

THEMATIC REPORT

*Respect of the rights
of asylum seekers, beneficiaries of international protection,
applicants for stateless status, recognised stateless persons
and foreigners in difficult situations*

2021

List of abbreviations

ECtHR - European Court of Human Rights

ECHR - European Convention on Human Rights

UNHCR - United Nations Refugee Agency

PAO - People's Advocate Office

LCA - Law Centre for Advocates

MIA - Ministry of Internal Affairs

BMA - Bureau for Migration and Asylum of the Ministry of Internal Affairs

GIBP - General Inspectorate of Border Police of the Ministry of Internal Affairs

TPCF - Temporary Placement Centre for Foreigners of the Bureau for Migration and Asylum

DAI - Asylum and Integration Directorate of the Bureau for Migration and Asylum

BCP - Border Crossing Point

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INTRODUCTION

The Law Center for Advocates (LCA) is a non-profit, non-political, public association, registered on February 24, 1997, at the Ministry of Justice of the Republic of Moldova.

The LCA's mission is to promote respect for the fundamental rights and freedoms of asylum seekers, beneficiaries of international protection, stateless persons, persons at risk of becoming stateless, foreigners in need (including foreigners detained in public custody).

The mission is implemented through the following activities:

- Providing free legal assistance to all refugees, asylum seekers, persons with humanitarian protection, stateless persons, and persons at risk of becoming stateless, foreigners in difficult situations.
- Training for lawyers, judges, government staff in the context of migration, refugees and statelessness, respect for human rights.
- Advocacy activities on access of refugees, asylum seekers, persons with humanitarian protection, stateless persons, and persons at risk of statelessness to the social protection, health, and education system.
- Monitoring policies, legislation, and activities of state institutions in the field of migration, asylum, statelessness and naturalisation.

Considering the complexity of the problem of ensuring and respecting human rights in the Republic of Moldova, the LCA proposed to produce a thematic report on the respect for the rights of asylum seekers, beneficiaries of international protection, stateless persons, persons at risk of becoming stateless, foreigners in need. The information reflected in the Report covers the year 2021.

The basic purpose of the report is:

1. To consolidate in one document the legislative and law enforcement issues in the areas of activity of the LCA.
2. To inform the United Nations Refugee Agency (UNHCR), the People's Advocate Office, the Ministry of Internal Affairs, the General Inspectorate of Border Police, the Bureau for Migration and Asylum and other relevant authorities.
3. To encourage national public authorities to pay more attention to the problems of persons belonging to the above categories.
4. To contribute to the improvement of legislation and law enforcement practices in areas of concern to beneficiaries of the LCA.
5. To inform public opinion

Previously, relevant to the subject matter of this Report, the LCA developed and participated in the development of:

- Analytical report about stateless persons in the Republic of Moldova, 2017.

- [The annual country survey](#), on the situation of stateless persons (since 2017). The survey is conducted within the framework of the [Statelessness index](#) project, implemented by the [European Network on Statelessness \(ENS\)](#);
- The thematic survey "*Observance of the rights of foreign citizens in state custody*", conducted by the People's Advocate Office in 2019. The version in Romanian language can be found [here](#) and the version in English language can be found [here](#).
- [Joint application](#) submitted to the UN Human Rights Council for the 40th Session of the Universal Periodic Review. The application was developed by the LCA in partnership with the [European Network on Statelessness \(ENS\)](#) and the [Institute on Statelessness and Inclusion \(ISI\)](#) and contains objections on access to citizenship for all children, facilitation of naturalisation, and the individual's right to liberty and security of person and the right to be free from arbitrary detention.

PARTNERSHIPS 2021

Activities in 2021 were implemented by the LCA in partnership with:

- International agencies and networks:
 - UN Refugee Agency (UNHCR),
 - International Centre for Migration Policy Development (ICMPD),
- People's Advocate Office (PAO),
- Government agencies
 - Ministry of Internal Affairs (MIA)
 - General Inspectorate of Border Police (GIBP),
 - Bureau for Migration and Asylum (BMA)
 - Public Services Agency (PSA)
 - National Institute of Justice (NIJ),
- International non-governmental organisations and networks:
 - European Network on Statelessness (ENS),
 - Institute on Statelessness and Inclusion (ISI),
 - *ERIM (Equal Rights & Independent Media)*,

LEGISLATIVE AND LAW ENFORCEMENT PROBLEMS IN THE FIELDS OF THE LAW CENTER OF LAWYERS' ACTIVITIES

BACKGROUND

Discrepancy of some laws with the provisions of the Administrative Code

On 19.07.2018, the Parliament adopted the Administrative Code (AC), which was published in the Official Monitor on 17.08.2018. The Article 257 of the AC, in paragraph 3, states that "*The Government, within 6 months from the publication of this Code:*

- (a) *will elaborate and submit to Parliament proposals to adjust the legislation in force in line with this Code.*
- (b) *shall bring its normative acts into conformity with this Code and shall ensure the development of normative acts necessary for its implementation.*

Problem

We note that most of the administrative procedures provided for by *Law 200/2010 on the regime of foreigners in the Republic of Moldova* are not in conformity with the Administrative Code.

The regulation of all administrative procedures will serve as a guide for BMA officials in the administrative procedures prior to different types of decisions issued by the BMA but will also provide foreigners with the procedural guarantees provided by the Administrative Code. The clear regulation of these procedures will provide a reference for the administrative courts in cases of examination of actions appealing BMA decisions.

The same situation, discrepancy with the norms of the Administrative Code, is also in the case of decisions of non-admission to the territory but also in the case of other decisions issued by the employees of the General Inspectorate of the Border Police, based on the *Law no. 215 of 04.11.2011 on the state border of the Republic of Moldova*.

Proposal

We consider it imperative to initiate actions for the development of administrative procedures within the BMA and GIBP with the subsequent inclusion of these procedures in the relevant legislative and normative acts.

ACCESS TO MEDICAL SERVICES FOR ASYLUM SEEKERS AND APPLICANTS FOR STATELESS STATUS

Problem

Asylum seekers and applicants for stateless status who are not employed are not included in the list of persons (Laws 1586/1998, 411/1995) who can obtain compulsory state health insurance policies. In this situation, they only benefit from primary and emergency medical assistance at the pre-hospital stage in case of acute life-threatening conditions.

Good practices:

1. Asylum seekers and applicants for stateless status who are employed in the labour market benefit from compulsory state health insurance policies through their employer.
2. Minor asylum seekers have access to medical assistance under the same conditions as minors who are citizens of the Republic of Moldova. Consequently, asylum seekers in the above categories benefit from medical services financed by the National Health Insurance Company (NHIC), through public and private medical-sanitary institutions.

Uninsured asylum seekers benefit from the medical services provided by the GIBP Medical Service, which is not part of the public health care system and is not funded by the NHIC. At the same time, the GIBP Medical Service does not have the capacity to provide the full range of medical services, offered by public and private medical institutions financed from the NHIC fund.

Amendment of some legislative acts (Law no. 270/2008 on asylum in the Republic of Moldova, Law no. 1024/2000 on citizenship of the Republic of Moldova, Law no. 1585/1998 on compulsory medical assistance insurance, Law no. 411/1995 on health protection, etc.) in order to bring them in line with the commitments made by the Republic of Moldova at the 2018 Global Forum for Refugees (ensuring access to the health system for asylum seekers by paying the compulsory medical assistance insurance premium in a fixed amount, etc.).

Proposal

The LCA proposes to amend the relevant legislative acts:

- Law No 270/2008 on asylum in the Republic of Moldova,
- Law No 1585/1998 on compulsory medical assistance insurance,
- Law No 411/1995 on health protection, etc.

to bring them in line with in line with the commitments made by the Republic of Moldova at the 2018 Global Forum for Refugees, in order to ensure access to the public health system for asylum seekers by paying the compulsory medical assistance insurance premium in a fixed amount, etc.).

RIGHTS OF APPLICANTS FOR STATELESS STATUS

Problem

The rights of applicants for stateless status are set out in paragraph 1 Article 87 with index 3 of the Law 200/2010. Except for procedural rights (interpreter, notifications, etc.), applicants for stateless status have only two rights: the right to stay in the country during the procedure and the right to work.

In contrast, asylum seekers have many more rights, which are set out in Articles 28, 29, 30 of the Law 270/2008. If from this list of rights, we exclude the procedural ones, we see that asylum seekers have the same right to stay in the country during the procedure (not to be returned) and the right to work. In addition to these two rights, asylum seekers have the following rights enshrined in law:

- to benefit from legal assistance at any stage of the asylum procedure, under the terms of the law.
- to be informed of the possibility to contact UNHCR representatives.
- to be advised and assisted by a representative of the non-governmental organisation at any stage of the asylum procedure.
- to be accommodated at the accommodation centre during the procedure.
- to benefit, in the case of persons with special needs, from the adaptation of accommodation conditions and assistance in accommodation centres.
- to receive primary and emergency medical assistance in accordance with the legislation in force.
- to have access to compulsory education under the same conditions as citizens of the Republic of Moldova.
- to benefit, in the case of a family with children and of an unaccompanied minor, from all social assistance measures granted, in accordance with the legislation in force, to children who are citizens of the Republic of Moldova.
- Minor asylum seekers have access to compulsory education under the same conditions as minors who are citizens of the Republic of Moldova.
- Asylum seekers are provided, in accordance with the legislation in force, with emergency medical assistance at the pre-hospital stage in case of acute life-threatening conditions.
- Minor asylum seekers have access to health care under the same conditions as minors who are citizens of the Republic of Moldova.

Proposal

Development of amendments to the Law 200 to extend the list of rights of applicants for stateless status by offering the same rights as asylum seekers.

AVOIDING THE SITUATION OF STATELESSNESS. REDUCING THE CASES OF STATELESSNESS

Problem 1:

In the Article 11 paragraph (1) letter c) of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV*, in the wording of the *Law No. 132 of 21.12.2017*, the phrase: "... ***provided that, at the time of birth, at least one of the parents has the right of residence or benefits from international protection granted by the competent authorities of the Republic of Moldova or is recognized as stateless by the competent authorities of the Republic of Moldova.***" The above-mentioned condition generates situations of statelessness of children, born on the territory of the Republic of Moldova, whose parents, not being citizens of the Republic of Moldova, did not have the right of residence on the territory of the Republic of Moldova at the time of the child's birth.

The phrase in question is contrary to:

1. The principle of priority of the norms of international treaties, provided for in paragraph 1 of Article 8 of the *Constitution of the Republic of Moldova* and in Articles 4, 9, 10 paragraph (2) of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV*.
2. The provisions of Articles 7 and 15 of the *Universal Declaration of Human Rights*, to which the Republic of Moldova acceded by *Parliament Decision No. 217-XII of 28.07.1990*.
3. The provisions of Articles 2 paragraphs 1, 2 and Article 24 paragraphs 1, 2 and 3 of the *International Covenant on Civil and Political Rights of 16.12.1966*, ratified by the Republic of Moldova by *Parliament Decision No. 217-XII of 28.07.1990*.
4. The provisions of Articles 2, 3, 7 and 8 of the *International Convention on the Rights of the Child* of November 20, 1989, to which the Republic of Moldova acceded by *Parliament Decision No. 408-XII of December 12, 1990*.
5. The provisions of Article 1 letter a) of the *Convention on the Reduction of cases of statelessness of 30.08.1961*, to which the Republic of Moldova acceded by *Law No. 252 of 08.12.2011*.
6. The provisions of Article 4 letters a) and b) and Article 6 paragraph 4 letter e) of the *European Convention on Citizenship of 1997*, ratified by the Republic of Moldova by *Parliament Decision No. 621 of 14.10.1999*.
7. The general principles of citizenship, provided for in Article 7 letters a), b) and d) of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV*.

Proposal

The annulment of the amendment of Article 11 paragraph (1) letter c) of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV* and the reinstatement of this legal norm to the wording before the *Law No. 132 of 21.12.2017*.

Problem 2:

In the Article 12 paragraph (11) of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV*, in the wording of the *Law No. 132 of 21.12.2017*, the phrase: "... over 18 years of age, ...". The condition mentioned above generates situations of statelessness of children, born on the territory of the Republic of Moldova, who for various reasons are not registered as citizens of the Republic of Moldova and do not have proof of citizenship. Children whose parents, and in some cases also grandparents, are undocumented or have expired/ invalid documents of the former USSR are particularly exposed to such situations. These persons are forced to be stateless until the age of 18 and only after reaching the age of majority can they apply for recognition of citizenship of the Republic of Moldova.

The phrase in question is contrary to:

1. The principle of priority of the norms of international treaties, provided for in paragraph 1 of Article 8 of the *Constitution of the Republic of Moldova* and in Articles 4, 9, 10 paragraph (2) of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV*.
2. The provisions of Articles 7 and 15 of the *Universal Declaration of Human Rights*, to which the Republic of Moldova acceded by *Parliament Decision No. 217-XII of 28.07.1990*.
3. The provisions of Articles 2 paragraphs 1, 2 and Article 24 paragraphs 1, 2 and 3 of the *International Covenant on Civil and Political Rights of 16.12.1966*, ratified by the Republic of Moldova by *Parliament Decision No. 217-XII of 28.07.1990*.
4. The provisions of Articles 2, 3, 7 and 8 of the *International Convention on the Rights of the Child of 20.11.1989*, to which the Republic of Moldova acceded by *Parliament Decision No 408-XII of December 12, 1990*.
5. The provisions of Article 1 letter a) of the *Convention on the Reduction of cases of statelessness of 30.08.1961*, to which the Republic of Moldova acceded by *Law No. 252 of 08.12.2011*.
6. The provisions of Article 4 letters a) and b) and Article 6 paragraph 4 letter e) of the *European Convention on Citizenship of 1997*, ratified by the Republic of Moldova by *Parliament Decision No. 621 of 14.10.1999*.
7. The general principles of citizenship, provided for in Article 7 letters a), b) and d) of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV*.

Proposal

In the Article 12 paragraph (11) of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV*, in the wording of the *Law No. 132 of 21.12.2017*, to exclude the phrase: " ... over 18 years of age, ... ".

Problem 3

In Article I paragraph 10 of the *Law no. 132 of 21.12.2017*, the phrase: "... **paragraph (2) is abrogated**", whereby paragraph 2 of Article 20 of the *Law on Citizenship of the Republic of Moldova no. 1024-XIV*, in the wording of the *Law no. 112 of 09.06.2011*, was abrogated.

The Article 20 of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV* was supplemented by paragraph 2 by *Law No. 112 of 09.06.2011*.

The abrogation of paragraph (2) of Article 20 of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV* generates and/or perpetuates situations of statelessness among persons born outside the territory of the Republic of Moldova, who do not hold the citizenship of other states, who have expressed their wish to become citizens of the Republic of Moldova, namely:

- a) persons born abroad who have at least one of their parents, grandparents or great-grandparents born on the territory of the Republic of Moldova;
- b) persons who until June 28. 1940 lived in Bessarabia, Northern Bukovina, Herta County and the Autonomous Soviet Socialist Republic of Moldova, their descendants;
- c) persons deported or refugees from the territory of the Republic of Moldova since June 28, 1940, and their descendants.
- d) persons who on June 23, 1990, were lawfully and ordinarily resident in the territory of the Republic of Moldova and are still so resident.

The abrogation of paragraph 2 of Article 20 of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV*, in the wording of the *Law No. 112 of 09.06.2011*, is contrary:

1. The principle of priority of the norms of international treaties, provided for in paragraph 1 of Article 8 of the *Constitution of the Republic of Moldova* and in Articles 4, 9, 10 paragraph (2) of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV*.
2. The provisions of Articles 7 and 15 of the *Universal Declaration of Human Rights*, to which the Republic of Moldova acceded by *Parliament Decision No. 217-XII of 28.07.1990*.
3. The provisions of Article 4 of the Convention on the Reduction of cases of statelessness of 30.08.1961, to which the Republic of Moldova acceded by *Law No. 252 of 08.12.2011*.
4. The provisions of Article 4 letters a) and b), Article 6 paragraph 1 letter a) and paragraph 4 letter b) of the *European Convention on Nationality of 1997*, ratified by the Republic of Moldova by *Parliament Decision No. 621 of 14.10.1999*.

5. The general principles of citizenship, provided for in Article 7 letters a), b) and d) of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV*.

Proposal

To annul the amendments introduced by Article I paragraph 10 of the *Law no. 132 of 21.12.2017*, the phrase: "... **paragraph (2) is abrogated**", by which paragraph 2 of Article 20 of the *Law on Citizenship of the Republic of Moldova no. 1024-XIV*, in the wording of the *Law no. 112 of 09.06.2011*, was abrogated.

To return to Article 20 of the *Law on Citizenship of the Republic of Moldova No. 1024-XIV*, in the wording of *Law No. 112 of 09.06.2011*

Problem 4

According to the statistics presented by the PSA, on 30.06.2021 in the State Population Register there were 1901 stateless persons registered. From 2012, since the Republic of Moldova has the procedure for determining stateless status, the BMA has recognized about 430 persons as stateless. Based on the above-mentioned figures, we deduce, that now about 1460 persons are stateless, who received this status until 2012, from the PSA (CRIS Registru).

PSA informed us that 799 stateless persons had expired identity documents on 30.06.2021. According to PSA, 989 stateless persons were born on the territory of the Republic of Moldova, i.e., they qualify 100% for recognition as citizens of the Republic of Moldova.

Based on many discussions with specialists from PSA and BMA we understood that most of the persons, documented with stateless documents until 2012, renounced the citizenship of the Republic of Moldova, under the pretext of acquiring citizenship of another state. Despite this, to date 1460 (30.06.2021) persons continue to be listed in the State Population Register as stateless.

In case, these persons have become citizens of other states, the information about their status in the State Population Register is to be corrected from stateless to foreign citizen.

In the situation, where these persons have failed to acquire the citizenship of another state, in accordance with the provisions of paragraph 2 Article 22 of Law 1024 on citizenship, the decrees (or parts of decrees) approving their applications for renouncing the citizenship of the Republic of Moldova shall be cancelled.

By ratifying the Convention of 1954 "*On Statelessness*" and the Convention of 1961 "*On the reduction of cases of statelessness*", the Republic of Moldova has undertaken the obligation not to

generate stateless persons, when citizenship is possible, and to reduce the number of stateless persons through naturalisation. Despite this, the Republic of Moldova still consistently reports a number of around 2000 stateless persons on its territory, half of whom were born on its territory and are eligible to be recognised as citizens of this state. The status of a considerable part of the remaining stateless persons on the list could be changed after a verification of their actual status (citizenship).

In October 2013, the UN High Commissioner for Refugees (UNHCR) asked: *"full commitment by the international community to end statelessness."* The Global Action Plan for Statelessness Reduction 2014 - 2024, was developed in consultation with states, civil society and international organisations. The plan sets out a framework of 10 actions to be taken to end statelessness within 10 years. **The first of the 10 points set out in the Plan is - Reducing existing situations of statelessness.**

Proposal

1. Initiate a verification of the current situation of persons who have received statelessness documents in order to establish their current status (third country citizenship).
2. Exclude persons who have acquired third-country citizenship from the list of stateless persons.
3. Cancel of decrees approving the renunciation of citizenship of the Republic of Moldova for stateless persons - former citizens of the Republic of Moldova who have not acquired citizenship of third countries.
4. Initiate procedures for acquiring citizenship of the Republic of Moldova for stateless persons who meet the criteria set out in Article 10 of Law 1024/2000 on citizenship of the Republic of Moldova.

IDENTITY DOCUMENTS.

Problem 1

Identity documents of beneficiaries of international protection and stateless persons are more expensive than identity and travel documents of the citizens of the Republic of Moldova.

The Supreme Court of Justice, by its decision of 19.07.2019, in the case no. 3r-154/19 filed on the application of the Law Centre for Advocates to the PSA, established the fact of direct discrimination of stateless persons, refugees and beneficiaries of humanitarian protection in comparison with citizens of the Republic of Moldova, on the basis of nationality, by imposing a differentiated price for the production and issuance of identity documents; declared void p. 9,11,16,18,19 of Chapter 5.5 of Annex No. 1 to the Order of the Public Services Agency No. 1 of 19.07.2017 on the temporary application of nomenclatures and tariffs to the services provided by the PI Public Services Agency.

Proposal

Equalization of prices for identity and travel documents issued to stateless persons and beneficiaries of international protection with the prices of identity and travel documents issued to citizens of the Republic of Moldova.

Problem 2

*The Regulation on the issuance of identity documents and registration of residents of the Republic of Moldova, approved by Government Decision no. 125 of 18.02.2013, p. 3 states the following: "Residents of the Republic of Moldova are considered to be its citizens domiciled in the country, regardless of whether they are registered at domicile or residence, foreigners with the right of residence on the territory of the Republic and persons recognized by the competent authorities of the Republic of Moldova as **stateless persons or refugees, as well as persons granted humanitarian protection, temporary protection or political asylum**, with the exception of foreigners - members of the diplomatic body."*

Point 117¹ of the Rules of Procedure states that:

"A person who does not have the possibility of being registered at domicile or temporary residence shall obtain an identity card or, where applicable, a provisional identity card without the said entry.

At the request of the person who has emigrated authorized, the provisional identity card shall be issued without registration at domicile and/or temporary residence on the territory of the Republic of Moldova."

The above rules allow us to state that in cases where the stateless person, refugee or beneficiary of humanitarian protection, *"who does not have the possibility to be registered at domicile or temporary residence, obtains the identity card ... without the said entry."*

In its work, the LCA has had several addresses to the Bureau for Migration and Asylum, requesting the issuance of identity cards for concrete persons, stateless persons, refugees, and beneficiaries of humanitarian protection, without the entry of registration at domicile. The reason for these requests were situations where the beneficiaries did not have a domicile, or the beneficiaries were unable to present notarial agreements of the owners or the refusal of the owners to provide such an agreement.

The BMA each time refused these requests, stating that only citizens of the Republic of Moldova have the possibility to receive identity cards without indicating domicile.

This approach of the BMA is discriminatory because the Regulation 125/2013 includes stateless persons, refugees and beneficiaries of humanitarian protection in the category of "inhabitants of the Republic of Moldova" and, on p. 117¹, provides the option of issuing identity cards without mentioning the domicile for all inhabitants of the Republic of Moldova.

Proposal

Avoiding situations where the BMA refuses to issue identity cards to stateless persons, refugees, and beneficiaries of humanitarian protection, when persons are unable to be registered at domicile or temporary residence.

CONFIRMATION OF THE DOMICILE OF STATELESS PERSONS AND BENEFICIARIES OF INTERNATIONAL PROTECTION IN THE PROCEDURE FOR ACQUIRING CITIZENSHIP

Problem

In the procedure for acquiring citizenship of the Republic of Moldova, persons are also required to provide a certificate confirming their domicile and family structure. In the case of stateless persons, refugees and beneficiaries of humanitarian protection living in the area controlled by the self-proclaimed authorities of the Moldovan Republic of Moldova, the problem of confirming the domicile and family structure arises, and the certificates issued in this respect by the local authorities on the left bank of the Dniester are not recognised by the authorities of the Republic of Moldova.

The family structure certificate issued by the Bureau for Migration and Asylum reflects only the family members of the beneficiaries, but not their home address. The Bureau of Migration and Asylum, according to the provisions of the Regulation on the organization and functioning of the BMA, approved by GD no.914 of 07.11.2014, is the authority responsible, inter alia, for the registration of these categories of persons.

Thus, in the case of stateless persons, refugees, and beneficiaries of humanitarian protection, who wish to obtain citizenship of the Republic of Moldova but live on the left bank of the Dniester, there is a barrier, which each one overcomes as he knows how. Most of the time, people must change their identity papers and establish another residence on the right bank of the Dniester. These situations lead to delays in applying for citizenship of the Republic of Moldova and perpetuate the status of statelessness, which is contrary to the 1961 Convention on the Reduction of cases of statelessness. These situations generate additional costs for the persons concerned. The additional costs are made up of the costs of new identity documents, which must be completed each time you change residence, and payments to homeowners to obtain their consent to register the residence.

Proposal of the LCA:

The Bureau for Migration and Asylum could include the beneficiaries' home address in the family structure certificate form.

PUBLIC CUSTODY

Public custody is a measure restricting freedom of movement ordered by the court against the foreigner for various reasons. It is the only measure ordered by the court so far against foreigners, provided for by art.64 *Law 200/2010 on the regime of foreigners*. Public custody is a measure to ensure the removal of the foreigner from the territory.

Persons taken into public custody are placed in the Temporary Placement Centre for Foreigners (TPCF), located on 88, Petricani Street, Chisinau municipality.

In TPCF in 2021, 71 persons were placed in public custody. Among them:

- 11 persons were suspects/defendants in criminal cases.
- 14 persons applied for asylum.

Placing in public custody of persons under criminal prosecution.

Problem

The LCA considers illegal to place foreigners, who have the status of suspects/defendants/indicted in criminal cases, in TPCF. The Code of Criminal Procedure (Article 175) expressly provides for preventive measures that may be applied to this category of persons.

Most often these persons are placed in public custody with a preventive measure established by the prosecuting authority - the obligation to report at their request and not to leave the country. Lawyers, who represent the persons when the BMA's applications for detention in public custody are examined

by the courts, have told the LCA that judges ignore the fact that the foreigners already have preventive measures in place and order detention in public custody/extension of the detention period.

Some TPCF employees reported during monitoring visits by the LCA that they have difficulties with persons in public custody who are under criminal prosecution, some of whom are very aggressive. From the statements of TPCF employees, we learned that according to their job description, they do not get any additional remuneration for putting their lives at risk with criminally prosecuted persons. These benefits are calculated for employees in remand facilities. Given that the legislation of the Republic of Moldova does not qualify public custody as detention, TPCF employees do not have the status of agents of the guard and escort section and are not provided with the necessary equipment to ensure the physical integrity of the persons placed, as well as TPCF staff.

Proposal of the LCA

Prohibiting the placement in public custody of foreigners, who are not allowed to leave the territory of the Republic of Moldova, under the provisions of Article 12 of *Law 200/2010 on the regime of foreigners*.

Detention in public custody of asylum seekers.

Problem

During 2021 there were 14 asylum seekers in public custody.

Only 3 persons have been released by the courts on the grounds that these persons are asylum seekers, the rest of the courts continue to ignore the arguments of the LCA and, without a legal basis, allow the BMA's requests with the extension of public custody of asylum seekers. However, since the asylum seeker has applied for asylum, he / she is no longer subject to Law 200/2010 on the regime of foreigners and is to be released immediately.

Some TPCF employees manage to persuade asylum seekers to withdraw their asylum applications if they want to leave the institution. During the reporting period, 6 asylum seekers in public custody withdrew their asylum applications, simply because they could no longer mentally cope with being deprived of their liberty for more than 30-60 days and were daily regarded as criminals and demeaned by some TPCF employees.

The LCA considers the detention of asylum seekers in public custody as a serious violation of their rights. The LCA considers the detention of asylum seekers in public custody, supported by the courts through the placement and extension of the time limits for the placement of these persons in public custody, as intimidation of asylum seekers and pressure on them, aimed at forcing asylum seekers to withdraw their asylum application and return to their countries of origin where their lives are endangered.

Proposal of the LCA

Avoiding placement in public custody and immediate release from public custody of asylum seekers.

In such situations there is no need for legislative amendments, as Article 2 paragraph 2 letter a) of the *Law 200/2010 on the regime of foreigners* (law regulating also public custody), expressly provides:

"(2) Except in situations where, for reasons of national security or public order, return from the territory of the Republic of Moldova is required, the present law does not apply:

a) foreigners whose regime is regulated by the [Law No.270-XVI of December 18, 2008](#) on asylum in the Republic of Moldova;"

The LCA supports the recommendation of the People's Advocate to the Parliament of the Republic of Moldova, made in the Thematic Study of 2019 "**Observance the rights of foreign citizens in state custody**" p. 3 "To complete the Law No. 200 of 2010 on the regime of foreigners in the Republic of Moldova, with provisions, which would expressly provide for the release from public custody of foreigners who have applied for asylum or granted stateless status."

Lack of alternatives of public custody

In the People's Advocate's recommendations to the Parliament of the Republic of Moldova, made in the 2019 Thematic Study "**Observance the rights of foreign citizens in state custody**" the Ombudsman indicated that the Bureau of Migration and Asylum and the judiciary apply alternatives to detention in the TPCF. The PAO explains this need by the fact that " ... according to Article 64, Law 200/2010, public custody is a measure restricting freedom of movement, ordered by the court against the foreigner.... The same principle applies to the arrest, as a preventive measure, of persons who have allegedly committed misdemeanours and offences under the Criminal Code and the Contraventions Code. Unlike in criminal procedure, where there is a wide variety of preventive measures alternative to arrest, in the field of migration there is only detention in the form of public custody, and no alternatives to detention are applied or provided for. This is why the practice of detention in public custody predominates in the Republic of Moldova. We consider that judicial control would be an alternative applied to foreigners falling under Article 64 of Law 200/2010. Direct control could be carried out by the BMA".

The LCA considers necessary to issue an additional recommendation to the Parliament of the Republic of Moldova on the creation of a legal framework specifying alternatives to public custody. The recommendations drafted by the PAO in 2019 to the BMA and the judiciary cannot be realised as they do not have a legal basis for implementation so far, or the alternatives to public custody must be effectively introduced into the legislation of the Republic of Moldova in order to be implemented.

Public custody in a state governed by the rule of law must be an exceptional measure and not the only one.

(Guide on public custody - <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=51b198514>)

Term of placement/extension of placement in public custody.

Problem

The legislator, at the time of the adoption of *Law 200/2010 on the regime of foreigners*, established in Article 64 of the Law that the placement in public custody is made for periods of up to 30 days, and the extension of the placement may be ordered for periods not exceeding 30 days. The same legal rule also provides for the maximum period of detention in public custody:

- of the foreigner against whom the return measure has been ordered - 6 months,
- of the foreigner who has been declared undesirable - 12 months
- of the foreigner against whom the expulsion measure has been ordered - until the expulsion is carried out.

Subsequently, by *Law 244/2016*, Article 64 of *Law 200/2010* was amended and the phrases limiting the periods of placement and extension of placement in public custody to 30 days were deleted. Judicial practice after 2016 looked different. Some courts ordered detention for 30 days, others for 60 or 90 days, and others applied a maximum period of 6 months.

The Law Centre for Advocates initiated a referral to the Constitutional Court to verify the constitutionality of the exclusion of the 30-day period from Article 64 of Law 200/2010. At the same time, the LCA sent a letter to the Supreme Court of Justice, with a view to issuing an advisory opinion for the unification of judicial practice on the issue of public custody.

In Advisory Opinion No. 102 of 2018, the Supreme Court of Justice ruled that, by its intensity and effects, taking into custody deprives the person of the physical freedom guaranteed by Article 25 of the Constitution. The Court established that, in the presence of sufficient conditions, the courts will order the application of the measure - taking into public custody, for an initial period of no more than 30 days. Also, the extension of the duration of custody will be ordered for a period not exceeding 30 days, which cumulatively will not exceed 6 months and 12 months respectively, to ensure the exercise of judicial control over the actions of the bodies empowered to execute decisions to return and remove aliens from the territory of the Republic of Moldova.

In its Decision No. 139 of 2018, at p.28, the Constitutional Court confirmed the correctness of the SCJ's ruling in its Advisory Opinion No. 102.

Notwithstanding what was stated, during 2021, the BMA requested, and the courts continued to apply unevenly the term of placement and extension of placement in public custody. There were 14 court orders for placement for a period of 60 days, 1 order for placement for a period of 90 days and 20 orders for placement for a maximum term - 6 months.

Proposal

The LCA proposes to amend Article 64 of *Law 200/2010 on the regime of foreigners*, and to reinstate the phrases limiting to 30 days the periods of placement and extension of placement in public custody, excluded by *Law 244/2016*.

Conditions of detention (placement) in TPCF

The conditions of detention in the TPCF were reflected in the Report of the People's Advocate Office on the Preventive Visit to the Temporary Placement Centre for Foreigners under the BMA, undertaken on 6 December 2018.

The Council for the Prevention of Torture verified and reflected the conditions of detention in the TPCF in the Report on the monitoring visit on compliance with basic safeguards of persons in state custody during the COVID-19 epidemic, conducted at the TPCF on September 28, 2020.

During 2021 detention conditions remained relatively good, but some detainees complained on the fact that they are fed only twice a day, and in the case of Muslims it is not always considered that these persons do not eat pork. In the same period there were complaints that the people placed did "*community work*" - gardening, washing the pods, etc. - for some benefits (a packet of cigarettes or other).

Judicial territorial competence for placement and extension of placement in public custody

Problem

The placement of persons in public custody and the extension of public custody is ordered by the court on the basis of the application submitted by the BMA. Law 200/2010 does not explain the territorial jurisdiction of the courts. The BMA territorial offices submit these applications to the courts of Balti, Comrat and Chisinau. The BMA application is submitted to the Temporary Placement Centre for Foreigners, which is located on 88, Petricani Street, Chisinau municipality. For the extension of the

term of public custody, the BMA is applying to the same court that previously ordered the initial placement. Thus, the BMA transports the detained person to Balti or Comrat monthly, together with BMA staff, to examine the request for extension of public custody, when in fact all the participants in these court hearings are in Chisinau.

The territorial competence for the examination of the BMA application was omitted by the legislator, thus the State suffers additional expenses for the monthly transportation of the foreigner to more than 100 km from the place of public custody, for the examination of the applications for extension of custody. Over 100 km also means about 2 hours of travel in one direction only. Surely this also means psychological pressure that is not necessary. Even when in court awaiting a hearing and a court decision, people in state custody (escort officers) still need to be provided with food and water.

In Balti, Comrat or Cahul, where the courts examining BMA applications are located, it is more complicated than in Chisinau, if not impossible, to find a translator/interpreter, especially of rare languages.

Proposal

If it is logical to address the judicial courts in whose territorial radius the BMA offices operate (Cahul, Chisinau, Balti) for the examination of the initial placement in public custody, then it is logical to address the Chisinau Court for the periodic judicial control and for the examination of the requests for the extension of the term of placement in public custody, because the TPCF is in its territorial radius.

The LCA bases the above proposal on the application by analogy of Article 54 paragraph 3 of Law 200/2010, which provides: "*The appeal against the return decision, made by the foreigner taken into public custody, shall be made to the court within whose jurisdiction the Centre for temporary placement of foreigners is located and does not suspend the measure of taking into public custody*".

Lack of interpreters in examining placement applications and extension of placement in public custody.

During the reporting period, there were complaints that the examination of public custody cases in the court of first instance, especially outside the Chisinau municipality, is carried out without interpreters in the languages spoken by the beneficiaries. In 2021 two asylum seekers from Iraq complained that during the court hearing at the Comrat Court, Central Branch, they did not have an interpreter in Arabic, an interpreter for Russian-English translation was present at the court hearing.

ASYLUM APPLICATIONS AT THE BORDER

During 2021 the LCA continued the practice of monitoring border compliance with the rights of persons in need of international protection. Monitoring visits were undertaken both by the LCA monitor alone and by a multi-functional team including representatives of the Bureau for Migration and Today, the General Inspectorate of Border Police, the People's Advocate Office, the UN Refugee Agency and the Law Centre for Advocates.

All monitoring visits were followed by visit reports, which were handed over to the participating and interested authorities. The LCA reaffirms its recommendations from its previous reports and joins the recommendations of the People's Advocate Office submitted to the General Inspectorate of Border Police during 2021. In this report, we would like to reiterate just a few general situations, which we have found at practically all border crossing points

Problem 1

GIBP's employees working at the border crossing points do not have access to licensed translators/interpreters and if necessary, to talk to a foreigner, they turn to casual language speakers or Google Translate. Calling on casual, unlicensed, and unpaid people or the Google Translate app is a momentary solution, but the quality of the administrative procedure with the use of such translations is flawed from the start. GIBP's employees explain the lack of translators by the lack of financial sources budgeted for translation services.

Such situations lead to the violation of the provisions of Article 23 paragraph 3 of the Administrative Code, which states that: "*... in the administrative procedure, as well as in the administrative dispute procedure or as a result thereof, no person ... may be disadvantaged, deprived of rights ... on the grounds of race, family origin, sex, **language**, nationality, ethnicity, religion, political or ideological beliefs, education, economic situation, social condition*".

Proposal

Article 115 of the Administrative Code regulates the costs of the administrative procedure and provides that the public authority conducting the procedure shall bear the costs of the procedure except for the costs incurred by the participants in the administrative procedure. It follows from this legal rule that the GIBP, as the administrative authority conducting administrative proceedings, is entitled to budget the costs of the proceedings, including the costs of translation services.

The LCA recommends that the GIBP identify, and contract authorised translators/interpreters who, if necessary, can be contacted online by GIBP's employees at border crossing points and assist them in administrative procedures taking place at the border.

The level of IT development already allows the translator to sign the report drawn up by the GIBP's officer in the territory remotely with an electronic signature, as well as the translator to sign the

undertaking of correct translation. Such an undertaking may also be provided for in the contract signed annually between the GIBP and the translator.

Problem 2

During 2021, situations were reported cases where only adults are registered in the Register of asylum applications at the border and no mention is made of accompanying children.

Since from the moment the parent(s) and their accompanying children apply for asylum, we consider it correct and necessary to register them in the Register of asylum applications at the border crossing point.

Proposal

Registration in the Register of asylum applications at the border crossing point and children accompanying parents who have applied for asylum at the border.

INTERNALLY DISPLACED PERSONS.

Problem

Although there are regular cases of refuge (internal displacement) of the citizens of the Republic of Moldova - residents of transnistrian region. Currently, there are no legal procedures and no regulated infrastructure for people who seek refuge as a matter of urgency and are persecuted by the Tiraspol administration. These people are "invisible" to the authorities. The Republic of Moldova offers much less assistance/protection to internally displaced persons than to asylum seekers or beneficiaries of international protection.

There have been cases where the Bureau for Migration and Asylum has used the Temporary Accommodation Centre for asylum seekers to accommodate these refugees from the left bank of the Dniester. The accommodation of internally displaced persons took place at the request of the Reintegration Office, in the absence of an alternative legal solution. Subsequently, lacking a legal and social protection mechanism, some of the persons originating from the left bank of the Dniester have applied for asylum in EU countries, which have granted them protection, because the Republic of Moldova does not have an effective remedy for the protection of internally displaced persons.

According to unofficial data, some 130 thousand people have fled from the left bank of the Dniester for 30 years.

Proposal

It is imperative to adopt a regulatory framework on internally displaced persons, citizens of the Republic of Moldova, who are taking refuge in the territory controlled by the constitutional authorities of the Republic of Moldova.