIA Order* No. 223 of 06.07.2012 *on the activity of temporary detention isolators of the Ministry of Internal Affairs,* the *MAI Order* No. 77 of 31.12.2013 *for the approval of the Regulation on the procedure for the identification, registration and reporting of the alleged cases of torture, inhuman or degrading treatment,* the *MIA Order* No. 5 of 05.01.2004 *on the procedure for the organization and carrying out of the activity of guarding, escorting and detaining apprehended and arrested persons in temporary detention isolators of police commissariats, etc.*

Having been developed by the GPI with the direct involvement of the civil society, in particular the Soros Foundation-Moldova, these *Standard Operating Procedures* cover not only procedural issues, but also contain provisions that can be considered as procedural safeguards of the fundamental rights of the person subject to apprehension, at all stages of the

application of this procedural measure of constraint. The practical value of these Standard Operating Procedures is obvious. However, we can find out that their implementation, regular adjustment and completion is still at the beginning of path. It needs a lot of will, training and multispectral approach.

Purpose and methodology of the study

Given the complexity of the institution and the regulatory novelties in the field of apprehension, the **purpose** of this report is to study comprehensively the apprehension starting from the regulatory and factual pre-conditions of using the deprivation of liberty and ending with the practical activity of placement and enforcement of detention of the accused. The analysis was carried out in the light of the safeguards and mechanisms for securing the procedural and fundamental rights of the apprehended person. Apprehension was explored in both regulatory and application terms. Thus, the procedure for apprehension, verification of its legality and reasonableness were examined by all subjects authorized by law to apprehend, escort and detain persons.

The relevance and the **purpose** of the study are also supported by statistical data that show that in 2018, 7,496 persons were apprehended, including 155 women and 105 juveniles. In total, 6,289 persons were placed in temporary detention isolators, 2,242 of whom were held in the Isolator from Chisinau.

From a **methodological** point of view, the report is based on the analysis of the regulatory framework applicable to the results of 36 visits made by the People's Advocate throughout 2018, on the interviews with Police employees, prosecutors, apprehended persons and employees of the TDI medical service, as well as on the previous monitoring reports of the People's Advocate.

All of these, as a whole, made it possible to approach comprehensively the institution of apprehension and its use in practice. The interviews made it possible to establish not only whether the fundamental rights of the apprehended person were respected, but also the position of practitioners on the problematic aspects of applying the relevant rules.

The monitoring visits and interviews with the apprehended accused, in their turn, completed, confirmed or contradicted the police employees' reports and their conduct in real and specific situations.

This report provides an overview of the apprehension as institution. The authors try to find out whether the rules and mechanisms of application are

clear, accessible and predictable. Of course, the authors do not claim to have revealed the truth as a last resort. They seek rather to put into discussions the need for a detailed legislation and for the development of an adequate management that would make the respect for human rights at this real and visible stage possible rather than illusionary.

I. The process of deciding to apply apprehension

1.1. The subject authorized to decide to apprehend a person

The criminal procedure set up measures of constraint to ensure the execution of the sentence or the compensation for the damage caused by the criminal act. Their purpose is to restrict certain rights of the accused, whose free exercise may have a negative impact on the fair resolution of the case. In the legal system of procedural measures of constraint, remand and apprehension have a central place due to the degree of interference with the fundamental right to free movement, since in fact they are measures of deprivation of liberty. Therefore, according to Art. 165 (1) the *Code of Criminal Procedure,* **apprehension** is deprivation of liberty of a person for a short period of time, which is not longer than 72 hours. Depending on the subject of apprehension, the circumstances or the purpose of this measure, the law sets maximum special time limits of 24 hours (in the case of apprehension of juveniles) and 6 hours (if apprehension is aimed at identifying the person). The *Contravention Code* allows undertaking the apprehension measure, which it defines as a short-term limitation of the liberty of the individual. Both regulatory acts admit the use of apprehension for strictly established reasons only.

It should be pointed out that, given the case law of the ECtHR (see, for example, *Bendenoun v. France,* § 47; *Lauko v. Slovakia*, §58; *Ziliberberg v. Moldova*, § 34, et al.), the contravention has a criminal nature, and the person subject to the contraventional measures of constraint is charged with crime. Consequently, the person apprehended for having committed a contravention enjoys the rights and safeguards provided by Art. 6 (1) of the ECHR equally as the accused that is apprehended within the criminal proceedings. Moreover, under Art. 424 of the Contravention Code, if in the course of examination of the contraventional case it is found that the violation contains constitutive elements of a crime, the official examiner

transmits the materials to the prosecutor or the criminal prosecution officer, subject to their competence. In this case, the failure to fulfil the obligations deriving from Art. 6 (1) of the ECHR may be an obstacle to the criminal procedural apprehension and, implicitly, to the conduct of the criminal proceedings in the case concerned.

As a measure of deprivation of liberty, apprehension imposes on the state, under Art. 5 of the Protocol No. 4 and Art. 2 of the ECHR, the positive obligation to provide sufficient and effective safeguards to protect the individual from any arbitrary deprivation of liberty. In this respect, the Code of Criminal Procedure stipulates in Art. 1 (3) that *criminal prosecution bodies and courts are required to act in the course of proceedings in such a way that […] no person is arbitrarily or unnecessarily subject to procedural measures of constraint or victim of the violation of other fundamental rights.* Being set forth in Chapter I of Title V of the CCP, apprehension is expressly attributed to procedural measures of constraint, calling, in this respect, for all the safeguards offered by the above-mentioned international act.

One of the main ways of securing the right to freedom and free movement is the exhaustive regulation of persons entitled by law to apprehend persons. According to the legal rules in force, apprehension of a person may be used by the prosecutor, the Police, the Border Police, the National Anti-Corruption Centre, the Customs Service, the State Tax Service, commanders of military units and troops, heads of military institutions, heads of prisons, commanders of ships and aircraft, courts and examining judges, carabineers[1]. Since they are authorized to deprive a person of his/her liberty by means of apprehension, their competence, as a rule, also covers making decisions in this regard, especially in flagrant cases in which they act as fact-finding bodies.

The pre-conditions of these authorities (to make the decision to append and to apprehend a person) are laid down in Art. 20 (f) of the *Law on the Activity of Police and the Status of Police Officer*, according to which *in the field of investigation of crimes and contraventions and criminal prosecution, the Police*

1 The subject of this study is only the unplanned apprehension by the Police, which is why the competences of the other subjects, who are not staff members of this specialized public institution within the Ministry of Internal Affairs, will not be covered.

is authorized to apprehend persons under the conditions laid down by the law. Under these legal provisions, the Police is represented by specialized subdivisions, such as the National Patrol Inspectorate, the National Investigation Inspectorate, the General Public Security Directorate, the General Criminal Prosecution Directorate and their territorial subdivisions. Among the employees of these specialized subdivisions, only criminal prosecution officers have the expressly regulated competence to use apprehension as a criminal procedural measure of constraint as laid down in Art. 166 of the CCP. As for the other specialized subdivisions, the criminal procedural law allows using apprehension only in the context of the fact-finding acts subject to the subsequent duty, laid down in Art. 273 (4) of the CCP to bring the apprehended person to the criminal prosecution body, which shall be carried out in the manner laid down in Art. 165–174 of the CCP.

Moreover, the *Law on the Activity of Police and the Status of Police Officer* divides somewhat the authorities of the police and of its specialized subdivisions established under and in accordance with Art. 14 of this law. Thus, Art. 20 of this Law governs the investigation of crimes, contraventions and criminal prosecution, making implicitly reference to the competence of the General Criminal Prosecution Directorate and of the National Investigation Inspectorate. Art. 21 of the *Law on the Activity of Police and the Status of Police Officer* governs the maintenance, provision and restoration of public order and security, the protection of the rights and legitimate interests of the individual and of the community by making reference, within the scope of the authorities specified in the law, to the competence of the National Patrol Inspectorate and of the General Public Security Directorate.

The provisions of Art. 22 of the same regulatory act authorise the Police to ensure the execution of justice, which would form the scope of interference of the Judiciary Police that remains a specialized subdivision of the General Police Inspectorate, although according to the Action Plan for the Implementation of the Judicial Reform Strategy 2011–2016, approved by the Parliament Decision No. 6 of 16 February 2012, the *Judicial Police* had to be subordinated to the Ministry of Justice. The new **Police Reform Strategy** and the **Action Plan for its implementation** underline the need to achieve this objective in the near future. Until then, however, the competences

of the Judicial Police remain shared, more arbitrarily, among its existing subdivisions.

Therefore, an evidence-based analysis of two texts of law is needed. Thus, according to Art. 273 (1) (a) and (a[1]), the Police, with its specialized and territorial units, as well as the Border Police, as an institution subordinated to the Ministry of Internal Affairs, have the legal prerogative granted by Art. 273 (4) of the CCP to apprehend persons. However, only the authorities of the Border Police, according to Art. 6 (4) (b), and the above-mentioned authorities of the National Investigation Inspectorate and of the General Criminal Prosecution Directorate, directly include the possibility to deprive persons of their liberty by means of apprehension. As for the maintenance, provision and restoration of public order and security, protection of rights and legitimate interests of the person and of the community, Art. 21 (1) (p) stipulates that the National Patrol Inspectorate and the General Public Security Directorate have the prerogative to use this measure of constraint only in order to *apprehend and detain in specially determined places foreigners who have entered illegally, stay illegally in, and are expelled from, the Republic of Moldova.*

Pursuant to Art. 22 of the *Law on the Activity of Police and the Status of Police Officer*, the Judicial Police has no authority related to apprehension, although, in the case of crimes committed during the court hearing, if the court, according to Art. 335 (2) of the CCP, orders the apprehension of the offender, its intervention is required. Furthermore, Art. 171 of the CCP, governing the procedure for apprehension in the case of crimes committed during the court hearing, obliges the court to send immediately a copy of the ruling and to bring the apprehended person to the prosecutor **under the escort of the judicial police**. In this particular case, the decision on the *de facto* apprehension is adopted by the court and the decision on the apprehension by law – by the prosecutor, who, according to the same rule, once the materials have been received and the apprehended person has been brought, shall act according to the law.

At the same time, the specialized police subdivisions include the 'Fulger' Special Purpose Police Brigade, the Dog Training Centre, the Technical, Criminal Investigation and Forensic Examination Centre, the Staff Inspection Directorate, etc. By the *Regulation on the organization and*

functioning of the General Police Inspectorate of the Ministry of Internal Affairs, approved by the **Government Decision No. 283 of 24 April 2013**, these specialized subdivisions have support functions, and the provisions of Clause 25 of this Regulation do not include competences related to making decisions to deprive a person of his/her liberty by means of apprehension. It should be pointed out that, according to the *Regulation* and contrary to the provisions of the *Law on the Activity of Police and the Status of Police Officer*, these are specialized subdivisions of the GPI, rather than of the Police, and hence it can be concluded that the *central unit of administration and control of the Police*, i.e. the GPI (according to the definition given in Art. 12 (1) of the *Law on the Activity of Police and the Status of Police Officer*) is the specialized state public institution under the subordination of the Ministry of Internal Affairs, which has the mission to defend the fundamental rights and freedoms of the person by maintaining, ensuring and restoring public order and security, preventing, investigating and discovering crimes and contraventions, i.e. the Police (as defined by Art. 2 of the *Law on the Activity of Police and the Status of Police Officer*).

Supporting the same position, Art. 24 (4) of the *Law on the Activity of Police and the Status of Police Officer* lays down that **'every police officer, throughout the country, regardless of his/her position, place where he/she is during or outside the working hours,** being informed of the existence of some circumstances or acts that endanger the rule of law, the life or health of persons or other social values, **is obliged** to report them to the nearest police subdivision and **to take possible measures** in order to prevent and stop the crime or contravention, to provide the first aid to persons in danger, **apprehend and identify offenders**, detect eyewitnesses and guard the scene of the event'. According to Art. 14 (1) of *the Law on the Activity of Police and the Status of Police Officer*, the specialized Police subdivisions are Police units with general territorial competence. Moreover, the same rule provides that the specialized subdivisions are established with the purpose of exercising the specific authorities of the Police, expressly laid down in Art. 18–23 of the *Law*. Clause 22 of the *Regulation on the organization and functioning of the General Police Inspectorate of the Ministry of Internal Affairs* expressly stipulates that the structure and regulations of activity of the specialized subdivisions shall be established by an order of the minister

of internal affairs. Coupled with Art. 14 of the Law, this rule points out the possibility of including in the authorities of the specialized subdivisions only those authorities that are directly governed by the law, making it impossible to provide these Police units with prerogatives, which the law does not offer having due regard to the established specialization.

The texts cited above, including the CCP of the Republic of Moldova, may lead to the conclusion that the decision of apprehension and its actual enforcement can be made and carried out by any employee of the specialized Police subdivisions, although he/she may not have, according to the status granted by the position held, the competence related to the prevention, investigation, detection of crimes, maintenance of public order, etc.

From these perspectives, the following few aspects affect the legality as defined by the ECHR, in terms of clarity and, implicitly, predictability of the law:

1. Lack of consistency between the provisions of the *Law on the Activity of Police and the Status of Police Officer* and those of the *Regulation on the organization and functioning of the General Police Inspectorate of the Ministry of Internal Affairs* in the part related to the specialized subdivisions and the status of their employees, and especially lack of delimitation between the GPI and the Police;
2. Lack of an explicit determination of the categories of the Police employees who can decide on and/or use apprehension by directly reporting to the specialized subdivisions concerned.

Being a measure of deprivation of liberty, apprehension necessarily requires the regulation **by law**, expressly and exhaustively, of the circle of subjects who are competent to decide on its use and, eventually, to use it. This assertion is based on the Constitution of the Republic of Moldova, which in Art. 25 (2) lays down, *inter alia*, that apprehension is permitted only in cases and in accordance with the procedure laid down by **law**.

Under the provisions of Art. 273 of the CCP, the Police, as previously analysed, and the Border Police (as part of the Ministry of Internal Affairs) are fact-finding bodies that have the legal prerogative to make the decision of apprehension, as long as the factual and legal grounds confirm it. The criminal prosecution body, although established within the Police, is a standalone body with extensive rights during apprehension and the only one entitled to

appreciate the need to continue the detention ordered by the other two subjects or to decide independently on the opportunity of apprehension. Under the *Law on the General Inspectorate of Carabineers*, No. 219 of 08.11.2018, carabineers do not only have the prerogative offered by Art. 24 (1) (l) to apprehend a person, but also the general obligation, which is also laid down for the Police employees, to take all necessary measures to prevent, suppress and/or further investigate the harmful act. Thus, according to Art. 25 (2) of the *Law on the General Inspectorate of Carabineer*, '**if there is a reasonable suspicion that certain circumstances or acts are harmful to the rule of law, the life of persons or other social values, each carabineer, regardless of his/her position, the place where he/she is during or outside the working hours, is obliged to** report them to the nearest subdivision of police or carabineers and **to take all possible measures** in order to prevent and stop the crime or contravention, to provide the first aid to the person in danger, **to apprehend and identify offenders**, to identify witnesses and secure the place where the event took place.'

From the legal provisions above, it results that carabineers are authorized to make the decision of apprehension, including in the case of crimes, without any provision of the CCP of the Republic of Moldova confirming this competence[2]. Since the General Inspectorate of Carabineers is a specialized state authority with a military status subordinated to the Ministry of Internal Affairs rather than to the Police, carabineers do not have the legal status of a fact-finding body, according to the criminal procedural law, and in the case of contraventions, the Contravention Code, in Art. 400 (4^1), provides for their competence related to the acts referred to in Art. 69, Art. 91 (1), Art. 911 (16) and (18), Art. 354, 355 and 357, which have been committed during the missions of the General Inspectorate of Carabineers carried out to maintain, provide and restore public order, to protect particularly important facilities, to prevent and combat terrorism, to ensure the state of emergency, siege and war. The competence of carabineers in this case is

2 In this case the provisions of Art. 168 of the CCP and the right of citizens to catch the person suspected for committing a crime are not concerned, because the rule is before to Law on General Inspectorate of Carabineers, is generally applicable and does not claim a distinct regulation with regard to carabineers.

alternative as the law provides that these illegal acts *are found out and examined **including** by carabineers.*

Given that, after the criminal punishments and some contraventional sanctions, procedural measures of constraint are the most restrictive for all the fundamental rights and freedoms, limiting the circle of subjects entitled by law to use apprehension, an indispensable safeguard is not only the right to liberty and safety, but also the compliance with the general requirement of legality and proportionality, which is imperatively required by the ECHR. As long as the law does not meet the criteria of clarity, accessibility and predictability, it is incompatible with the provisions of this international regulatory act.

Based on the analysis of the legal texts referred to above, two ways of forming the decision to use the apprehension measure can be outlined:

1. If apprehension is carried out by the police, as a fact-finding body, the decision-making process has two stages:
   - Determination of the need to use apprehension by finding the reasons and grounds set forth in the law by the fact-finding body of the Police;
   - Verification of the legality and reasonableness of this decision by the criminal prosecution body or prosecutor, as the case may be, which may or may not confirm them by drawing up the report on the apprehension by law.
2. If apprehension is carried out directly by the criminal prosecution body, the finding of the reasons, the identification of the grounds and the making of the decision of apprehension take place in a single stage.

In both situations, the result of the decision-making process found in a apprehension report of the criminal prosecution body will be verified by the prosecutor, who according to Art. 167 (1) is to be informed within 3 hours of apprehension. He/she verifies the legality of apprehension of the person (Art. 52 (1) (13) of the CCP). Therefore, if apprehension is used by carabineers, the border police or the police, the apprehension process follows two procedural stages and, if used by the criminal prosecution body, only the relevant decision is made.

Based on the provisions of the *Standard Operating Procedure for apprehension,* and reporting them to the Police subdivisions, the decision to use the

factual apprehension is made by the police employee, who obviously may also be the criminal prosecution officer, but the decision to order the continuation of this procedural measure of constraint shall be made exclusively by the criminal prosecution officer[3].

1.2. Circumstances underlying the decision of apprehension

The aforementioned perspectives do not refer to the psychological aspects of the formation of the decision of apprehension, which exist before and/or are inherent to the other stages. Moreover, the psychology of the formation of the conviction related to the need for the deprivation of liberty is directly related to the reasons and grounds for apprehension, which, if exist, generate a sequence of logical-procedural operations.

In the criminal procedural law, all these circumstances define the concept of *reasonable suspicion*, which, in the text of Art. 6 (4) [3] of the CCP is *the suspicion resulting from the existence of acts and/or information that would convince an objective observer that a crime attributable to a particular person or persons have been committed or its commission is being prepared and that there are no other acts and/or information that remove the criminal nature of the act or prove the person's non-involvement.*

The case-law of the ECtHR deals with the concept of *the reasonableness of suspicion* or *obvious reasons for suspicion* that the person, in respect of whom the decision of apprehension could be made, would have committed the crime. This is appreciated on the basis of acts or information likely to convince an objective observer that the individual concerned might have committed the crime (*Ilgar Mammadov vs. Azerbaidjan*, p. 88; *Erdagöz vs. Turkey*, p. 51; *Fox, Campbell and Hartley vs. The United Kingdom*, pct. 32; *Selahattin Demirtaş vs. Turkey*, p. 161). The sufficiency of facts and circumstances is appreciated specifically for this stage and does not need evidence to convince the independent observer of the person's guilt or, to a sufficient extent, to make it possible to decide on his/her conviction.

3 Except where the prosecutor has competence, either by dealing with the case in general or by merely ordering the detention.

However, the intimate conviction about the existence of a reasonable suspicion shall be based on all circumstances of the case, and in the event of an unplanned apprehension by the police, on the conduct of the person, the circumstances giving reasons to believe that the crime was committed, the external materialization of the subject's intentions that could be appreciated, from the point of view of the law, as a reason for apprehension. It is important that the act, in respect of which there are sufficient reasons to believe that it was committed, is a crime within the meaning of the ECHR. In this regard, the legal classification of the act according to a criminal rule governed by domestic law is not sufficient, but it is important to appreciate the nature of the procedures as well as the degree of severity of punishments. These latter two aspects pursue the purpose of excluding the exclusive competence of the state in qualifying acts as criminal, and thus in avoiding to fulfil its positive and negative obligations under Art. 5 of the ECHR by attributing such acts to contraventions, crimes or the like *(Benham v. The United Kingdom,* p. 56; *S., V., A vs. Denmark* (the Grand Chamber), p. 90).
According to the *GPI Order* No. 195 of 30 March 2018 *for the approval of the Standard Operating Procedure for apprehension*, 'reasonable suspicion' is *the suspicion resulting from the existence of acts and/or information that would convince an objective observer that a crime attributable to a particular person or persons have been committed or its commission is being prepared and that there are no other acts and/or information that remove the criminal nature of the act or prove the person's non-involvement.* Therefore, when making the decision of apprehension, the employee of the Police, the General Inspectorate of Carabineers, the Border Police, provided by law with such authorities, should not only analyze the factual situation that could be classified as a committed or planned crime, but also to assess whether there are objective criteria that would indicate the circumstances that deny the criminal nature of the act. In order to avoid the unjustified apprehension, the official subject shall also report the information of the acts and factual circumstances to the person who may be apprehended so that he/she can objectively determine the possibility of his/her involvement in the crime.
From another perspective, according to the CCP regulations, apprehension can be carried out with respect to a group of persons who do not necessarily (until the apprehension by law) have a procedural status, as well as

with respect to the suspect, the accused, the defendant and even the convict. The finding of the existence of a *reasonable suspicion* will be made differently, depending on the particular factor as well as the existing evidence concerned. The issue of ensuring the fundamental rights, in the light of sufficient evidence to find out a reasonable suspicion, arises in particular in the case of apprehension of a suspect, under Art. 166 of the CCP, or of a subject who will acquire the status of suspect by the act of apprehension. If flagrant crimes or detection on the body, the clothes, in the place of residence of the person, in his/her vehicle of **obvious** traces of the crime would **also** justify an objective observer deciding on the use of apprehension, then detection of traces left by that person at the scene or his/her attempt to hide are grounds that let the competent subject to appreciate at his/her own discretion the need for apprehension, as he/she is supposed to know more circumstances than the independent observer. In this case, the decision of apprehension is based more on evidence of behaviour or indirect evidence than on the objective circumstances of the factual situation. Obviously, as the case-law of the ECtHR provides for, the evidence required for apprehension shall not be the same, in terms of their evidential value, as those that justify conviction.

However, each evidence taken separately and all evidence as a whole (existing at the time when the decision of apprehension is made) shall convince the person who decides on the factual apprehension, and then the person that uses the apprehension by law, that the acts, the attitude of the person, the nature and circumstances of the committed harmful act include at least one of the grounds provided by the law for the apprehension of the person. In this context, this refers obviously to the absolute conviction (although related to that timeframe) that a harmful act has been committed, that the act is provided for in the criminal law as a crime, that the person has committed the act and there is no circumstance preventing the prosecution, the trial or the criminal liability of the person for whom the decision of apprehension is made. This conviction shall be established in the apprehension report, which shall contain, *inter alia*, a detailed description of the above-mentioned aspects, from which the reasonable suspicion also derives.

For some grounds, the law indirectly lays down less strict criteria for the verification of reliable and sufficient reasons for taking this procedural

measure of constraint. It is, for example, the case of apprehension at the scene when the subject is caught while committing the crime, or immediately afterwards, or the case of identification by the victim or by the eyewitness, etc., when, at the time when the decision of apprehension is made, the evidence that forms the conviction are direct. Instead, the circumstance that the person tried to hide or that traces thereof were found at the scene of the crime, whether there are reasonable grounds that he/she will commit new crimes, will prevent establishing the truth or will avoid the criminal prosecution, shall be supported by a set of evidence sufficient to confirm not only the reasonable suspicion that the person has committed the criminal act, but also that it is found in a way that would convince an independent observer that the actions/inactions of the subject is a ground for the apprehension governed by law.

Relating these regulatory provisions to the practical work of police employees, the *Reports on the preventive visits of representatives of the People's Advocate Office* (hereinafter the PAO) reveal that most apprehensions are carried out in criminal cases in which the criminal proceedings have already been initiated, and are ordered in respect of those persons whose identity is known. In this respect, it can be found out that the decision of apprehension is made having due regard to the circumstances of the case, which confirm the reasonable suspicion of the commission of the crime and should therefore support a legal and justified apprehension. However, as the statistical data provided by the Police Inspectorates, the PAO show, the decision of the *de facto* apprehension was not always followed by an apprehension by law or a deprivation of liberty by means of arrest ordered by the court. Although this fact does not expressly indicate the illegality of apprehension or the lack of its grounds, it is, however, a sign of inappropriate deprivation of liberty.

Thus, the statistics of persons apprehended in different regions show that:

- In 2017, Cahul PI apprehended 105 persons, 85 of whom (approx. 81%) were later released, and only 20 were arrested (only one of whom was placed under home arrest). In 2018, until 17 August 2018, 58 persons were apprehended, and 34 of them were released. Of the 58 apprehended persons, 22 were remanded, and 2 were placed under home arrest.
- During 2017 Criuleni PI apprehended 78 persons, 31 of whom were released, and 47 of them remained in detention as the court ordered their

remand. Therefore, in about 40% of cases, the court found that it was not necessary to extend the detention. In the first four months of 2018, Criuleni PI apprehended 11 persons, 9 of whom were released.

- Balti PI ordered apprehension in 2016 in 121 cases, of which only 27 persons (22.3%) were released; in 2017 it ordered apprehension of 129 persons, for 88 of whom (68.2%) the court ordered to extent the detention by means of remand. Until 23 August 2018, 65 persons were apprehended by the criminal prosecution body, 14 of whom were later released.
- During 2017 Dubasari PI ordered apprehension as a procedural measure of constraint in 47 cases, in which extension of the detention was ordered later by the court only in respect of 25 persons; for the first four months of 2018 apprehension was applied 15 times, and for 11 persons the prosecutor found the need to continue the detention, submitting to the examining judge a request to undertake the preventive measure in the form of arrest.

1.3. Stages of the apprehension decision-making process

The issues discussed above relate mainly to the psychology of making the decision of apprehension, the acts, circumstances and necessary and sufficient conducts in this respect. However, they do not concern, in any form, the procedural exteriorization of these cognitive and logical processes, which not only the grounds, but also the legality of apprehension depends on. Indeed, the coincidence of the reasons and the grounds for apprehension are included in the legality, which, however, is much wider in terms of content.

Based on the previously analysed provisions of Art. 166 (6) of the CCP, indirectly, this regulatory act makes difference between factual apprehension/ de facto apprehension and apprehension by law, as defined in the *Standard Operating Procedure for apprehension*, approved by the GPI Order No. 195 of 30 March 2018, for which the stages of apprehension decision-making process are also partially different.

Thus, the *de facto apprehension* has a decision-making process consisting of several stages:

1. finding out the factual circumstances (reasons) justifying the recourse to a certain procedural degree of constraint;
2. appreciation of the opportunity to choose apprehension as a means of preventing the continuation of the criminal activity or of achieving other purposes invoked by the criminal procedural law;
3. strengthening the reasons for apprehension with the grounds provided by the law in order to determine the legality and the reasonableness of the decision made.
    1. **Finding out the factual circumstances (reasons) justifying the recourse to a certain procedural degree of constraint** implies the appreciation, by the subject entitled to make the decision of apprehension, of the circumstances of the act and of the personality of the offender in order to determine whether they allow and/or require the apprehension of the person concerned. This stage clearly relates to the appreciation of the reliable reasons (reasonable suspicion) of supposing that a particular person has committed the criminally harmful act.
    2. **Appreciation of the opportunity to choose apprehension as a means of preventing the continuation of the criminal activity or of achieving other purposes invoked by the criminal procedural law.** The national criminal procedural law does not oblige the competent subject to use apprehension only when this procedural measure is legally justified, but also necessary, regulating in this regard alternative measures that would ensure that the accused has a proper behaviour without an interference with his/her right to physical freedom that is incommensurate with the committed act, his/her personality, the particular circumstances of the case, etc. Consequently, apprehension, like arrest in fact, is a measure that will be ultimately taken, when, obviously, the other restrictions laid down by the law are not sufficient to ensure that the purpose of the criminal proceedings is achieved.
    3. **Strengthening the reasons for apprehension with the grounds provided by the law in order to determine the legality and the**

reasonableness of the decision made. According to Art. 167 (1) of the CCP, *for each case of apprehension of the person, the criminal prosecution body shall draw up a apprehension report, specifying, inter alia, the grounds and reasons for apprehension.* Therefore, the law makes an essential difference between the *reasons for apprehension* that are the factual circumstances of the case underlying the decision of apprehension, and the *grounds for apprehension* that are expressly provided for by the law for different categories of charged persons – the suspected, the accused, the defendant, the convict, and other categories of persons who may be subject to this procedural measure of constraint. For the decision of apprehension of a person to be legal and well founded, it is necessary that at the time of making it the competent subject finds out that the reasons established by him/her in a particular case match the conditions of at least one of the grounds laid down in the CCP for the apprehension of the subject. Annex No. 2 to the *Standard Operating Procedure for apprehension*, approved by the GPI Order No. 195 of 30 March 2018, which contains the sample report of the de facto apprehension also provides for the need to include in the procedural act the grounds for de facto apprehension, and points out the need to inform the person of the circumstance in connection with which he/she was apprehended. Point 5 of the same regulatory act governing the person's initial information prescribes the obligation of the person, who made the decision and carried out the actual apprehension, to inform the person concerned of the reasons and grounds for the apprehension. In the context of these last two regulations, the reasons and grounds for apprehension are not clearly distinguished. Furthermore, it is not made clear which grounds are applicable, since apprehension can be carried out both under the Contravention Code and under the Code of Criminal Procedure. The provisions of the first regulatory act above also obliged the subject who apprehends the person to specify in the report the reasons for apprehension (Art. 434 (1) of the Contravention Code). Moreover, Art. 376 (4) of the Contravention Code governs the obligation to inform only about the reasons for apprehension. Art. 376 (3) of the same regulatory act

extend the obligation to inform about the circumstances of the act and its legal classification, which in fact refer to the same reasons for apprehension. Although Art. 433 (1) does not refer directly to the grounds for apprehension; it governs them similarly like the Code of Criminal Procedure. From the above perspectives, the reasons and grounds for apprehension shall be clearly distinguished so as to ensure the legality at the time of the de facto apprehension of the person, the right to information and the defence of the apprehended person. Furthermore, since the contravention may be reclassified as a crime, in order to ensure that the purpose of the criminal process is achieved, it is important for all the safeguards of fundamental rights to be provided when this need arises, that is, from the moment on which the decision of apprehension is made. At the same time, given that, from the ECHR perspective, the examination of the initial legality begins with the quality of the law, it is important that it meets the requirements of clarity and predictability.

Once all the requirements laid down in the regulatory act for the *de facto* apprehension are met, in the light of the above stages, the required measures shall be made to determine whether this deprivation of liberty shall be followed by apprehension by law. In this respect, according to Art. 24 (4) of the *Law on the Activity of Police and the Status of Police Officer* and Art. 25 (2) of the *Law on the General Inspectorate of Carabineers*, police officers and carabineers, at the time when the criminal or contraventional act is found out, are obliged to inform the nearest police subdivision in this regard. However, the practical way in which the actions necessary for the apprehended person to appear before the criminal prosecution officer/prosecutor, are carried out, is not described in a regulatory manner.

The representative of the criminal prosecution body will be the one entitled to make the decision to extend the detention or to release the person. According to the *Standard Operating Procedure for apprehension*, apprehension by law may be used only by the representative of the criminal prosecution body, by drawing up the apprehension report.

In this respect, the apprehension decision-making process involves, in its turn, several steps to be followed by the criminal prosecution officer:

1. Verification of the reasonable assumption that the alleged crime has been committed by the de facto apprehended accused. The PAO reports and statistical data submitted by police inspectorates show the basis and the practical value of this step. In this respect, Balti PI, for example, during 2017, used apprehension in 129 cases, and 18 of the accused were released later by the criminal prosecution officer.
2. Verification of the correctness of the classification of the reason for apprehension based on the grounds provided by the law;
3. Selection of the procedural measure of constraint able to ensure that the purpose of preventing, suppressing, detecting the crime will be achieved by means of a minimum interference with the fundamental rights. and that the opportunity of apprehension is assessed. The system of procedural measures of constraint is enough complex to allow the criminal prosecution body and/or the prosecutor to use the necessary and sufficient procedural mechanism enabling to achieve the purpose at the relevant stage of the criminal proceedings.

Therefore, detention is not a procedural obligation for the competent subject, who has a discretionary right in this respect.

At the same time, it is important to emphasize that *discretionary* does not mean out of law, but on the contrary, in strict accordance with its letter and spirit. The release of the apprehended person has, or may have, if appropriate, an impact on his/her procedural status, including in the light of the principle of *non bis in idem*. For these reasons, when deciding on the application of apprehension by law or the release of the person, the criminal prosecution body shall take the necessary measures to ensure that the immediate purpose of the criminal proceedings is not affected.

Given the degree of interference with the fundamental right to physical freedom, the procedural law provides for a check of the legality of the person's apprehension by the prosecutor through the rule laid down in Art. 52 (1) (13), guaranteed by the obligation of the criminal prosecution officer to inform in writing the prosecutor, as laid down in Art. 167 (1) of the CCP. As a result, the final decision on the legality and reasonableness of apprehension shall be made by the latter.

These arguments are also confirmed by the practice of Balti PI, in respect of which the statistical data submitted by the PAO show that in 2016,

apprehension was ordered with respect to 121 persons, 21 of whom were released by the prosecutor; in 2017 – 129 persons were apprehended, 13 of whom were released by the prosecutor; in 2018 (until 23 August 2018) apprehension was ordered with regard to 65 persons and the release was ordered by the prosecutor in 13 cases. Statistical data of Causeni PI also show that the prosecutor exercises his/her discretionary right to decide to release the apprehended person. In this respect, in 2017, 29 persons were apprehended, 8 of whom were released by order of the prosecutor, and in 2018 (until 10 August 2018) apprehension was ordered in 8 cases and the prosecutor decided to release only one person.

As for Dubasari PI, during 4 months of 2018, 15 persons were apprehended, 4 of whom were released by the prosecutor. In 2017, 47 persons were apprehended, 20 of whom were released by the prosecutor. As for the 18 cases of apprehension ordered by Ocnita PI employees in 2017, the prosecutor issued orders for the release of apprehended persons in 6 cases, and for the 8 apprehended persons in the first four months of 2018, similar procedural acts were adopted with respect to 4 persons.

In 61.1% of cases (13 out of 21 apprehended persons), for 2016, the prosecutor ordered the release of the person apprehended by Vulcanesti PI; in 2017, the prosecutor made the same decision in 31.5% of cases (6 out of 19 cases); and for the first four months of 2018 the same was ordered in 62.5% of cases (10 releases out of a total of 16 apprehensions).

A different practice is shown by statistics of Straseni PI. Thus, in 2016, in all the 19 cases of apprehension, the decision of the criminal prosecution officer was supported by the prosecutor not only by confirming the legality of apprehension, but also by submitting the appropriate request for arrest to the examining judge. In 2017, the prosecutor ordered the release of only 3 out of 30 apprehended persons, and in the first five months of 2018, for all 7 apprehended persons the state accuser asked the court to extend the detention based on a request for remand in 6 cases and a request for home arrest. At the same time, the total number of apprehensions in Straseni municipality should be emphasized, as in the case of the districts of Vulcanesti, Causeni, etc. it falls within an average limit per country compared to Balti IP, for example.

Similar examples of the practice of confirmation/refusal by the prosecutor of the initial decision of apprehension can be found in the following statistical data:

Police Inspectorate	Year			
	2017		2018 (the first 4 months) *	
	Apprehended persons	Released persons	Apprehended persons	Released persons
Orhei	91	12	21	1
Soldanesti	19	2	2	2
Soldanesti	19	2	2	2
Taraclia	45	12	26* (the first 6 months)	5* (the first 6 months)
Donduseni	16	3	15	6

1.4. Actions following the adoption of the decision of apprehension

The decision of apprehension shall always be confirmed by a procedural fact-finding act which, according to the *Standard Apprehension Procedure for apprehension*, the Contravention Code and the Code of Criminal Procedure, is the report of the de facto apprehension and of the apprehension by law, whose form, content, terms and procedure of preparation will be the subject of further analysis.

II. Apprehension by police

2.1. The subject competent to apprehend the person in the criminal proceedings

The Code of Criminal Procedure expressly provides for the subjects entitled to apprehend a person suspected of committing a crime. Thus, the prosecutor[4], the criminal prosecution body[5] and the fact-finding bodies[6] have *the right to apprehend*. In the context of this study, we will analyse the apprehension by police (as both a criminal prosecution body and a fact-finding body).[7] Police[8] is a specialized public institution subordinated to the Ministry of Internal Affairs (MIA), which has the mission to *defend human rights and fundamental freedoms* by ensuring/restoring public order and preventing/detecting crimes[9]. The manner in which the police subdivisions exercise (institutionally) their authority in the case of apprehension is analysed in Chapter I. Further, we will refer directly to the specific subject authorized to apprehend a person.

Under the national legislation, the police has the legal competence to apprehend *de facto* and/or *by law* the person suspected of committing a crime. Fact-finding bodies of the police can only apprehend *de facto* a person. Thus, when *each police officer*, regardless of his/her position and place (during or outside the working hours), notifies about circumstances or acts that jeopardize the rule of law, the life or health of persons or other social values, is obliged:

1. to report this to the nearest police subdivision;

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4 Art. 52 (1) (15) of the CCP

5 Art. 57 (2) (11) and Art. 166 of the CCP

6 Art. 273 (2) of the CCP

7 Art. 20 lit. (f) of the Law on the Activity of Police and the Status of Police Officer

8 The Police General Inspectorate (GPI) is the police administration and control unit with competence throughout the country. The General Criminal Prosecution Directorate within the GPI ensures the activity of all the criminal prosecution bodies.

9 Art. 2 of the Law on the Activity of Police and the Status of Police Officer

2. to take the possible measures in order to prevent and stop the crime or contravention;
3. to provide the first aid to persons at risk;
4. *to apprehend and identify offenders*;
5. to identify eyewitnesses;
6. to ensure the security of the place where the event occurred.[10]

In the case of apprehension of the person in the circumstances described above, *the police officer* is obliged to transmit the apprehended person together with the fact-finding documents and the material means of evidence to the criminal prosecution body/prosecutor, within at most 3 hours from the moment of the *de facto* apprehension.[11]

The criminal prosecution body of the police may carry out the *de facto* apprehension and the apprehension *by law* of the person suspected of committing a crime. The criminal prosecution body has the right to apprehend the person if there is a reasonable suspicion of committing a crime for which the law provides imprisonment for more than 1 year, and the requirements specified in the law are meet[12], as well as the apprehension on the basis of an order (of the prosecutor or the criminal prosecution body) for indictment, based on the order of the criminal prosecution body until the arrest, or for the execution of the arrest warrant in the conditions specified by the law.

The *Standard Operating Procedure for apprehension*[13] makes it clear which employees of the GPI subdivisions may apprehend a suspect of a crime: (1) employees of the GPI subdivisions, who according to the legal provisions may order the *de facto* apprehension and/or the apprehension *by law*, (2) other civil servants with special status within the MIA who have the right to deprive of liberty (to apprehend) a person.

Similar provisions are found in the *Law on the Activity of Police and the status of Police Officer*, which stipulates that *the status of police officer* also applies to the following categories of the MIA employees: (1) employees of the MIA subdivisions exercising the police authorities; and (2) the teaching

10 Art. 24 (4) of the Law on the Activity of Police and the Status of Police Officer

11 Art. 273 (2)

12 Art. 166 (1) of the CCP

13 Art. 166 (1) of the CCP

staff of the educational institutions of the MIA.[14] Although this law refers to the MIA Regulation in order to determine which categories of employees can exercise the police authorities, the Regulation does not contain clear and exhaustive provisions. We do not have clear provisions on the categories of the MIA employees who can exercise police authorities in respect of which the standard operating procedures in the field of apprehension would be enforceable. This uncertainty also arises because the legal force of some departmental acts is not very clear and if they are mandatory for other subdivisions of the MIA.

However, an example of a subdivision that exercises police authorities (in peacetime) is the General Inspectorate of Carabineers (GIC)[15]. Thus, the GIC has the competence to apprehend and escort apprehended persons[16], and the *carabineer*[17] has the competence to apprehend persons and explain their rights[18]. The carabineer may carry out *de facto* apprehension under the same conditions as the police officer. The Law on the General Inspectorate of Carabineers stipulates exactly the same obligation (described above in the case of the police officer) in Art. 25 (2).

Under this law, the carabineer has the competence to find out the crime and to carry out the *de facto* apprehension, although the Code of Criminal Procedure does not expressly provide the carabineer with the status of fact-finding body.

The new provisions do not make clear which category of carabineers can find out crimes and apprehend persons, as the law uses a generic term. However, the Informative Note on this draft law specifies that *the contacted, well-trained and prepared staff of the GIC will have the competence to find out a contravention and a crime.* It is further noted that *the qualified staff of the structure (GIC) will be authorized to find out certain crimes committed in public places during the mission, which is attributed to minor and less serious crimes.*

14 Art. 31 (4) of the Law on the Activity of Police and the Status of Police Officer

15 Art. 2 (2) of the Law on the National Inspectorate of Carabineers

16 Art. 22 (2) (e) of the Law on the National Inspectorate of Carabineers

17 According to Art. (4) (2) of the Law on the National Inspectorate of Carabineers, the carabineer is the person who does the military service in the GIC

18 Art. 24 (1) (l) of the Law on the National Inspectorate of Carabineers

Although the Informative Note points out the need to adjust the provisions of the Code of Criminal Procedure, this aspect was omitted at the beginning of the reform of the carabineer troops. The absence in the CCP and in other special laws of these competences will make it difficult for the carabineers to build these new skills. As mentioned above, it is not very clear how and if the standard operating procedures on apprehension will be carried out by carabineers.

It is too early to analyse the degree of implementation of these provisions since they were introduced in 2018, but it is certainly necessary to draw attention to how carabineers will exercise these competences and will ensure the respect for the rights of the person during apprehension. Both police officers and carabineers shall attend continuous training courses in the field of standard operating procedures on apprehension of the person and ensuring the respect for the rights of the person during apprehension. The interviews conducted by the PAO during the monitoring visits show that police officers are not aware of the approval of the new operational procedures and follow old instructions.

2.2. Procedure for apprehension by the police

The Code of Criminal Procedure refers to two forms of apprehension: *de facto* apprehension and apprehension by law, although it does not make difference between them. The *Standard Operating Procedure for apprehension*[19] provides for that *de facto* apprehension is carried out until the report is drawn up (this period shall not exceed 3 hours) and consists in the physical deprivation of liberty, while the apprehension by law implies the drawing up of the apprehension report. The CCP also stipulates that an adult can be also apprehended until the crime is recorded (to be carried out immediately or during at most 3 hours after the person has been brought to the criminal prosecution body).[20]

19 Approved by the GPI Order No. 195 of 30 March 2018

20 Art. 166 (4) of the CCP

Apprehension of a person can only take place if there is reasonable suspicion that he/she has committed a crime, and if (1) the person has been caught in the act; (2) the eyewitness, including the victim, make it directly clear that this person has committed the crime; (3) obvious traces of the crime are discovered on the body or on the clothes of the person, at his/her home or in his/her means of transport; (4) the traces left by the person are discovered at the scene of the crime; (5) he/she tried to hide or his/her identity could not be established[21]. A person may also be apprehended if (1) there are reasonable grounds to suppose that he/she will escape criminal prosecution, (2) will prevent discovering the truth, or (4) will commit another crime.[22]

The *Standard Operating Procedure for apprehension* lays down the following steps to carry out the *de facto* apprehension:

1. the police officer's request to the apprehended person to follow him/her to the police unit;
2. initial information of the apprehended person;
3. immobilisation of the person (if necessary);
4. accompanying and bringing the person to the police unit;
5. drawing up the *de facto* apprehension report.

The Standard Operating Procedure describes in details these steps, clarifying the role of the police officer at the stage of the *de facto* apprehension and determining how he/she shall act. Moreover, it clearly sets out the conditions under which the apprehended person shall be informed, when and how the police officer can use force, how to act if the apprehended person needs medical assistance. It also set forth the police officer's obligation to draw up the *de facto* apprehension report, prohibiting to replace it by an activity report or any other written document.

Although this is an obligation for the police officer, who carries out the *de facto* apprehension, the interviews conducted by the PAO during the monitoring visits show that this is not always the case. During the interviews, several employees of the police sections said that some police officers (official examiners) do not draw up *de facto* apprehension reports because they

21 Art. 166 (1) of the CCP

22 Art. 166 (3) of the CCP

do not have time, they do not know how to draw them up or do not want to do so. It seems that police officers do not have the necessary knowledge of how to draw up a *de facto* apprehension report and do not understand its procedural value.

These operating procedures complement the CCP's provisions and facilitate the police officer's activity at the stage of apprehension. Moreover, the operating procedures clearly explain how a police officer should behave in order to ensure that all the procedural rights of the apprehended person are respected.

Taking into account that these procedures have been developed recently, we cannot yet assess their degree of implementation, as well as their impact on the manner in which apprehension is carried out. These operating procedures shall be discussed and explained during the initial and continuous training of the police officers to ensure that they are properly complied with.

The *de facto* apprehension is determined by the drawing up of the apprehension report. Both the CCP and the standard operating procedures set out the content of the apprehension report and when it should be drawn up. The report shall include the grounds, reasons, place, year, month, day and time of apprehension, the physical condition of the apprehended person, complaints about his/her state of health, clothes (description of clothing), explanations, objections, requests of the apprehended person, the request to undergo a medical examination, including on his/her own account, the act committed by the person concerned, the results of the body search of the apprehended person, as well as the date and time when the report was drawn up.[23] The apprehension report is an important procedural document and deserves increased attention on the part of police officers. The information included in the report shall describe very clearly and in details how the apprehension took place.

Previous studies have shown that police officers typically have a formal attitude towards the drafting of this document and do not provide relevant details and information to determine the legality and the reasonableness of the apprehension. The report often contain summary information or references

23 Art. 167 (1) of the CCP

to legal provisions[24]. This has also been confirmed during the interviews with police officers conducted by the PAO during the monitoring visits. It has been found out that sample reports are used, but sometimes they do not contain all the required information (information on the state of health of the apprehended person, the objections of the apprehended person or the lawyer's signature may miss).

One of the reasons could be their attitude and the extent to which police officers understand the rights of the apprehended person and the purpose of apprehension.

Another problem that still exists and was also pointed out by the GPI in response to the PAO's inquiry of 11 October 2018, relates to the possibility of exceeding the 3-hour timeframe for drawing up the apprehension report if the apprehension was carried out during night time, as there may be difficulties regarding the presence of a lawyer providing state-guaranteed legal assistance. The same difficulty was reported by the majority of police officers interviewed by the PAO during the monitoring visits, in particular, the 3-hour timeframe for documenting the person does not seem to be enough when it is necessary to travel long distances from the place of apprehension to the police unit. For this reason, most of the interviewees suggested to revise this term.

The Standard Operating Procedure determines how police officers should behave with the arrested person during the research, as well as how they shall ensure the respect of his/her procedural rights. Moreover, it contains a very important provision on ensuring the legality of apprehension: *any action by the police officer whereby a person suspected or accused of committing an illegal act is prevented from leaving the place whenever he/she wishes or is deprived of his/her liberty shall be subject to procedural documentation.*

Development of the operating standards is a first step in making the apprehension process more efficient. To ensure that all the rights of the apprehended person are adequately ensured, these procedures shall be known, understood and enforced by the persons that order and carry out the apprehension.

24 T. Osoianu, M. Vidaicu, Reținerea persoanei de către poliție. Concluziile unei cercetări // p. 35

2.3. Term of apprehension and period of detention

The Code of Criminal Procedure sets the term of apprehension. Thus, a person cannot be apprehended for more than 72 hours (for juveniles – for more than 24 hours). The term of apprehension begins since the moment when the person is *de facto* deprived of his/her freedom.

A problem that occurred very often in the police practice was the wrong calculation of the term of apprehension. Often, the time of the *de facto* apprehension was not included in the total term of apprehension, and was wrongly indicated in the apprehension report.[25] The same problem was also revealed in the interviews conducted by the PAO during the monitoring visits. At the legislative level, the problem was resolved by the amendments made to the CCP (2016), whereby the following was made clear:

- the moment from which the term of apprehension shall be calculated is the moment of the deprivation of liberty;
- the term of apprehension also includes the time during which procedural actions were carried out immediately from the moment of deprivation of the person of his/her liberty and until the moment when the apprehension report is drawn up (if the person was deprived of the freedom to move during these measures);[26]
- the period of apprehension shall not be longer than the minimum term required for the detention of the person;

However, the PAO technical reports drawn up following the monitoring visits show that this problem still exists in practice. Reasons may be different: the police officers do not have knowledge of how to apply the amendments made; they misunderstand the importance of the accurate specification of the term of apprehension, or gain additional time for certain procedural actions.

Although the criminal procedure law provides that the apprehension of the person for identification shall not exceed 6 hours, most of the persons

25 T. Osoianu, M. Vidaicu, Reținerea persoanei de către poliție. Concluziile unei cercetări // p. 38

26 Art. 166 (6) of the CCP

interviewed by the PAO said that this provision is not complied with as there are no additional regulations. This fact shows that police officers do not know how to use this provision and would need guidance in this regard. It would be welcome to clarify how this provision should be applied in the standard operating procedure for apprehension.

Following the monitoring visits by the PAO, it has been revealed that sometimes the period of detention in temporary detention isolators may exceed 72 hours, although the law prohibits this. The monitoring mission targeted persons who passed in certain isolators more than 3 days, for example: isolator in Briceni PI (1 person – 6 days and another person – 9 days); Soroca PI (2 persons with arrest warrant), Basarabeasca PI (1 person – 4 days); Cahul PI (2–3 months). The reasons for detention for more than 72 hours also include the lack of identity papers. Moreover, the placement is maintained at the request of prosecutors or judges.

2.4. Ensuring the right to information of the accused during apprehension

The Code of Criminal Procedure in Art. 11 (5), Art. 64 (2) (2), Art. 66 (2) (2) and Art. 167 (1) provides for the right of the suspected/accused to be immediately informed of his/her rights, in a language that he/she understands.[27] Similar provisions are stipulated in Art. 25 (5) (10) of the Law on Police Activity and the Status of Police Officer (No. 320 of 27.12.2012).

The Code of Criminal Procedure contains general provisions on how the apprehended person is informed of his/her rights, providing for that this information shall include the rights of the apprehended person, in accordance with Art. 64 of the CCP, including the right to silence and the right against self-incrimination, to give explanations that will be included in the report, to enjoy the assistance of a defender and to make statements in his/her presence.

27 Art. 25 (5) of the RM Constitution, Art. 11 (5) of the CCP, Art. 376 (4) of the CC.

Under the Law on Police Activity and the Status of Police Officer, the *police officer* is authorized *to explain* to the apprehended person his/her rights[28] and to make known to him/her the rights and obligations arising in the case of the measures likely to restrict the rights and freedoms of the person.[29]
Although there are legislative provisions that could ensure the exercise of the right to information, the practice of criminal prosecution bodies is flawed. Previous studies have shown that the provision of information on the procedural rights is a formal one, and is usually carried out hurriedly by the criminal prosecution body. Information is written in small letters, in the CCP language. Very rarely, criminal prosecution bodies explain to the person what these rights mean exactly. If the suspect is not apprehended, the evidence of receipt of the extract from the CCP (text of Art. 64) is the signature made on a similar extract, which is attached to the criminal file materials. The fact of provision of written information on the rights and obligations of the accused is evidenced by the signature of the accused and his/her defender in the respective behaviour of the order of indictment (Art. 282 (3) of the CCP).[30] The same findings can be made based on the interviews conducted by the PAO. Thus, most interviewed police officers reported that:

- The rights of the apprehended person are usually made known by the criminal prosecution officer when that person is brought to the inspectorate at the stage when the apprehension report is drawn up or during the hearing.
- The criminal prosecution officer hands him/her over the list of rights and explains them, often in the presence of the lawyer, and the apprehended person confirms this by making a signature. Some police officers said that the rights are explained by the lawyer.

On the other hand, most of the apprehended persons interviewed by the PAO said that they had received a list of rights, but nothing has been explained to them (sometimes neither the lawyer has helped them to understand what rights they had). Moreover, some of them said that they were

28 Art. 25 (5) (10) of the Law on Police and Status of Police Officer.

29 Art. 26 (n) of the Law on Police and Status of Police Officer.

30 Ed Cape, Zaza Namoradze, Apărarea penală efectivă în Europa de Est, Chișinău: Cartier 2013, p. 186

not told that they had the right to silence, and others said that although they told the police that they did not know the state language, nobody helped them with the translation of the received list of rights. The lack of translators at police inspectorates was reported almost by all police officers interviewed by the PAO.

In this regard, the Standard Operation Procedure for apprehension clarifies several aspects, and namely:

- The person's initial information of his/her rights and the reasons for the apprehension is the duty of the police officer who carries out the *de facto* apprehension. The fact that this is not done (as results from the interviews made by the PAO) suggests that police officers are not aware of these provisions.
- The person should be informed at the place of the *de facto* apprehension, in simple and understandable terms, about the essence of the suspicion, the legal classification of the act, the grounds and reasons for the apprehension, the time of the apprehension;
- The police officer shall inform the person about (1) the right to enjoy legal assistance, (2) to silence and not to criminalize him/herself, (3) to notify relatives or third parties of his/her legal situation, (4) to enjoy medical assistance, (5) to be provided with translation/interpretation services, (5) to complain, (6) to be informed about the duration of the deprivation of liberty, and (7) to challenge the apprehension;
- The police officer makes available to the person the Letter of Rights, introduced in the police activity by the MIA Order No. 284 of 19.09.2016;
- The provision of the Letter of Rights does not replace the police officer's obligation to inform the person about his/her procedural rights. This provision is also applicable to the criminal prosecution officer, because the Letter of Rights does not contain all the prerogatives of the apprehended person.

These regulations guide police officers as to how and when to inform the apprehended person about his/her rights. Moreover, the operating procedures contain a sample Letter of Rights to be handed over to the apprehended person. The apprehension report is a document that certifies that the person has been informed of his/her rights, and shall be signed by the suspect. It is important for both police officers and lawyers to understand the

importance of explaining the rights of apprehended persons. Introduction of the Letter of Rights could improve the situation in this regard if it has been really handed over to apprehended persons. All these safeguards shall be ensured from the correct understanding by those who carry out the apprehension of the purpose of apprehension and the content (including the purpose) of the rights of persons during apprehension. Only in thus way we can really ensure a change in the attitude of the police towards the respect for human rights in the criminal proceedings.

III. Escort and transport of the apprehended person

3.1. Authority competent to decide on and escort and/or transport the apprehended person

Although the concept of *escort* is used both in the CCP, in the *Law on the Activity of Police and the Status of Police Officer* and even in a rule of incrimination of the Contravention Code, none of the above-mentioned regulatory acts provide a definition or at least an explanation in this regard. The *Standard Operation Procedure for escorting and transporting the person deprived of his/her liberty* (hereinafter referred to as the *Standard Procedure*), approved by **the GPI Order No. 194 of 30 March 2018**, describes the ***escort*** as *a number of activities carried out for the safe transport of persons deprived of their liberty to addresses where they shall be present.* In turn, ***transport***, according to the same regulatory act, *is the movement of persons deprived of their liberty for carrying out procedural activities or for ensuring the exercise of certain rights.* Escort involves specific safety measures that guarantee the safety of the accused deprived of his/her liberty, on the one hand, and the achievement of the purposes of the procedural action to which he/she is to take part, and of the criminal proceedings in general, on the other hand. Therefore, transport takes place only in the context of escort, as neither the *Standard Operation Procedure for escorting and transporting the person deprived of his/her liberty* regulates them separately.

Escort and transport are preceded by a procedural decision whereby actions are ordered in which the accused must participate. This may be the case of verification of statements at the scene of the crime, confrontation, experiment or other evidentiary proceedings, or the case of making known judgments delivered on the case, such as the refusal to initiate criminal prosecution, classification of criminal proceedings (according to Art. 274 (5) of the CCP), or the refusal to bring in an indictment, etc. The subject competent to decide on the procedural action, during which the apprehended person

shall be present, does not decide simultaneously on the establishment of the escort, but is entitled to request the escort, observing the terms and conditions established by the *MIA Order No. 5 of 05.01.2004 on the procedure for the organization and carrying out of the activity of guarding, escorting and detaining apprehended and arrested persons in temporary detention isolators of police commissariats*.

According to the *Standard Operation Procedure for escorting and transporting the person deprived of his/her liberty*, the escort of the person apprehended by law shall be carried out by:

- the head of the Police subdivision, which includes the police officer who has drawn up the apprehension report; or
- the head of the Police subdivision, which includes the police officer who coordinates the apprehension ordered by the prosecutor; or
- the head of the Police subdivision organizing and assisting the escort.

Under the same regulatory act, *the head of the Police subdivision may delegate the authority to establish and train the escort.* The subject to whom such authority may be delegated, the act whereby the relevant delegation is ordered, and the procedure to be followed in this regard are outside the regulatory scope.

In the case of the de facto apprehension, according to the *Standard Procedure*, the escort of the person to the Police shall be carried out by:

- the police officer who carried out the apprehension; or
- the police officers designated for this purpose, at the direction of the head of the Police subdivision.

Similarly to the situation found out in the case of the apprehension by law, in the case of the de facto apprehension regulated by the *Standard Procedure*, the regulation in terms of the procedure and the competent authority of the Police provided with the right to designate the police officers responsible for the establishment of and/or for the escort is not clear. This regulatory provision leaves no room for interpretation with regard to the determination of the authority entitled to rule on the escort although the *MIA Order No. 5 of 05.01.2004* includes certain regulations, without, however, making clear how to apply these two regulatory acts with the same subject of regulation.

At the same time, the *Law on the Activity of Police and the Status of Police Officer* makes reference to the escort of apprehended persons to temporary

detention isolators only in the context of the provisions governing the authorities of the police in the field of maintaining, ensuring and restoring public order and security, protection of legitimate rights and interests of the person and of the community, without providing any explanations or regulations on matters not regulated or poorly regulated by the *Standard Procedure*. Given the above, the national law is neither clear, nor predictable.
The composition of the escort is also briefly regulated in the *Standard Procedure* and the *MIA Order No. 5 of 05.01.2004*. Pursuant to Clause 4 of the *Standard Procedure, police officers authorized to establish an escort and to carry out the mission shall be part of the same Police subdivision as the police officer who drew up the apprehension report or coordinates the apprehension process ordered by the prosecutor.*
The escort may also include:
- police officers from rapid intervention units; or
- other units engaged in the area of national security; or
- other units that ensure public order.

A somewhat distinct regulation is found in the *MAI Order No. 5 of 05.01.2004*.
The situations in which the representatives of these authorities will be involved in the escort of the apprehended person are governed expressly, but not exhaustively. Thus, the number of persons deprived of their liberty, their actions in committing the crime, their affiliation to the organized crime group, the complexity of the case, as well as other circumstances to be appreciated by *judiciary bodies* are factual grounds that justify the establishment of the escort with the involvement of authorities other than the Police. In all cases, such a decision may only be made to protect civil society from the person being escorted and the life and health of that person from the actions of third parties. The *standard procedure* prohibits the unjustified use of intervention forces as well as their usual involvement in the case of escorting the apprehended person.
The People's Advocate noted the practice of the GPI subdivisions to escort persons under arrest from prison to insulator, from insulator to court, etc. The NPA does not intervene in this regard, both because of the staff crisis and the poor condition of the means of transport. The GPI received 20 modern vehicles for management purpose, and another 5 were purchased.

At the same time, the NPA does not have a sufficient number of cars to fully cover the escorting needs. In its explanation, the GPI noted that Law 320/2012 expressly provides for the mission of escorting persons by the GPI, and the NPA can escort only those whose sentence has not become final.
Taking into consideration the provisions of Art. 21 (k) of the Law 320/2012 on Police Activity and the Status of Police Officer, the Police shall ensure the detention of apprehended persons in temporary detention isolators and their escort. Therefore, the police's authorities are expressly limited to the detention of apprehended persons (for 72 hours), as well as to the escort of apprehended persons (to the criminal prosecution isolator). The police's competence ceases once the status of 'apprehended person' has changed to 'arrested/detained persons – with arrest warrant' or upon his/her transfer to prison custody. Subsequently, the mission of the prison administration intervenes (GD 437/2018) that performs the functions of escorting convicts, arrested persons and offenders.
The term *judicial bodies* used in the context of the provisions of the *Standard Procedure* may be interpreted in many ways, given that the national law does not use such a concept except in the context of the international legal assistance in criminal matters, especially Art. 1 (6) of the *Decision of the RM Parliament for the ratification of the Europe Convention on Mutual Assistance in Criminal Matters*, No. 1332-XIII of 26.09.97 and Art. 1 (3) of the *Law for the ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters*, No. 312 of 26.12.2012, as well as in one rule of the Contravention Code (Art. 425 (6^2). The Code of Criminal Procedure, the *Law on the Activity of Police and the Status of Police Officer,* the *Law on the General Inspectorate of Carabineers* do not contain any provision that makes it possible to determine the meaning of the concept used by the *Standard Procedure*. In this respect, the terminology used needs a regulatory coherence so that the systemic interpretation of the law, where the analogy is admissible, can be carried out.
The *Standard Procedure* lays down in Clause 8 an exception from the general rule that escort and transport shall be carried out by the team formed by the previously identified competent authority, according to which *medical institutions shall provide the means of transport and medical assistance*

during the escort of ill persons deprived of their liberty, based on Agreements of Collaboration[31].

During the preventive visits to 24 TDIs, the representatives of the PAO revealed that in 10 districts/municipalities the means of transport necessary to escort apprehended persons are in a poor condition and need to be replaced with new cars, which shall meet the technical and regulatory requirements: there are no such means of transport in 4 districts, and the TDIs have to use the guard unit to transport the apprehended persons. Thus, even though some territorial PIs received vehicles (mini-buses), they are not large enough and do not have space for personal belongings.

The actual situation per district/municipality is reflected in the following table:

Provision of TDIs with vehicles needed for escort		
Have special cars	**Have cars that shall be replaced**	**Have no special cars**
Balti (2 units)	Briceni	Basarabeasca
Cimislia	Cantemir	Ceadir-Lunga
Causeni	Donduseni	Taraclia
Floresti	Drochia	Leova
Comrat	Falesti	
Nisporeni	Glodeni	
Orhei	Ocnita	
Singerei	Straseni	
Ungheni	Stefan-Voda	
Vulcanesti	Telenesti	

At the same time, the People's Advocate emphasizes that the escort/transport is not carried out in safe conditions, including for police employees, and there were cases when they have become ill getting infected from the person being escorted,. Preventive visit reports also show an insufficient number of places in the means of transport, places for detainees and those

31 The agreement of collaboration between the Police General Inspectorate and the relevant ministry to which the medical services are subordinated is a precondition for the implementaiton of the provisions of the Standard Procedure in the field of granting medical assistance to persons deprived of their liberty to be placed in the TDIs. Although this regulatory act entered into force on 30 March 2018, such an agreement is not publicly available, which is why the need for and applicability of the Standard Procedure cannot be assessed in this respect.

for persons being escorted are not separated, and it is not clear how to separate detainees by sex (women and men) and by age (minors and adults) during transport.

If necessary, the police officer who orders or coordinates the apprehension under the authority of the prosecutor asks the interpreter to accompany the apprehended person to the hospital facility and to the TDI in order to ensure the translation of conversations with the apprehended person until the TDI staff arranges the placement in a detention room.

3.2. Procedure for escorting and transporting the apprehended person

Escort and transport of the apprehended person shall be carried out respecting the sequence of the actions regulated by the *Standard Procedure* formulated in such a way as to ensure the proportionality of the general social interest, as well as the fundamental rights of the accused deprived of his/her liberty by means of apprehension.

The provisions of the Standard Procedure deal with three forms of escort/transport of the apprehended person:

A. Escorting the apprehended person to the TDI;

B. Escorting the accused deprived of his/her liberty by means of apprehension to the place of the criminal prosecution or trial[32];

C. Replacement of the apprehended person in the TDI after escorting him/her to the criminal prosecution body, court, or for a right protected by law to be exercised.

A. Escorting the apprehended person to the TDI involves certain activities in several stages:

1. Identification of the TDI in which the apprehended person is to be placed. For this purpose:

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32 It concerns both the participation of the apprehended person in certain criminal prosecution actions and the provision of the presence of the apprehended person in order to ensure a right or interest protected by the law. The escort for participation in the trial is mainly aimed at ensuring his/her presence before the examining judge in the process of examining requests and complaints in the cases provided by the law.

a) The police officer who orders or coordinates the apprehension under the authority of the prosecutor checks the possibility of placing the factually apprehended person or the person apprehended by law in the nearest TDI from the place where the investigations were conducted;

b) The staffs on duty of the TDI, appointed by the head of the TDI, reports the number of available beds, so that the number of persons deprived of their liberty does not exceed, as far as possible, the detention capacity of the TDI. As an exception, the apprehended person will not be placed in the nearest TDI in the case of:

- the existence of the danger of impeding the proper conduct of the criminal prosecution, the apprehended persons may be placed in other TDIs;
- the person deprived of his/her liberty is placed in another TDI when his/her life or health is subject to real danger deriving from other persons deprived of their liberty. By order of the head of the TDI, the apprehended person, in the given situation, will be transferred to another TDI, unless there is a prohibition on the police officer who has ordered the apprehension or the prosecutor. The latter are informed about the dangerous situation and the need to change the place of detention before the decision to transfer is made by the head of the TDI.

c) If the TDI does not have available places, the police officer is required to request the same information from another TDI in the immediate vicinity.

3. Mandatory appearance at the hospital facility, in accordance with the collaboration agreement signed by the GPI and the relevant ministry, of the person deprived of his/her liberty to be medically examined before being placed in the TDI. Although it seems to be a prerequisite for the implementation of the Standard Operation Procedure, there is no evidence of its performance until now, and these rules are practically inapplicable.

However, there are positive examples of co-work in practice. Thus, the Ialoveni Police Inspectorate co-works with the district hospital (ambulance). The apprehended persons are not examined by the doctor because there is no doctor at the inspectorate. If at the time of the apprehension it is found that the apprehended person has body injuries, he/she is transported to the district hospital and then subjected to forensic examination. A similar approach can be found in the practice of the TDI of Cahul PI: if bodily injuries are found on the body of the apprehended person, before he/she is placed in the isolator, he/she is brought to the guard unit and the ambulance is called to document the case. All issues related to the state of health of the apprehended person are indicated in the apprehension report and, if necessary, the emergency service is announced. In Calarasi, the apprehended persons are examined only upon entering the temporary detention isolator, unless the worsening of the health condition is reported, when the involvement of the emergency medical service is requested. As a whole, Comrat PI follows the same procedure. Thus, when drawing up the apprehension report, a 'visual examination' of the apprehended person is carried out within the PI, he/she is asked about his/her physical condition, and then notes are made in the report. If bodily injuries are detected or the suspect invokes health problems, ambulance is called that fixes the bodily injuries and police makes notes in the apprehension report. At Donduseni, the monitoring visits revealed an even simpler procedure. In this respect, the persons to be apprehended are asked about their physical condition or if they complaint about the state of health, the corresponding marks are made in the apprehension report. The external examination of the apprehended person, in Dubasari PI, is carried out visually by the criminal prosecution officer when the apprehension report is being drawn up. As reported by the head of the criminal prosecution body, if bodily injuries are found on the body of the apprehended person, he/she is escorted to the district hospital for the determination of bodily injuries.

The medical examination process at Falesti, Taraclia and Ocnita has some peculiarities where, if there are no complaints about the state of health, the person is placed in the Temporary Detention Isolator and is examined there by a doctor. In Falesti and Ocnita, if the doctor finds bodily injuries, the prosecutor is notified and then he/she is transported to carry out a forensic

examination. The Straseni Police Inspectorate does not have a doctor, and the TDI activity was suspended. Therefore, the criminal prosecution officer makes entries in the apprehension report on the body examination. If injuries are found, the apprehended person is transported to the Straseni municipal hospital to carry out the expert examination. Following the visit to Soldanesti TDI, the People's Advocate found that the medical examination of apprehended persons is carried out formally or is not carried out at all, which raises serious concerns about the respect of the right to safety of persons in police custody.

An unacceptable situation was also observed during the monitoring visit of the PAO members to Soroca, where, according to the employees, the medical examination of the apprehended person can also be carried out in corridor, although both the Police Inspectorate and the TDI have special medical rooms.

The monitoring of the actual situation of the examination of persons detained at Stefan-Voda TDI was followed by the GPI's notifying the failure to comply with the relevant national and international rules. In this respect, the PAO has established that the provisions of Art. 175[1] of the Execution Code of the Republic of Moldova and of Clause 19 of the *Instruction on the activity of temporary detention isolators of the MIA* approved by the MIA Order No. 223 of 6 July 2012, according to which upon receiving or transferring apprehended persons to/from TDIs, they shall be necessarily subjected to the medical examination, and the relevant document shall be drawn up, and shall subsequently undergo a sanitary disinfection, in accordance with the requirements of the European Committee for the Prevention of Torture[33].

The findings made by the PAO do not reveal any case where the person was escorted to the medical facility to be subjected to the medical check-up before being placed at the TDI. However, a medical check before detention is carried out in most cases immediately before to the placement of

33 According to the rules of the European Committee for the Prevention of Torture, the medical examination of detainees placed in police custody is one of three fundamental safeguards against ill-treatment. The doctor should consult and examine each detainee as soon as possible after admitting him/her to the institution and then should examine him/her, if necessary, to detect physical or mental illnesses and to take all necessary measures; to separate detainees suspected of having infectious or commutable diseases; to detect physical or psychological defects that could harm the rehabilitation process and determine the physical capacity of work each detainee (SMR, Rule 24).

the person in the TDI, by the institution's paramedic. According to Clause 6 of the *Standard Procedure,* the medical examination before placement in the TDI is mandatory, and shall be carried out by **doctor**, who formulates better safeguards for the protection of persons against ill-treatment as the physical and health condition of the person will be monitored at all stages of the apprehension procedure and detention, and the medical check may be ordered after the body search at the time of placement of the apprehended person in the TDI (Clause 2 of the *Procedure for the placement of the apprehended person in the temporary detention isolator*, approved by the GPI Order No. 193 of 30 March 2018).

- The apprehended person is subjected to body check and, if the medical staff requests, the handcuffs of the escorted person are removed;
- Escorting police officers leave the medical room where the apprehended person is medically examined if the medical staff request so, but remain near the door of the medical room where the medical assessment is carried out in order to be able to intervene, if necessary;
- After the medical check-up, the apprehended person shall be handcuffed again, unless the doctor considers that eventual treatment may be affected;
- The medical record drawn up during the medical check-up is handed over to the escort in a closed envelope and the prescribed treatment is made available to the escort without leaving the escorted person;
- The escort carries out the body check of the apprehended person to ensure that he/she has not stolen certain goods then leaving the hospital facility.

3. The escort ensures that the accused is transported to the TDI, and immediately transmits the Medical Record and the prescribed treatment.

B. Escorting the accused deprived of his/her liberty by apprehension at the place of the criminal prosecution or trial

In essence, all the actions taken to ensure the presence of the accused placed in the TDI at the addresses where they shall be present constitute the legal escort procedure, which can be conventionally divided, into certain stages, as follows:

I. **Preparation for the escort and transport of the apprehended person.** This stage involves the following activities:

1. Before the escort activity begins, the person deprived of his/her liberty shall be informed of the place where he/she is to be transported;
2. He/she is informed that during escorting he/she has to comply with the rules of travel requested by police officers and the legal rules regarding the detention regime;
3. The escort checks the identity of the person deprived of his/he liberty. For this purpose, the person is required to introduce him/herself and this information is verified, according to the documents provided by the judicial bodies;
4. The escort assesses whether he/she has the documents necessary for the placement in the TDI, including the sheet of awareness, drawn up in accordance with the sample given in Annex 1 to the *Standard Procedure*. The sheet of awareness is a working tool developed by the police officers who carried out studies, and contains information about the person, obtained from the investigations, declared by him/her, by doctor or family. The sheet will accompany the person deprived of his/her liberty throughout the police custody, and the information is confidential and cannot be disclosed to third parties;
5. The person deprived of his/her liberty is controlled by the police officer prior to departure. His/her clothes and items are checked: a bottle of drinking water, food, papers to be submitted to the judiciary bodies or other institutions, medicines and doctor's prescription, as the case may be;
6. Before departure, the escorting police officers recommend the apprehended person to use the toilet room;
7. If necessary, the apprehended persons being escorted are immobilized by means of available equipment, generally using handcuffs. When using handcuffs, the hands of the person being escorted shall be in the back or in front. When the person being escorted shows resistance, tries to escape, to commit a suicide or to harm him/herself, handcuffs shall be used necessarily;
8. At the request of the chief of the escort, the escort may be accompanied by a translator.

II. Actual transport of the apprehended person implies:

1. Movement of the person being escorted, as a rule, by crossing the public space, to the place of the criminal prosecution or the trial of the case;
2. Regular check of the handcuff closing device;
3. Calling the Emergency Medical Service when the person deprived of his/her liberty claims a worsening of the state of health during escorting. Depending on the information received from the medical staff, the escorting police officers bring the person to the medical staff or wait the arrival of the emergency medical staff.

III. Escort during the criminal prosecution actions or activities necessary to exercise the rights of the apprehended person:

1. Before being made available to the criminal prosecution body or the court, the person placed under escort authority may discuss with the defender, once he/she proves his/her status to the chief of the escort and if the person deprived of his/her liberty expresses his/her consent, and the circumstances permit the conversation (escorting to a safe area, within an institution). During the conversation, police officers do not move away from the person being escorted, and the immobilization means are not removed;
2. The chief of the escort draws up a report specifying that the person being escorted has been granted the right to defence, and then makes him/her available to the criminal prosecution bodies;
3. Placement of escorted persons at their destination in specially arranged and permanently guarded premises of the police. If the judicial bodies do not have specially arranged rooms, the person being escorted will be guarded without interruption by the escort. The apprehended persons are guarded constantly during the criminal prosecution acts, with the exception of the hearings, where the presence of the escort is prohibited. Nonetheless, the criminal prosecution bodies may request the intervention of the escort in this case as well, in order to ensure the rule of law or to prevent escape;
4. In performing the above-mentioned activities, when the presence of the person deprived of his/her liberty under the authority of the escort is no longer necessary, the person deprived of his/her liberty

is allowed to sit down in an area where he/she is not in danger, he/she cannot, in turn, endanger people and can be easily supervised.

C. **Replacement of the apprehended person in the TDI after escorting him/her to the criminal prosecution body, court, or for the exercise of a right protected by law** involves the following actions:
   1. When arriving at the TDI, grades and names of escorting police officers, car number, date and time of arrival, and data of the apprehended person are entered into the TDI's records;
   2. The escort hands over to the TDI the apprehended person, the documentation provided by the criminal prosecution bodies, the medical documentation, the prescribed treatment, and the goods he/she has with him/her in the TDI;
   3. After the TDI staffs check the identity and the reasonableness of detention of the person, the escort leaves the TDI and the apprehended person remains at the disposal of the guards.

The procedure of escorting, however, implies not only a set of actions necessary to ensure the movement of the apprehended accused to the addresses indicated by the competent subject, but also a series of prohibitions and restrictions, laid down in regulatory acts, both for the person held in police custody and for the employees ensuring his/her escort and transport. In this regard, the *Standard Procedure* provides as follows:

1. Information about these persons (state of health, civil status, property, children, religion etc.) to which police officers have access is confidential and cannot be made public;
2. Persons deprived of their liberty who suffer from communicable diseases or from psychological disturbances cannot be escorted together with healthy persons;
3. Unreasonable use of force is prohibited. The means of immobilization shall not harm the person and his/her dignity;
4. During the escort, the use of special means against juveniles, if their age is obvious or known, against women, elderly persons and persons with visible signs of disability is prohibited, unless these persons assault the subject of law or other person, including in groups or using weapons, show resistance in a way that poses a threat to human life and health unless such actions can be stopped otherwise and by other means;

5. During the escort, it is prohibited to use special means in buildings and rooms in which highly flammable, toxic or explosive substances or substances which, being in contact with components of special means, pose a greater risk to human life and health;
6. During the escort, it is prohibited to apply cartridges with rubber or plastic bullets, means with irritant or lachrymatory effects, in violation of their technical restrictions and characteristics;
7. Firearms can be used as an extreme measure to prevent escaping escort or escape of persons in legal detention, as well as to prevent attempts of their forced release;
8. Handcuffs shall not be used in the case of juveniles, pregnant women, the elderly, persons with visible signs of disability;
9. Police officers are prohibited to expose persons being escorted to media representatives to obtain images, sounds or interviews from them;
10. The unjustified appearance of the immobilized escorted person in the public is prohibited;
11. The person being escorted is prohibited to speak with other persons. When he/she is in a safe place, the person being escorted receives from the defender or family members, subject to the permission of the chief of the escort, water, cold food or medicines, for which there is a prescription issued by the doctor. The products shall be received in containers, i.e. sealed blisters that shall have a shelf life;
12. Threats, rude words, swearing, etc. are prohibited. Police officers and persons deprived of their liberty under the authority of the escort, shall communicate fairly and shall respect the dignity of the interlocutor;
13. For security reasons, the discussion of the lawyer with the person being escorted under certain circumstances: during the escort, in the car or in situations that police officers cannot manage, is not allowed.

3.3. Place where the apprehended person is escorted

The definitions of *escort* and *transport* of the apprehended person, who was previously examined, suggest that these activities are aimed at bringing the

subject to **addresses where he/she shall be present to carry out procedural activities or to ensure the exercise of certain rights.**

Therefore, it is clear why the *Standard Procedure* does not exhaustively regulate the location to which the apprehended accused person is to be accompanied, but sets forth that any movement of the apprehended person in or outside the TDI shall exclusively aim the fulfilment of the obligations or the exercise of the rights and legitimate interests of the person deprived of his/her liberty. In this respect, in order to comply with the restrictions provided by the law, which are inherent to the restriction of the right to free movement, the apprehended person shall be escorted to be placed in the detention facility and, in order to ensure that the purposes of criminal proceedings are achieved, he/she shall be escorted, for example, to bring in an indictment. For the accused, the participation in procedural actions is a right, rather than an obligation (Art. 64 (2) (11)), Art. 66 (2) (12) of the CCP), which is the reason why his/her escort to the criminal prosecution body or prosecutor, in the case in which he/she does not agree, would be a violation of those rights. Moreover, neither the *Standard Procedure*, nor the *MIA Order No. 5 of 05.01.2004* regulates the situation when the suspect or any accused deprived of his/her liberty refuses to be escorted to the criminal prosecution body or to the court, and the procedure to be followed in this case. Moreover, the *MIA Order No. 5 of 05.01.2004* lays down the possibility to carry out certain criminal prosecution actions directly in the TDIs, which does not, however, oblige the accused to cooperate with the criminal prosecution bodies or the prosecutor. Taking into account the given provisions, the escort of the apprehended person will be carried out with the exceptions provided by the law, in principle, in order to ensure that his/her rights are exercised.

In the cases of submission, as provided for by the law, of requests, inquiries or complaints, the participation of the apprehended suspect in the court hearing is mandatory (for example in the case provided for by Art. 473^3 (1) of the CCP), and his/her escort will be aimed at fulfilling an obligation or at exercising a right. Since the criminal procedural law does not allow arresting the suspect, even if the respective procedural status was obtained through the effect of the apprehension report, he/she cannot be escorted to court for the purpose of examining the request for remand.

The *Standard Procedure* specifies particular escort situations and rules derived from the specifics of the escort destination. Thus, proceeding from the provisions of the aforementioned regulatory act, in addition to the escort for placement/replacement in the TDI, to the criminal prosecution body, prosecutor or court, the escort can also be carried out in order to ensure the right to medical assistance. In this respect, all the three **Standard Procedures, approved by Orders No. 193, 194, 195 of 30 March 2018**, require from the police to immediately contact the Emergency Medical Service if the apprehended person says that he/she has pains or his/her health worsened. According to the instructions of the medical worker, the person is escorted to a hospital facility or an ambulance is awaited to intervene/decide. According to the *Standard Operation Procedure for escorting and transporting the person deprived of his/her liberty*, medical institutions provide the means of transport and medical assistance during the escort of ill persons deprived of their liberty under the Collaboration Agreements*. When the escort is formed for a diseased person, the chief of the escort shall inform the institution that requested the presence of the person deprived of his/her liberty that he/she represents a danger (without saying which disease is commutable) or is a vulnerable person (trauma, fractures, moves with assistance, etc.), as the case may be.

According to Clause 7 of the above-mentioned *Standard Procedure*, if the medical staff decide, based on the examination results, to hospitalize the person deprived of his/her liberty, the chief of the escort informs the head of the police subdivision and the criminal prosecution body in order to take measures of measures of guarding in the hospital. The escort shall ensure that the person is guarded until he/she the escort is replaced by other police officers. At the same time, the specificity of the disease of the person being escorted may require special protection measures, as well as express information of the medical institution about this. In this respect, Clause 8 of the same *Standard Procedure* imposes the obligation that persons suffering from communicable diseases and persons suffering from psychological disorders deprived of their liberty are transported under escort, separately from healthy persons. Police officers escorting persons suffering from commutable diseases are required to wear protective equipment provided by

the medical institution, in accordance with the Collaboration Agreement* concluded by the General Police Inspectorate and the relevant ministry.
The analysis of the rules concerned does not, however, allow establishing the obligations of the escort if, upon the arrival of the ambulance, the need for hospitalization is determined, and the transport is provided by the medical institution.

3.4. Exercise of the right to information during the escort/ transport of the apprehended person

Although the *Standard Procedures* do not expressly regulate the way in which the right to information shall be ensured or what it contains during the escort/transport of the apprehended suspect, the presence of a translator/interpreter to accompany the escort or to take part in the medical check-up prior to the placement/replacement in detention, and afterwards, including in the case of the hospitalisation of the accused, implies communication between the escort, the medical staff and the detainee. When a health problem likely to prevent or postpone the procedural measure of constraint, not only the competent authority shall be informed to decide on the apprehension, but also the apprehended person, as well as the persons who have been informed about apprehension. The conclusion derives from the provisions of Clause 7 of the *Standard Operation Procedure for escorting and transporting the person deprived of his/her liberty* that lays down that *the person deprived of his/her liberty and hospitalized shall be allowed to receive from the defenders, subject to the opinion of the treating doctor, the necessary prescription and food according to the public health rules, when the hospital is unable to provide them.*
In addition, if further information on any relevant circumstances related to the execution of the apprehension measure is needed, the *Standard Procedure* stipulates in Clause 9 that *the translator/interpreter may remain at the request of the police officers in the TDI to translate/interpret their*

conversations with the person deprived of his/her liberty until the placement in the detention room.

Furthermore, according to Clause 3 of the *Standard Operating Procedure for apprehension, the police officer shall communicate to the apprehended person and to the persons accompanying him/her information about the place where he/she is to be brought or escorted*, which also implies the obligation to inform the person if he/she is to be transferred to another TDI or placed in a medical institution. Information, in the latter case, will only be communicated if / when the accused's state of health allows him/her to understand the content of the submitted information.

IV. Placement in detention of the apprehended person

4.1. The subject competent to decide on the placement in detention of the apprehended person

The criminal prosecution body or the prosecutor decides whether the person is to be placed in detention. The *Standard Operating Procedure for apprehension* provides for that police officers ordering the apprehension by law shall inform the TDI in which the person is to be placed to provide that person with food, bed and bed clothing. The person's detention may not exceed 72 hours. It is important to note that the criminal prosecution body or the prosecutor shall thoroughly analyze the grounds and the need for the person to be detained before deciding to place his/her in detention.

Even if a maximum legal length of apprehension is set, the law does not oblige to place in detention a person for this entire period, making it very clear that apprehension *shall not exceed* 72 hours. In this respect, the provisions of the standard operating procedure for apprehension under which *the period of apprehension shall not be longer than as strictly necessary for the detention of the person,* are very relevant. The police officers who carry out and decide on the apprehension of the person shall understand the need for apprehension and decide on the placement of the person in detention, taking also into account the consequences of the deprivation of his/her liberty.

4.2. Procedure for the placement in detention of the apprehended person

The *Standard Operating Procedure for the placement of the apprehended person in temporary detention isolators*[34] establishes the following stages:

(1) Reception of the apprehended person by TDI police officers, transmission by the escort of the documents (apprehension report) accompanying the apprehended person. Here is the first interaction between the escorting police officers and the TDI employees.

(2) Body search and check of personal belongings are already carried out by the TDI police officers. At this stage, the TDI police officers can also determine if the person has traces of use of physical force, and if they detect them, they are required to draw up a report. The *Standard Operating Procedure for the placement of the apprehended person in the Temporary Detention Isolators* does not establish in this case the obligation of the police officers to bring to the medical staff the person who has traces of violence on the body. Such an obligation arises if traces of violence appear after the person is placed in detention. It is not clear what the reasoning behind this distinction is. This uncertainty can cause difficulties in applying the operating standards.

Only after the body search and check of personal belongings, the TDI police officers take over from the escort the apprehended person and the documents provided by the criminal prosecution body.

(3) Information of the person (this stage will be described below).

(4) placement of the apprehended person in the detention room – at this stage the person is placed in a room in the TDI, subject to the principle of separation of women and men and having consulted the sheet of awareness (a sample of this sheet is attached to the *Standard Operating Procedure on the placement of the apprehended person in Temporary Detention Isolators*).

34 Approved by the GPI Order No. 193 of 30 March 2018

This procedure also provides for clear rules on how to ensure the rights of the apprehended person. It should be appreciated that conceptually the standard operating procedures are developed based on the principle of the respect for the rights of the apprehended person at any stage of the apprehension procedure. They are landmarks for all police officers involved in this process. However, the existence of these standards does not ensure the legality of apprehension. It is also important that these procedures are carried out and complied with by those involved in the placement of the person in detention.

The operating standards make clear the responsibilities of police officers and establish the need for a professional interaction between escorting police officers and those who receive the person in TDI.

4.3. Place and conditions of detention of the apprehended person

According to the operating procedures, the police employee shall be informed whether the TDI has available the number of beds required for the persons to be held in custody, and shall inform the TDI about the number of persons who will be imprisoned, their sex and age. If the TDI has no available beds, the apprehended person will be imprisoned in another TDI that is located closely to the investigating police subdivision. It is important that police employees involved in this process comply with these provisions correctly and emphasize the respect for human dignity in the decision-making process in the TDI where the person is to be placed.

Following the POA monitoring visits, it was found that, as a whole, PIs observed a period of detention of apprehended persons of at least 24 hours. They were escorted to criminal prosecution isolators immediately after obtaining arrest warrants. Thus, they avoided the general 72-hour detention practice. However, this system has created inconveniences for prosecutors and investigation/prosecution officers who either have to go whenever necessary for hearings to the Criminal Prosecution Investigator, or to escort them back to the Police Inspectorate. Moreover, IPs that do not have insulators had to hold (undocumented) apprehended persons in the hallway for

several hours, or in the guard unit on a chair, without proceeding to the documentation. All this time, persons could not leave the Police Inspectorate, and were not apprehended as such. Such practices continue. The situation worsens when there are a number of witnesses, juveniles, etc. All are held in the hallway of the institution without being assigned an official status. We assume that GPI subdivisions shall have rooms of apprehension in the PI building (except basements) provided with furniture, drinking water and protection system. It is inadmissible to apprehend a person in the space intended for the guard unit. Moreover, police employees shall avoid holding persons in the PIs without any procedural status. At the same time, all persons entering and leaving the Police Inspectorate shall be recorded in the register of access in which the time of entry and the name of the employee concerned shall be necessarily specified. Visitors can stay in the building of the police only a minimum period of time.

The Operating Procedure sets out how police officers in TDIs shall intervene if the apprehended person becomes violent. After such intervention, the emergency medical service is called to provide health care to those involved (even if no pains are reported). It is important to note that the TDI staffs records in a report the intervention with regard to the violent person, which shall be transmitted to the prosecutor immediately but not later than 24 hours. Short notes of the intervention are also made in the person's Sheet of Awareness. The fact of emergency medical examination is recorded in the Register of Case, including by the team of emergency doctors.

During the monitoring visits carried out by the PAO to the TDIs in the country, it was found that detention conditions in most cases do not meet the national and international standards. The PAO notes that all the cells in the detention isolators shall be reasonably sized to be suitable for the number of persons they host, adequate lightened (for example, enough to be able read, except for periods of sleep) and ventilated. It would be preferable for cells to have natural light. Cells should be provided with rest facilities (for example, a fixed chair or a bench), and persons obliged to stay overnight in detention shall be provided with mattresses and clean beds. Persons held in custody shall be allowed to satisfy their physiological needs whenever they want in decent and clean conditions, and shall be provided with adequate personal hygiene conditions. They shall be provided with meals at

appropriate time, including with at least one full meal (e.g., a little more than a sandwich) every day.[35] The question of the reasonable size of a police cell (or other type of dwelling for detainee/prisoner) is a difficult issue. When analysing it, many factors have to be considered. In any case, the CPT delegations work with highly recommended dimensions. The following dimensioning (seen as a desirable level rather than a minimum standard) is currently used when analyzing a single-person police cell for a detention longer than a few hours: 7 m2 having at least 2 m between the walls and 2.5 m between floor and ceiling.

It should be noted that the first initiative for the reform of the detention conditions started with the approval by the Government Decision No. 1624 of 31.12.2003 of the Concept of the Prison System Reform and the Action Plan for 2004–2020 for its implementation, where the construction of the 8 arrest houses was planned. In 2009–2010 these actions stopped, mainly due to the lack of funding. Repair works in the isolators started after the adoption of Government Decision No. 511 of 22.06.2010, whereby 2,200,000 MDL were allocated for the repair of 30 temporary detention isolators of the Police Inspectorates.

On 12 December 2016, the Government of the Republic of Moldova and the European Commission signed the Agreement on the funding of the police reform. The policy matrix on the implementation of the Budget Support for the police reform provides for, among other established objectives, the reduction of ill-treatment, abuse and discrimination against persons held in police custody. According to the Policy Matrix on the implementation of the budget support for the police reform for 2017–2020, during the period concerned, the police will have to renovate at least 15 Temporary Detention Isolators, according to international standards. At least 100 temporary detention cells are to be renovated, at least 25 specialized units for the transport of detainees have to be purchased, at least 250 police officers shall be trained in the field of the respect for human rights.

According to the findings of the PAO, many rooms in the temporary detention isolators are still located in the basements of the buildings of the Police

35 The CPT argues that person held in police custody for 24 hours or more should be provided, as far as possible, with daily outdoor exercises.

Inspectorates. However, if we compare the detention conditions in the TDIs in 2010–2018, we notice a significant improvement, which however is below the international standards. There are still poor material conditions; poor hygiene in the cells, lack of mattresses, blankets and hygiene items; nutrition only 2 times/day; lack of medical staff; formal medical examination; lack of privacy in the sanitary unit; poor artificial and natural light, bad pungent odour, moisture; detention over 72 hours (see Annex 3).

Therefore, the activity of 17 temporary detention isolators was stopped. According to the updated data, there are currently 96 functional detention facilities with a capacity of 242 persons. 15 isolators are to be renovated by 2022, of which 2 isolators shall meet the criteria for the detention of persons with disabilities.

According to the response letter to the request of the PAO (of 11 October 2018), 14 TDIs (Edinet, Rascani, Balti, Singerei, Ungheni, Orhei, Chisinau, Criuleni, Hincesti, Anenii Noi, Causeni, Cimislia, Cahul and Comrat) were proposed to be modernized. The Order of the GPI head No. 527 of 28 December 2017 approved the minimum rules for detention facilities and the equipment of police vehicles for the transport of detainees held in police custody. The PAO will continue to monitor how recommendations are complied with following the monitoring visits.

The PAO recommendations following these visits largely concern the following measures:

1. separation of the sanitary units in the cells, including in order to ensure privacy;
2. replacement of windows in the cells so that natural light and fresh air penetrate;
3. artificial lighting of cells with a medium intensity;
4. cosmetic repairs in cells, including the floor;
5. provision of detainees with mattresses and clean bedclothes;
6. provision of a medical room with a safe for medicines;
7. repairs of the courtyard for walks;
8. provision of courtyards with a special place as a shelter in unfavourable weather conditions;
9. capital repairs of the bathrooms and maintenance in an adequate sanitary condition;

10. decommissioning of all unused cells;
11. nutrition of detainees three times a day, according to the legislation in force.

4.4. Safeguarding the right to information of the apprehended person placed in detention

The right to information of the apprehended person shall also be secured at this stage of apprehension. The *Standard Operating Procedure for the placement of the apprehended person in the Temporary Detention Isolators* lays down that when the apprehended person is taken over by the TDI police officers, he/she shall be given the possibility to get acquainted with (1) the TDI's activity regulation, and (2) the list of rights and obligations that the apprehended person shall have. The Operating Procedure states that the rights and obligations shall be communicated to the apprehended person in the mother tongue. The person shall be informed of the following: the right to legal assistance and the presence of a translator/interpreter, the right to medical assistance, the right to correspondence, to complain, to challenge the measures of deprivation of liberty, the right to communicate, the right to decent treatment, the right to diplomatic assistance, the right to visit and to receive packages, the right to food and drinking water, the right to walk, the right to rest. Also, the operating procedure provides how the TDI employees shall proceed if the person goes on hunger strike (refuses to eat).
The fact of informing the person about all these shall be recorded in the internal records by the TDI staff (usually by drawing up a report), and the apprehended person shall confirm that he/she has been informed by making a signature. Also, the TDIs shall display, in a visible way, information about their contact details:
(1) the territorial offices of the National Legal Aid Council;
(2) police subdivisions;
(3) territorial and hierarchically superior prosecution offices;
(4) the Ministry of Justice – Service of Interpreters and Translators;
(5) the People's Advocate (Ombudsman);
(6) institutions with authorities to control the Police activity;

(7) Courts of all levels.
Employees of the TDIs are obliged to immediately inform the apprehended person about the contact details of various public institutions if they request such information, as recorded in the report.
We do not have information on how the right to information is exercised when the person in being placed detention. The PAO monitoring visits did not cover this apprehension stage. However, for the purpose of this study, we consider it appropriate to mention the existing regulations on placing a person in detention as police employees participate even in this stage. For this reason, we consider it important to train all categories of police officers involved in various stages of the apprehension process on how to apprehend a person, on their role at the appropriate stage of apprehension, and how to inform/explain to the apprehended persons their rights. Police officers shall understand the need for each stage and how to determine its legality in order to assume responsibility for each legal action he/she takes.

Conclusions and Recommendations:

I. Apprehension decision-making process

1. There is no clear regulation and division of the competence of apprehension and its limits within the GPI subdivisions in particular, and in other subordinate institutions of the MIA in general. In this respect, the *Law on the Activity of Police and the Status of Police Officer* and the *Regulation on the Organization and Functioning of the General Police Inspectorate of the Ministry of Internal Affairs* makes it difficult to make a delimitation between the Police as a specialized state public institution and the central administration and control unit of the latter – the GPI. As a result, according to the law, every police officer, regardless of whether or not he/she fulfils his/her function, is not only entitled, but also obliged to apprehend the person, if the circumstances stipulated by the law exist. Since it is clear which employees of the GPI and for the exercise of which authorities provided for the law they may decide on apprehension, the rules in question as a whole and their system do not meet the requirement of clarity and predictability required by the ECHR;
2. There is an inconsistency between the provisions of the *Law on the Activity of Police and the Status of Police Officer*, on the one hand, and the provisions of the CCP, on the other hand. Thus, while the CCP regulates the obligation of the judicial police to carry out the apprehension ordered by the judge for offenses committed in court hearing, the Law above does not provide such competence. In this respect, it is necessary to underline that the decision of apprehension, according to the existing regulations, does not belong to the representative of the Judicial Police, unless it fulfils the general duty assigned to any police officer to repress or prevent any criminal act/contravention and apprehends the person who, in these circumstances, may be considered its author;

3. Extension of the circle of subjects authorized to decide on apprehension cannot have a positive impact as long as there are no procedural mechanisms whereby those who make the decision of apprehension also ensure the fundamental rights of the accused. By the act of apprehension, the person obtains a procedural status, which shall be communicated as soon as the measure of deprivation of liberty is taken. It is important to set up such a mechanism for both the case of the fact-finding bodies provided by Art. 273 of the CCP, and for carabineers who have the right and the obligation to apprehend, as the standard operating procedures adopted by the GPI are mandatory only for the subdivisions of the respective central administration and control unit of the Police. Although Chapter II of the Standard Operating Procedure for apprehension sets forth that *it may also be applicable to other civil servants with special status within the Ministry of Internal Affairs empowered to deprive the person of his/her liberty (to apprehend)*, it remains unclear how a regulatory act subordinated to the law adopted by a subdivision (GPI) of the MIA would be directly applicable to other subdivisions of the same authorities (for example, the Border Police or the General Inspectorate of Carabineers).
4. The law has gaps in the actions that follow the *de facto* apprehension decision, since both the *Law on the Activity of Police and the Status of Police Officer* and the *Law on the General Inspectorate of Carabineers* oblige the police officer, respectively the carabineer, to notify, immediately after the deprivation of liberty, the nearest police subdivision or subdivision of carabineers in this respect, without describing the procedural actions to be taken or how to ensure the presence of the apprehended person before the competent authority in order to decide on the apprehension by law. In this respect, at least one rule would be required, which would also make the *Standard Operation Procedure for escorting and transporting the person deprived of his/her liberty* directly applicable in cases where apprehension is carried out by other subjects with this right.
5. At the moment, the effectiveness of the application of the Standard Procedures cannot be appreciated, since they were only adopted a year ago. This conclusion is confirmed by the visits made by the PAO representatives, who in only 8 out of the 37 monitoring reports find out the

use by the police of the letter of rights, Annex No. 1 of the *Order GPI No. 195 on the Standard Operating Procedure for apprehension*.

II. Apprehension of the prison by the police

6. The fact that the standard operating procedures describing the apprehension procedure, whose main objective is respecting and ensuring the rights of the apprehended person, have been developed and approved is positively appreciated. However, it is necessary to clarify their legal force, and to ensure that they are necessarily carried out by the subjects entitled to apprehend. These standards shall contain an initial and continuous training curriculum for police officers.

7. The circle of subjects that may carry out the apprehension was extended; carabineers are also provided with this authority, although it is not very clear whether the operational procedures are mandatory for this category of subjects as well, being approved by the order of another subdivision of the MIA. However, measures shall be taken to train the carabineers about how to carry out the arrest, in order to ensure that the right of the apprehended person is respected.

8. Although at the legislative level amendments have been made to address the issue of the term of apprehension, the police practice remains the same – the term of the *de facto* apprehension is wrongly indicated in the apprehension report.

9. There are also shortcomings in the preparation of the report: (1) the *de facto* apprehension report is not drawn up, and (2) the content of the apprehension report is still brief, missing important information necessary to establish the legality and the reasonableness of the apprehension.

10. The provisions of the Code of Criminal Procedure concerning the 6-hour term for the apprehension of the person for identification purposes are not complied with as police officers do not have the necessary knowledge and need additional regulations.

11. There has also been no change in the respect of the right to information. Initial information at the stage of the *de facto* apprehension is not carried out. Most often, during the hearings, the criminal prosecution

officer provides the apprehended person with a list of rights. The practical rights are not explained.

III. Escort and transport of the apprehended person:

12. Although the *Standard Operating Procedure for the escort and transport of the person deprived of his/her liberty,* by definition, should refer to two different actions – the transport and escort of the apprehended person – it governs mainly the escort, referring only occasionally to the activity of transport. For these reasons, there are no express provisions regarding the competent authority that shall ensure the transport, special rules on the persons or means of transport through which this action is taken (except in the case of intervention of the emergency medical service and the use of ambulance in the relevant sense), etc.;

13. The cooperation agreement between the Police General Inspectorate and the relevant ministry to which the medical services are subordinated would be a precondition for the implementation of the provisions of the *Standard Procedure* in the field of prior check and provision of medical assistance to persons deprived of their liberty who are to be placed in the TDIs. Although this regulatory act entered in force on 30 March 2018, such an agreement is not publicly available, which is why the need for and the implementation of the *Standard Procedure* cannot be assessed in this respect;

14. *The Standard Operating Procedure for the escort and transport of the person deprived of his/her liberty* was developed, *inter alia*, under the *MIA Order No. 5 of 05.01.2004 on the procedure for the organization and carrying out of the activity of guarding, escorting and detaining apprehended and arrested persons in temporary detention isolators of police commissariats*, whose provisions on transport are more detailed. At the same time, these two regulatory acts have a common regulatory object, and not only the relationship between them, their legal force, but also the practical way of implementing them remains unclear. As a consequence, it is necessary to assess the role and place of the *Standard Procedure* in

the system of internal regulatory acts regulating the escort/transport of persons who were apprehended as a procedural measure of constraint;

15. As regards the escort, the above-mentioned regulatory acts do not contain consistent regulations. For example, the *Standard Operating Procedure for the escort and transport of the person deprived of his/her liberty* provides the prerogative of establishing the escort for several categories of subjects, whereas the *MIA Order No. 5 of 05.01.2004* provides this authority exclusively to the 'commander of the subdivision (the police commissioner) '. Furthermore, according to the *Standard Operating Procedure for the escort and transport of the person deprived of his/her liberty*, *the head of the Police subdivision may delegate the authority to establish and train the escort.* The subject to whom such authorities may be delegated, the act whereby the relevant delegation is ordered, and the procedure to be followed in this regard remain outside the regulatory scope;

16. Similarly to the situation found in the case of apprehension by law, in the case of the de facto apprehension, the regulation in terms of the procedure and competent authority of the Police entitled to designate police officers responsible for the establishment / execution of the escort is not clear. The applicable regulatory provisions of the *Standard Procedure* do not even leave room for interpretation to determine the authority entitled to rule on the escort, and the *MIA Order No. 5 of 05.01.2004* makes no difference between these two forms of apprehension (factual and by law);

17. The escorting authority, based on the CCP regulations, the *Law on the Activity of Police and the Status of Police Officer* and other regulatory acts subordinated to the applicable law, including the *Standard Operation Procedure for escorting and transporting the person deprived of his/her liberty*, is assigned to a number of specialized Police subdivisions. At the same time, the publicly available regulatory acts do not determine the cases of intervention for each of them, creating difficulties in the practical activity, as reported each time by employees of the TDIs and the police inspectorates interviewed during the visits by the PAO. Moreover, police officers, who according to the internal rules have another competence, are often involved in such activities. This obligation is established

under p. 3.33 of the *MIA Order No. 5 of 05.01.2004*. Therefore, the regulatory framework with gaps regarding the escort does not allow establishing with certainty which body is authorized to decide on and form the escort, as well as how different police units shall cooperate in the context of the apprehension decision-making and enforcement of such decision by transport and escort;

18. According to the particular aspect of the transport, during the preventive visits to 24 TDIs, the representatives of the PAO revealed that in 10 districts/municipalities the means of transport necessary to escort apprehended persons are in a poor condition and need to be replaced with new cars, which shall meet the technical and regulatory requirements: there are no such means of transport in 4 districts, and the TDIs have to use the guard unit to transport the apprehended persons;

19. The People's Advocate emphasizes that the escort/transport is not carried out in safe conditions, including for police employees, and there were cases when they have become ill getting infected from the person being escorted,. Preventive visit reports also show an insufficient number of places in the means of transport, places for detainees and those for persons being escorted are not separated, and it is not clear how to separate detainees by sex (women and men) and by age (minors and adults) during transport;

20. The findings made by the PAO do not reveal any case where the person was escorted to the medical facility to be subjected to the medical check-up before being placed at the TDI;

21. Neither the *Standard Procedure,* nor the MIA Order No. 5 of *05.01.2004* regulates the situation of the refusal of the suspect or of any accused deprived of his/her liberty to be escorted to the criminal prosecution body or to the court, and the procedure to be carried out in this regard.

The above-mentioned issues call for regulatory changes to ensure the clarity, accessibility and predictability of the 'law', which implicitly will constitute the general safeguards of the fundamental rights of the apprehended person.

IV. Placement in detention of the apprehended person

22. The *Standard Operating Procedure for the placement of apprehended persons in temporary detention isolators* was developed and approved. Although we do not have data on how the legal procedures for placing a person in detention are complied with, it is necessary to ensure their proper implementation.

23. This procedure contains clear provisions on how to ensure the rights of the apprehended person when placing him/her in detention.

24. It is not very clear which actions the TDI employees shall take when they find traces of use of physical force when placing the person in detention. The operating procedure covers the measures that shall be taken by the TDI employees if such traces appear after the person has been placed in the TDI.

25. Detention conditions in the TDIs in the country have not yet been adjusted so as to meet the international standards. The recommendations made by the PAO on the basis of the monitoring visits to each TDI are to be implemented.

Annex 1

Information on temporary detention isolators

#	Subdivision	Location	No. of cells			Accommodation capacity (places)		Beds		
			total	functional cells	Non-functional cells (suspended activity)	total, according to documentation	admissible no. of places	total	used	non-used
1	Chisinau PD	Surface	**22**	21	1	67	67	**75**	67	8
2	Balti	Surface	**3**	0	3	6	0	**3**	0	3
3	Bender	Surface	**5**	2	3	20	6	**10**	3	7
4	Anenii Noi	Floor 2	**11**	6	5	22	12	**22**	12	10
5	Basarabeasca	Surface	**7**	2	5	14	14	**9**	4	5
6	Briceni	Surface	**7**	7	0	16	16	**7**	7	0
7	Cahul	Surface	**12**	6	6	12	2	**14**	12	2
8	Calarasi	Semi-basement	**11**	4	7	20	11	**11**	11	0
9	Cantemir	Basement	**6**	4	2	26	8	**16**	8	8
10	Causeni	Surface	**7**	4	3	16	16	**16**	16	0
11	Cimislia	Surface	**8**	4	4	32	16	**32**	16	16
12	Criuleni	Semi-basement	**0**	0	0	0	0	**0**	0	0
13	Donduseni	None	**0**	0	0	0	0	**0**	0	0
14	Drochia	Semi-basement	**12**	3	9	50	12	**50**	12	38
15	Dubasari	Not used	**0**	0	0	0	0	**0**	0	0
16	Edinet	Semi-basement	**7**	4	3	15	15	**15**	15	0
17	Falesti	Semi-basement	**9**	5	4	20	12	**16**	12	4
18	Floresti	Semi-basement	**7**	5	2	10	10	**10**	10	0
19	Glodeni	Basement	**7**	2	5	6	6	**6**	6	0
20	Hincesti	Surface	**9**	1	8	38	38	**22**	4	18
21	Ialoveni	None	**0**	0	0	0	0	**0**	0	0

#	Subdivision	Location	No. of cells			Accommodation capacity (places)		Beds		
			total	functional cells	Non-functional cells (suspended activity)	total, according to documentation	admissible no. of places	total	used	non-used
22	Leova	Surface	**9**	5	4	19	11	**11**	11	0
23	Nisporeni	Semi-basement	**7**	7	0	19	19	**19**	19	0
24	Ocnita	Surface	**8**	4	4	15	11	**15**	11	4
25	Orhei	Surface	**11**	3	8	25	9	**25**	9	16
26	Rezina	Semi-basement	**16**	2	14	60	16	**16**	6	10
27	Rîscani	Surface	**9**	3	6	6	6	**6**	6	0
28	Sangerei	Surface	**9**	4	5	9	9	**16**	9	7
29	Soldanesti	Surface	**4**	1	3	12	2	**12**	2	10
30	Soroca	Basement	**12**	12	0	50	50	**24**	24	0
31	Stefan Voda	Surface	**3**	3	0	7	7	**7**	7	0
32	Straseni	Basement	**0**	0	0	0	0	**0**	0	0
33	Taraclia	Semi-basement	**4**	4	0	4	4	**8**	8	0
34	Telenesti	Surface	**7**	3	4	24	8	**8**	4	4
35	Ungheni	Semi-basement	**7**	4	3	44	28	**28**	18	10
36	Comrat	Semi-basement	**11**	3	8	0	8	**8**	8	0
37	Ceadar-Lunga	Semi-basement	**10**	1	9	3	3	**3**	3	0
38	Vulcanesti	Surface	**0**	0	0	0	0	**0**	0	0
	TOTAL		**277**	**139**	**138**	**687**	**452**	**540**	**360**	**180**

Annex 2

Extract from interviews with apprehended persons conducted by the PAO

S. Case (Rezina TDI/ 38 years old)

- ' on… at about 21.00, while I was on a visit at my aunt, I was apprehended by the Police Inspectorate officers… The police officers put me down, then they handcuffed me and got me in the car they came with. On the way to the police inspectorate, I was threatened with a gun by the police officers from the car.' – 'when I arrived at the police inspectorate, I was awaited by the criminal prosecution officer and by the state-guaranteed lawyer.' – 'the state-guaranteed lawyer did not get very involved when the apprehension report was drawn up, signed it and went away'. – 'the rights and obligations were communicated to us by the criminal prosecution officer jointly with the lawyer'. - 'the police officer also informed us of the right to silence and the right against self-incrimination'. - 'the relatives were informed of the apprehension by the police officers who apprehended me while we were on the way to the police inspectorate. My brother who works at the fueling station was informed'. – 'the medical examination was carried out by the paramedic of the institution in the guard unit. This examination was more superficially'. - 'between 21.00 and 23.30 until being placed in the Temporary Detention Isolator of the PI..., I was assaulted and threatened several times with the gun by the police officers who accompanied me to the police inspectorate, and were dressed in civilian clothing. - the prosecutor was notified about this incident and he ordered the forensic examination. The case is being investigated by the Prosecutor's Office ... that is to provide its opinion.

R. Case. (Rezina TDI/ 27 years old)

- 'on ..., the district police officer appeared at home and told us that we should go to the Police Inspectorate ... to sign some papers (previously I beat my cohabitant).'

- 'we arrived to the police inspectorate at 14.00. Until 14.40 I stayed in the corridor near the door of the criminal prosecution officer until the state-guaranteed lawyer appeared. The lawyer's actions were superficial, with no objections to my apprehension'. - 'the rights and obligations were communicated by the

lawyer'. - 'the relatives were not informed of my apprehension'. - 'the right to silence and the right against self-incrimination were not communicated to us by the employees of the inspectorate'. - 'at about 15.20, the apprehension report was completed'. - 'the medical examination was carried out by the paramedic of the institution in the medical room, after which I was placed in the TDI for 3 days'.

I. Case. (Cahul TDI/ 17 years old)

- On … 2018, at around 14.00, the ... district police came home and said, 'Take your identity card and come with us to the police. No adult relative was at home, only the younger brother, my mother was gone to ...,. As the juvenile told, she knew the police officers visually, although none of them introduced themselves. She was transported to the Police Inspectorate .... At around 16:30, the juvenile was placed in the Temporary Detention Isolator of ... PI – 'I know why I was apprehended. I was given 2 years of probation. I have never appeared during this period, and the Probation Office filed a lawsuit to the court, after which I was sentenced to 1.5 years of imprisonment. That's what the police officer explained to me'. – 'When I arrived to …PI, the officer on duty was told – 'This girl is not allowed to go out', after which they called someone and called Mr. ... Movileanu'. – 'The rights and obligations were explained to us by Mr. ... Movileanu (police officer) during the drawing up of the apprehension report'. 'They gave me 4 sheets and a sheet with rights and obligations and told me to sign them, then I will read them'. - 'The state-guaranteed lawyer was present when the report was drawn up. – No teacher or psychologist was present during the apprehension and the drawing up of the apprehension report. - 'I was explained that I can call relatives. I didn't want to call anyone. Then V.Movileanu called my aunt from his personal phone'. – 'I was examined by the doctor of the Insulator the next day on ... 2018'.

D. Case. (Cahul PI)

- 'I was apprehended this year. When they came to apprehend me, I was alone at home in C ... village. I don't remember the date of the apprehension, but I know it was Saturday. I asked why they apprehend me, and they answered 'You know why'. – 'During the apprehension I was hit with the nightstick. On this case, I wrote a complaint to the prosecutor's office. At the moment, the complaint is being examined'. - 'I was brought to the PI and passed a night in the temporary detention isolator, and then they let me go home. They did not provide a lawyer, nor did they explain my rights and obligations'. - 'The

next Saturday they came, they gave me some papers, then they brought me to Chisinau to ... to carry out a forensic examination, where I spent 1 month. The lawyer was only at the Hospital,. - 'Police officers came from…, they took me and brought to Prison No. 5 in Cahul'. - 'I was not allowed to call and announce my relatives that I am imprisoned neither at the police nor in the prison'. – 'The doctor examined me at the inspectorate and in the prison'.

V. Case. (Cahul PI)

- '2 weeks ago I was at home with my friends (we were 3) when suddenly 8 police officers came, told us to get in the car and brought us to different police inspectorates. I was brought to ...PI' - 'My car was taken by those 8 police officers and I know nothing about it'. – 'The apprehension report was drawn up at .... PI. The state-guaranteed lawyer was present'. – 'The rights and obligations were not communicated to me , - ,I signed some papers there, but I don't remember what namely'. – 'I was not allowed to call my relatives and let them know that I was apprehended'.

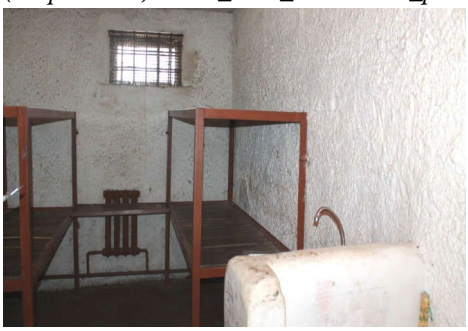
V. Case. (Balti TDI/ 21 years old)

- on …2018 I was apprehended at N ... while working in the field, persons dressed in civilian clothing came and introduced themselves as criminal police officers and brought me to the ... inspectorate, they said that I have something to sign. Then they brought me to court in Ungheni. They held me at the inspectorate for 72 hours. The lawyer participated in drawing up the apprehension report. The rights and obligations were not explained to me, but I signed some sheets. The right to silence was not communicated to me, but the lawyer began to talk with me and said: 'think how you will proceed ... punishment is milder if you recognize'. . When I entered the insulator, the doctor examined me. At the inspectorate they also let me to call.

Annex 3

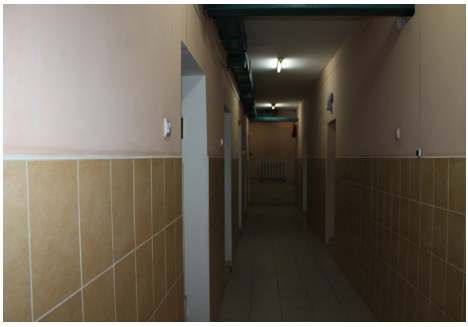
Cimislia Police Inspectorate

(4 April 2018) Photo_PAO_Cimislia PI_police isolator_04.04.2018



Basarabeasca Police Inspectorate

(4 April 2018) Photo_PAO_Basarabeasca PI_police isolator_04.04.2018



Nisporeni Police Inspectorate

(18 April 2018) Photo_PAO_Nisporeni PI_police isolator_18.04.2018

Ungheni Police Inspectorate

(18 April 2018)

Photo_PAO_Ungheni PI_police isolator_18.04.2018




Cantemir Police Inspectorate

(24 April 2018)

Photo_PAO_Cantemir PI_police isolator_24.04.2018


Leova Police Inspectorate

(24 April 2018)

Photo_PAO_Leova PI_police isolator_24.04.2018

Floresti Police Inspectorate

(2 May 2018)

Photo_PAO_Floresti PI_police isolator_02.05.2018

Soroca Police Inspectorate

(2 May 2018)

Photo_PAO_Soroca PI_police isolator_02.05.2018

Singerei Police Inspectorate

(22 May 2018)

Photo_PAO_Singerei PI_police isolator_22.05.2018

Telenesti Police Inspectorate

(22 May 2018)

Photo_PAO_Telenesti PI_police isolator_22.05.2018

Ocnita Police Inspectorate

(31 May 2018)

Photo_PAO_Ocnita PI_police isolator_31.05.2018

Falesti Police Inspectorate

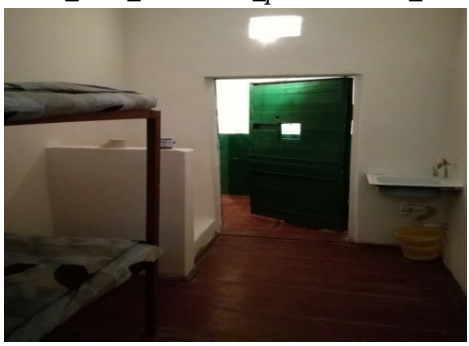
(7 June 2018)

Photo_PAO_Falesti PI_police isolator_07.06.2018

Glodeni Police Inspectorate

(7 June 2018)

Photo_PAO_IP Glodeni_police isolator_07.06.2018



Calarasi Police Inspectorate

(3 July 2018)

Photo_PAO_ Calarasi PI_police isolator_03.07.2018

Orhei Police Inspectorate

(14 June 2018)

Photo_PAO_Orhei PI_police isolator_14.06.2018




Drochia Police Inspectorate

(31 July 2018)

Photo_PAO_ Drochia IP _cell_police isolator_31.07.2018


Edinet Police Inspectorate

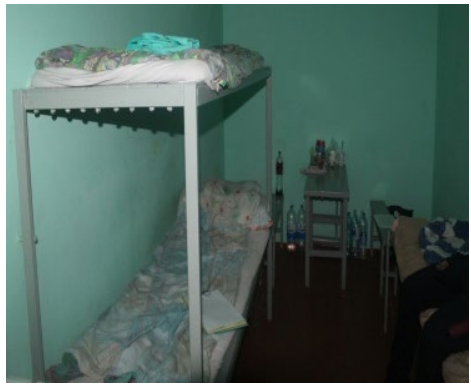
(14 June 2018)

Photo_PAO_Edinet PI_police isolator_14.06.2018

Ceadir-Lunga Police Inspectorate

(24 July 2018)

Photo_PAO_Ceadir-Lunga PI_police isolator_24.07.2018



Taraclia Police Inspectorate

(20 June 2018)

Photo_PAO_Taraclia PI_police isolator_20.06.2018

Briceni Police Inspectorate

(23 June 2018)

Photo_PAO_Briceni PI_police isolator_23.06.2018

Rezina Police Inspectorate

(12 July 2018)

Photo_PAO_Rezina PI_police isolator_12.07.2018

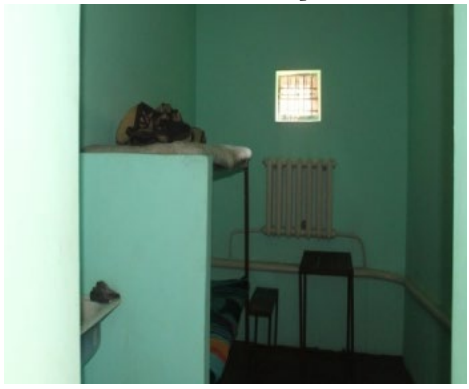





Soldanesti Police Inspectorate

(12 July 2018)

Photo_PAO_ Soldanesti PI _police isolator_12.07.2018




Riscani Police Inspectorate

(31 July 2018)

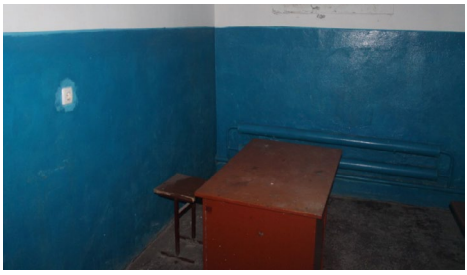
Photo_PAO_ Riscani PI_police isolator_31.07.2018


Comrat Police Inspectorate

(24 July 2018)

Photo_PAO_Comrat PI_police isolator_24.07.2018






Stefan-Voda Police Inspectorate

(10 August 2018)

Photo_PAO_ Stefan-Voda PI_police isolator_10.08.2018