

Council of Europe Project
„STRENGTHENING THE HUMAN RIGHTS COMPLIANT CRIMINAL
JUSTICE SYSTEM IN THE REPUBLIC OF MOLDOVA”



REVIEW OF THE NORMATIVE FRAMEWORK WITH REGARD TO THE DETENTION AND ESCORT OF
PERSONS IN POLICE CUSTODY IN THE REPUBLIC OF MOLDOVA

REPORT

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Abbreviations

CPC	Criminal Procedure Code of the Republic of Moldova, no. 122 of 14 March 2003
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
GPI	General Police Inspectorate
MIA	Ministry of Internal Affairs
NAP	National Administration of Penitentiaries
PAO	People's Advocate Office (Ombudsperson)
PPS	Public Prosecution Service
PSA	Public Service Agency
TDI	Temporary Detention Isolator
UN	United Nations

1. Introduction

1i. Background to the Review

This review of the normative framework with regard to the detention and escort of persons in police custody in the Republic of Moldova (hereinafter the Review) is part of the Council of Europe project 'Strengthening the human rights compliant criminal justice system in the Republic of Moldova' (hereinafter the Council of Europe Project).¹ Radu Geamanu (International consultant), Graham Smith (Lead international consultant) and Vadim Vieru (National consultant) were appointed to conduct the Review in July 2021 with the support of the Council of Europe Project team, particularly Anastasiia Saliuk (Programme Manager), Nelea Bugaevski (Senior Project Officer), Aliona Cojocaru (Project Officer) and translators, interpreters and technicians.

The Review was commissioned by the Council of Europe Project following a request by the General Police Inspectorate (GPI) for assistance with addressing problems that they had identified with the detention, custody and escort of persons in police custody. The GPI separately forwarded two reports offering their evaluation of the regulatory framework to the Council of Europe Project to explain their concerns, on which the terms of reference and schedule of the Review were based.

1ii. 28 September 2021 meeting with the General Police Inspectorate representatives

The representatives of the GPI clearly and helpfully set out their concerns with current arrangements for the detention and escort/transfer of detainees in police custody and indicated the need :

- to analyse the normative framework of the Republic of Moldova for detention in police custody and the escort/transfer of detainees, including comparison with other countries (*for example*, Romania);
- to consider legislative reform in the interest of protecting the human rights of persons in custody, including the competencies of police and prison officers involved in the escort/transfer of detainees;
- to establish who is responsible for escorting/transferring detainees; and
- to enhance interdepartmental co-operation between criminal justice agencies, particularly the General Police Inspectorate and National Administration of Penitentiaries (NAP).

The GPI subsequently accepted the Review's recommendation to proceed by the Council of Europe Project convening a joint meeting between Review consultants, GPI and NAP representatives. It was agreed that the priority of the meeting would be to discuss arrangements for the escorting/transferring of all detainees and seek consensus on how to move forward, including discussion of legislative reform.

¹ <https://www.coe.int/en/web/national-implementation/projects-by-geographical-area/moldova-cjr>

1iii. 26 October 2021 meeting with the General Police Inspectorate and National Administration of Penitentiaries representatives

Following the meeting held on 26 October 2021 with the representatives of the GPI and NAP the terms of reference of the Review were further developed and are based on constructive discussions held.

1iv. Review terms of reference

- In the context of Council of Europe standards, to analyse operation of the legislative and normative framework of the Republic of Moldova in regard to:
 - detention in police custody time limits (lead consultant, Graham Smith); and
 - police escorting and transferring of detainees (lead consultant, Radu Geamanu).
- Drawing on the findings of the Review to make recommendations on how law and practice in the Republic of Moldova may be improved in compliance with Council of Europe standards.

2. Council of Europe standards

The primary source of Council of Europe criminal justice standards is laid down in the substantive articles of Section One of the European Convention on Human Rights. Article 3 lays down the absolute prohibition of torture and ill-treatment and Article 5 lays down the right to liberty. Together with Article 2, the right to life, and Article 4, the prohibition of slavery, Articles 3 and 5 are the first ranking fundamental rights that protect the physical security of the individual.² The Republic of Moldova became a member of the Council of Europe and ratified the European Convention on Human Rights in July 1997, and up to 2020 has been found by the European Court of Human Rights to have breached the Convention on 781 occasions.³ This includes 162 violations of Article 3 (20.7% of the total: which is equal highest with Article 6, the right to a fair trial) and 105 of Article 5 (fourth highest at 13.4%).

2i. Article 3 of the European Convention on Human Rights and protections against torture and ill-treatment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The unconditional terms of Article 3 mean that there can never, under the Convention or under international law, be a justification for acts which breach the article. In other words, there can be no factors which are treated by a domestic legal system as justification for resort to prohibited behaviour – not the behaviour of the victim, the pressure on the perpetrator to further an investigation or prevent a crime, any external circumstances or any other factor.⁴

² *Buzadji v. the Republic of Moldova* (Application no. 23755/072016), Judgment 6 July 2016, paragraph 84.

³ European Court of Human Rights, 2021, *Annual Report of 2020*, p.165.
https://www.echr.coe.int/Documents/Annual_report_2020_ENG.pdf.

⁴ Aisling Reidy, *The prohibition of torture. A guide to the implementation of Article 3 of the European Convention on Human Rights*. Human rights handbooks, No. 6, Directorate General of Human Rights, Council of Europe, 2002, page 19, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007ff4c>.

Among the positive obligations of the member States there is the obligation to protect personal dignity and physical integrity, especially of those persons deprived of their liberty. These responsibilities of the State (through the penitentiary/police authorities) apply even when breaches of the physical and mental state of a prisoner have been committed by other inmates. In securing the necessary protection under Article 3, member States are obliged to train law enforcement officials (*for example*, policemen and prison staff), thus ensuring a high level of competence in their professional conduct and in the interest of protecting persons deprived of their liberty against torture and ill-treatment.

Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim.⁵

The suffering and humiliation involved must in any case go beyond that inevitable element of suffering or humiliation connected with the execution of a prison penalty. In accordance with Article 3 of the European Convention the State must ensure that the conditions of executing a prison penalty are compatible with respect for human dignity and that the manner and method of the execution of the measure do not subject the person to distress or hardship exceeding the unavoidable level of suffering inherent in detention.

Escorting and transferring of detainees in the legal framework of the Republic of Moldova needs to be examined in regard to transport conditions and medical examination when leaving the prison (entering the GPI custody) and when returning to the prison (and into the custody of NAP).

In regard to transport conditions, the European Court of Human Rights holds that member States shall respect the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) standards (see further below), invoking, also, the United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners, stressing that transport conditions must not breach the requirements of Article 3.⁶

The European Court of Human Rights has developed a solid body of case law on conditions which persons deprived of their liberty are transported/transferred,⁷ especially as such conditions can lead to infringement of Article 3. In *Tomov and Others v Russia*⁸ the European Court established the following approach to be taken concerning the transport of prisoners:

- a strong presumption of violation arises when detainees are transported in conveyances offering less than 0.5 square metres of space per person. Whether such cramped conditions result from an excessive number of detainees being transported together or from the restrictive design of compartments is immaterial for the Court's analysis, which is focused on the objective conditions of transfer as they were and their effect on the

⁵ *Kudla v Poland* (Application no. 30210/96), Judgment of 26 October 2000, paragraph 91.

⁶ See, for example: *Tarariyeva v Russia* (Application no. 4353/03), Judgment of 14 December 2006; *Khudoyorov v Russia* (Application no. 6847/02), Judgment of 8 November 2005; *Mouisel v France* (Application no. 67263/01), Judgment of 14 November 2002.

⁷ European Convention on Human Rights, *Guide on the case-law of the European Convention on Human Rights. Prisoners' rights*, Updated on 31 August 2021, pages 19-21, nos. 68-70, 73, https://www.echr.coe.int/Documents/Guide_Prisoners_rights_ENG.pdf.

⁸ *Tomov and Others v Russia* (18255/10, 63058/10, 10270/11 et al.), Judgment of 9 April 2019, paragraphs 23-128.

applicants, rather than on their causes. The low height of the ceiling, especially of single-prisoner cubicles, which forces prisoners to stoop, may exacerbate physical suffering and fatigue. Inadequate protection from outside temperatures, when prisoner cells are not sufficiently heated or ventilated, will constitute an aggravating factor;

- the strong presumption of a violation of Article 3 is capable of being rebutted only in the case of a short or occasional transfer. By contrast, the pernicious effects of overcrowding must be taken to increase with longer duration and greater frequency of transfers, making the case for a violation stronger;
- as regards longer journeys, such as those involving overnight travel by rail, the Court's approach will be similar to that applicable to detention in stationary facilities for a period of a comparable duration. Even though a restricted floor space can be tolerated because of multi-tier bunk beds, it would be incompatible with Article 3 if prisoners forfeited a night's sleep on account of an insufficient number of sleeping places or otherwise inadequate sleeping arrangements. Factors such as a failure to arrange an individual sleeping place for each detainee or to secure an adequate supply of drinking water and food or access to the toilet seriously aggravate the situation of prisoners during transfers and are indicative of a violation of Article 3;
- when deciding cases concerning conditions of transfer, the Court will remain attentive to the CPT standards and to the Contracting States' compliance with them;
- the assessment of whether there has been a violation of Article 3 cannot be reduced to a purely numerical calculation of the space available to a detainee during the transfer. Only a comprehensive approach to the particular circumstances of the case can provide an accurate picture of the reality for the person being transported.

In regard to medical examination when leaving the prison (entering GPI custody) and when returning to the prison (and into the custody of the NAP), the European Court of Human Rights has found violations of Article 3 in relation to ill-treatment of prisoners by escorting officers during their transfer to the court to attend court hearings (for example, *Balajevs v Latvia*, 2016; *Ostrovenecs v Latvia*, 2017).⁹

Given the fragile situation faced by persons deprived of their liberty, especially when exiting the custody of NAP, entering the custody of GPI (for the duration of transport) and, finally, re-entering the NAP custody when brought back to the penitentiary, need for medical examinations each time a prisoner leaves/enters NAP/GPI custody is imperative. The medical practitioner paying particular attention to recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently.

In addition to the substantive obligations described above, procedural obligations on member States arise where an individual raises an arguable claim that he/she has been seriously ill-treated in breach of Article 3. The member State has an obligation to initiate a thorough, prompt, impartial and independent investigation which is open to public scrutiny and involves the victim. The investigation shall be capable of leading to the establishment of

⁹ European Convention on Human Rights, *Guide on the case-law of the European Convention on Human Rights. Prisoners' rights*, updated on 31 August 2021, page 42, no. 178, https://www.echr.coe.int/Documents/Guide_Prisoners_rights_ENG.pdf.

the facts of the case and, if the allegations prove to be true, identification and punishment of those responsible.¹⁰

Turning now to CPT standards, in the context of this Review of detainee escort/transfer the Committee has issued guidance on financial resources and transfers. On the obligations of members States to prisoners in times of economic hardship the CPT states:¹¹

"The CPT is aware that in periods of economic difficulties (...) sacrifices have to be made, including in penitentiary establishments. However, regardless of the difficulties faced at any given time, the act of depriving a person of his liberty always entails a duty of care which calls for effective methods of prevention, screening, and treatment.

In light of the importance attached to the risk of ill-treatment to detainees, the CPT has issued a Factsheet on the transfer of detainees.¹² Whatever the grounds for transferring persons deprived of their liberty from a place of detention to another place (for example, from a police station to a prison; from a prison to another prison; a courthouse or a hospital; or from a border point of entry to an immigration detention centre), the CPT considers that transportation should always be carried out in a humane, secure and safe manner.

2ii. Article 5 of the European Convention on Human Rights and detention in police custody time limits

The key purpose of the right to liberty and security under Article 5 of the European Convention on Human Rights is to prevent arbitrary or unjustified deprivations of liberty.¹³ In the context of this Review, Article 5 regulates the circumstances in which police may deprive a person of their liberty, the minimum rights to which a person detained in police custody is entitled, grants a right of judicial review of detention and creates a right to compensation for unlawful deprivation of liberty.¹⁴ Police are granted discretionary powers to arrest, apprehend and detain persons for the purpose of enforcing the law and protecting the public, and Article 5 serves to ensure that powers which interfere with the right to liberty are not exercised arbitrarily. As already mentioned, together with Articles 2, 3 and 4 of the European Convention on Human Rights, Article 5 protects the physical security of the individual, and the CPT holds that immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest:¹⁵ that is, commonly after an individual has been taken into police custody.

¹⁰ See, Guidelines adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies, H/Inf (2011) 7, Parts IV and VII pages 11-13). <https://rm.coe.int/1680695d6e>.

¹¹ Developments concerning CPT standards in respect of imprisonment, Extract from the 11th General Report of the CPT, published in 2001, CPT/Inf(2001)16-part, <https://rm.coe.int/16806cd24c>.

¹² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Transport of detainees factsheet*, 2018, page 1, <https://rm.coe.int/16808b631d>.

¹³ For comprehensive explanation see, Council of Europe, 2021, *Guide on Article 5 of the European Convention on Human Rights*. https://www.echr.coe.int/documents/guide_art_5_eng.pdf.

¹⁴ Murdoch, J. & Roche, R., 2013, *The European Convention on Human Rights, A handbook for police officers and other law enforcement officers*, Council of Europe, page 42.

https://www.echr.coe.int/Documents/Handbook_European_Convention_Police_ENG.pdf.

¹⁵ See Extract from the 12th General Report of the CPT, § 41. <https://rm.coe.int/16806cd1ed>.

The text of Article 5 is as follows:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

The exceptions listed under Article 5.1 (a)-(f) are exhaustive and fundamentally underpinned by the rule of law: deprivation of liberty must be in 'accordance with a procedure prescribed by law'. Lawfulness is not only a matter to be determined by domestic law, and compliance with Article 5 is required to establish whether deprivation of liberty is arbitrary in all circumstances. A decision to detain must be the last resort, that is when no less restrictive alternatives to deprivation of liberty are available for achieving the purposes set out in Article 5.1 (a)-(f). Detention must be constantly under review and when conditions that may initially have justified detention no longer apply the deprivation of liberty must be promptly discontinued.

For the purpose of this Review, namely power of police to detain a person for up to 72 hours if suspected of committing an offence, Article 5.1(c) and 5.3 govern police powers of detention. Police powers to detain under the Republic of Moldova law are presented below

in Section 3i and relevant European Convention on Human Rights Article 5 case-law, including applications against the Republic of Moldova, are discussed below in Section 3iii.

For the *Buzadji v the Republic of Moldova* application the European Court of Human Rights considered research conducted on the use of detention on remand in 31 Council of Europe member States.¹⁶ The Court inferred that ‘arrest and initial detention prior to judicial involvement are explicitly regulated and strictly limited in time in the legislation of all 31 member States.’¹⁷ The initial detention time limit varied between 24 hours (eight member States) and 96 hours (three member States), with the majority (12 member States) setting a time limit of 48 hours.¹⁸ Thus, 65% of member States set a time limit of 48 hours or less.

The Committee of Ministers has issued recommendations to Council of Europe member States on the use of custody that is compliant with Article 5 of the European Convention on Human Rights.¹⁹ In addition to setting out in principle that to remand in custody a person suspected of a criminal offence shall be the exception rather than the norm, the Committee of Ministers recommended:

The interval between the initial deprivation of liberty and (...) appearance before such an authority [judicial] should preferably be no more than forty-eight hours and in many cases a much shorter interval may be sufficient.²⁰

3. Detention in police custody 72-hours time limit

3i. Legislative and normative framework

General legislation

National legislation provides for two types of apprehension: as coercive criminal procedural action and coercive administrative procedural action (the latter is not the subject of this Review). According to the Constitution of the Republic of Moldova, in cases of apprehension as coercive criminal procedural action the term of apprehension cannot exceed 72 hours.²¹ Derogations in respect of exceeding this term are not permitted, and the duration of apprehension is calculated from the moment of the *de facto* deprivation of liberty.

¹⁶ *Buzadji v the Republic of Moldova* (Application no. 23755/072016), Judgment 6 July 2016, paragraphs 45-60. <http://hudoc.echr.coe.int/eng?i=001-164928>. The 31 member States surveyed were: Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Northern Macedonia, Monaco, Montenegro, the Netherlands, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Switzerland, Turkey, Ukraine and the United Kingdom.

¹⁷ *Ibid*, paragraph 46.

¹⁸ *Ibid*, paragraph 51.

¹⁹ Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse (*Adopted by the Committee of Ministers on 27 September 2006 at the 974th meeting of the Ministers' Deputies*). <https://pjp.eu.coe.int/documents/41781569/42171329/CMRec+%282006%29+13+on+the+use+of+remand+in+custody%2C+the+conditions+in+which+it+takes+place+and+the+provision+of+safeguard+against+abuse.pdf/ccde55db-7aa4-4e11-90ba-38e4467efd7b>.

²⁰ *Ibid*, paragraph 14[2].

²¹ Article 25, paragraph 3 of the Constitution of the Republic of Moldova; Article 166, paragraph 5 of the CPC; Article 175¹ of the Enforcement Code of the Republic of Moldova no. 443/2004.

The Constitution also establishes that a person must be released without delay if reasons for detention in custody no longer exist.²²

The Criminal Procedure Code (CPC) regulates apprehension establishing that deprivation of a person's liberty shall be for a short period of time and not longer than 72 hours.²³ With regard to grounds of apprehension by a criminal investigative body, if there is reasonable suspicion that a person committed a crime for which the law provides for punishment by imprisonment for more than one year, as well as in other situations expressly provided, the suspected person may be detained by the criminal investigative body.²⁴

There are two types of apprehension – *de facto*, which is physical, and *de jure*, where there is reasonable suspicion that a person committed a crime. *De facto* apprehension is the physical apprehension of a suspect prior to the drawing up of apprehension minutes by the competent criminal investigation body. *De jure* apprehension occurs the moment the competent criminal investigation body has drawn up the minutes of apprehension. *De facto* apprehension may be carried out by the official examining body (Police, Border Police), and relevant documents, material evidence and detainee must be immediately handed over to the criminal investigative body or prosecutor, but no later than within three hours of their *de facto* apprehension.²⁵

In the case of minors, the maximum term of apprehension is 24 hours.²⁶ If apprehension is solely to establish the identity of a person, it cannot exceed six hours.²⁷ Prolongation of apprehension is not permitted, but if the prosecutor establishes that an apprehended person shall be subjected to arrest or house arrest, the prosecutor must submit an application to the investigative judge requesting preventive arrest at least three hours before the expiry of the term of apprehension.²⁸

Within an hour of apprehension, the criminal investigative body shall request the Territorial Office of the National Legal Aid Council or other authorized persons to appoint an *ex officio* attorney in order to immediately provide necessary legal assistance to the apprehended person.²⁹

According to national legislation,³⁰ police have the following duties in ensuring the rights of detained persons:

- a detainee shall be immediately informed of the grounds for their detention only in the presence of a selected defence counsel or a court-appointed attorney providing urgent legal assistance;
- the criminal investigative body shall ensure that there is a place where the detainee and his/her defence counsel can communicate confidentially before their first interrogation;

²² Constitution of the Republic of Moldova, op cit, Article 25, paragraph 6, Article 166, paragraph 5 of the CPC also provides that 'the period of apprehension must not exceed the duration strictly necessary for [the detainee's] detention.'

²³ Article 165(1) of the CPC.

²⁴ *Ibid*, article 166.

²⁵ *Ibid*, paragraph 4.

²⁶ *Ibid*, paragraph 5

²⁷ *Ibid*, paragraph 5¹.

²⁸ *Ibid*, paragraph 6.

²⁹ *Ibid*, article 167, paragraph 1¹.

³⁰ *Ibid*, paragraph 1.

- if a juvenile is detained, the person conducting the criminal investigation shall immediately notify the prosecutor and the parents/guardians of the juvenile;
- a detainee shall be interrogated in line with the provisions of the CPC, if he/she consents to be interrogated;
- the apprehension body shall have the right to subject the detainee to a body search.

In the event that the prosecutor submits a request to arrest an adult more than 69 hours after the moment of apprehension, and 21 hours in the case of a minor, the court shall reject the request for arrest and order the release of the person.³¹

Emergency pandemic legislation

As a result of the global Covid 19 pandemic emergency legislation was introduced to protect public health and counteract the impact on the delivery of public services,³² including exceptional measures suspending the national legislation during the state of emergency in regard to pre-trial detention in police custody and arrangements to protect the human rights of detainees.³³

3ii. Analysis

The Review analysis of detention in police custody time limits in the Republic of Moldova is separated into five parts, examining a) GPI concerns; b) European Convention on Human Rights case law; c) international and national monitoring/inspection reports; d) published research; and e) findings.

a) GPI concerns

GPI representatives explained at the 28 September 2021 and 26 October 2021 meetings that the 72-hours time limit is not operating at present and under Covid 19 pandemic regulations persons may be detained by police for seven days. It was explained further that meeting the revised seven days limit was proving difficult as the result of the procedural duties of police regarding examination of suspects, which have to be completed before transfer to a penitentiary. Moreover, it was stated that under normal circumstances, outside of the pandemic, these procedural duties negated the statutory 72-hours time limit. Other reasons given by the GPI for non-compliance with the legislation are the difficulties experienced by police in establishing the identity of foreign nationals, and NAP restrictions on the days on which penitentiaries receive persons arrested by police and insistence that all documents of transferees are in order.

The GPI are of the view that the problems they face meeting the 72-hours time limit are due to deficiencies in the normative framework and the need for improved inter-departmental collaboration between the GPI and NAP. While supporting the adoption of

³¹ Article 230 of the CPC, together with article 166 paragraph 7.

³² Law No. 69 of 21-05-2020 regarding the establishment of measures during the state of emergency in public health and the amendment of some normative acts. https://www.legis.md/cautare/getResults?doc_id=125899&lang=ro.

³³ *Ibid*, article 24. (1) As a result of introducing some exceptional measures, during the state of emergency in public health declared by the Decision of the Extraordinary National Commission of Public Health no. 10 of May 15, 2020, the detention of detainees in the detention facilities of the General Police Inspectorate and / or of the National Anticorruption Center is allowed.

interdepartmental protocols to address these problems they believe legislative reform is necessary. In regard to overcoming difficulties establishing the identity of foreign nationals the GPI proposes that the identity of detainees be established by court order, which would require reform of the CPC, Enforcement Code and legislation regulating the Public Service Agency (PSA). These reforms would simplify procedures for issuing identity cards to foreign nationals. In regard to restricted access to penitentiaries the GPI proposed that the NAP receive arrested persons at any time, which would require amendment of the Enforcement Code and regulations (Government Decision No. 437/2018) on the organising and functioning of the NAP. The NAP representatives at the 26 October 2021 meeting agreed on the usefulness of interdepartmental protocols and understood that legislative and regulatory reform as suggested by the GPI may be necessary.

Statistical data

Table 3ii (a) Persons detained in police custody: 2019 - 2021 (Jan-Sep)

	2019	2020	2021 (Jan - Sep)
Total no.	6772	7064	3550
No. compliant with 72-hours time limit	6772	4248	849
(% of total)	(100)	(60.1)	(23.9)
No. not compliant with 72-hours time limit	0	2816	2701
(% of total)	(0)	(39.9)	(76.1)

Table 3ii (b) Reasons for non-compliance with 72-hours time limit: 2021 (Jan-Sep)

	No.	(% of total)
Emergency pandemic regulations	1563	(57.9)
Penitentiary restricts transfers to specified days	987	(36.5)
Identity documents	12	(0.4)
Refusal of penitentiary to take into custody due to errors in mandate/court decision	139	(5.1)
Total	2701	(100)

Statistical data quickly collected by the GPI in response to a request from the Review team are presented in Tables 3ii (a) and (b), above. Table 3ii (a) presents the trend in compliance with the 72 hours limit in recent years and Table 3ii (b) presents the recorded causes of non-compliance in the first nine months of 2021. It is evident at a glance that the Covid 19 pandemic coincides with the upward trend in non-compliance with the 72 hours limit.³⁴ This is confirmed in Table 3ii (b) with 57.9% of non-compliance cases directly attributed to emergency pandemic regulations which, introduced in May 2020, are also likely to have been responsible for much of the non-compliance in 2020.

³⁴ The World Health Organisation declared a Public Health Emergency of International Concern on 30 January 2020. <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

Although not attributed to the emergency regulations, it is not unreasonable to assume that the impact of the pandemic on social interactions and reduced operational capacity of public services played a significant part in the three other categories of non-compliance presented in Table 3ii (b). The NAP representatives at the 26 October 2021 meeting explained that this is the case in regard to an inter-departmental arrangement restricting days and times penitentiaries receive persons arrested by police. The data also show a significant fall in the number of persons detained in custody in the first nine months of 2021 compared with 2020, a projected fall of 33% if the same number of detentions were to continue for the remaining three months of 2021. Although we do not know for certain from the GPI data, it may also be the case that the pandemic has been responsible for the fall in persons detained by police in the first nine months of 2021.

In examining the GPI statistical data together with the testimony of GPI representatives at the 28 September and 26 October meetings the Review team holds that the 72-hours time limit operates as a norm, rather than a maximum, which has been routinely overstepped in the last two years. As the impact of the pandemic on public health, social interactions and public services recedes, and emergency legislation ceases to have effect, there is a risk that failure to observe the 72-hours time limit will be normalised (for example, after exceptional circumstances and emergency legislation no longer apply high rates of non-compliance will continue in the future).

b) Case-law of the European Convention on Human Rights

Delayed transfer of suspects to penitentiaries, irrespective of whether police are responsible, leaves the GPI vulnerable to complaints that they have unlawfully deprived individuals of their liberty under national law and in breach of Article 5.1 of the European Convention on Human Rights. Brief examination of the European Convention on Human Rights case law, especially the Republic of Moldova applications, demonstrates why this is the case.

In the case of *K-F v Germany*³⁵ the European Court of Human Rights ruled that a delay of 45 minute in releasing a detainee where the statutory time limit was 12 hours was not in accordance with a procedure prescribed by law and in breach of Article 5.1.³⁶ The Court held that the authorities were aware of the maximum period of detention in advance of taking the applicant into custody, and were 'under a duty to take all necessary precautions to ensure that the permitted duration was not exceeded', including checking the identity of the applicant.³⁷

Statutory time limits have been considered by the European Court of Human Rights in three Republic of Moldova Article 5.1 applications:³⁸ *Ignatenco v. the Republic of Moldova*;³⁹

³⁵ *K.-F. v. Germany* (Application 144/1996/765/962), Judgment of 27 November 1997), <http://hudoc.echr.coe.int/eng?i=001-58119>

³⁶ *Ibid*, paragraph 73.

³⁷ *Ibid*, paragraph 72.

³⁸ In the above-mentioned *Buzadji v the Republic of Moldova* (Application no. 23755/072016), Judgment 6 July 2016, paragraph 61, <http://hudoc.echr.coe.int/eng?i=001-164928>, the European Court of Human Rights Grand Chamber found it appropriate to hear the application under Article 5.3 as the relevance and sufficiency of reasons to detain, rather than observance of the statutory time limit, were at issue and in need of clarification. The Court explained the Strasbourg jurisprudence on Article 5 in some detail (paragraphs 84-91), including 'scrupulous adherence to the rule of law' (paragraph 85), before synchronising the requirement that a judicial officer promptly gives relevant and sufficient reasons to detain in custody or release pending trial with the requirement that a person deprived of their liberty under Article 5.1 (c) shall be brought promptly before a judicial officer (paragraph 102). The Court found that

Lipencov v. the Republic of Moldova;⁴⁰ and *Paşa v. the Republic of Moldova*⁴¹. In *Ignatenco* the European Court considered a delay of three hours and 45 minutes in complying with the 72 hours statutory time limit. After referring to the strict adherence to statutory provisions required in *K-F v Germany*⁴² the Court went on to examine the circumstances surrounding non-compliance. Noting that although the investigating judge did not order the applicant's detention until after the expiry of 72 hours, the prosecution lodged their request to remand in custody three hours and twenty minutes within the statutory time limit. Moreover, the applicant was in attendance at the remand hearing only 30 minutes after expiry of the time limit, which was the amount of time he was materially affected by the delay. The Court distinguished the case from *K-F v Germany* and found that the short delay was not in violation of Article 5.1.⁴³

The circumstances that mitigated against violation in *Ignatenco* were not present in *Lipencov* and the European Court of Human Rights ruled that a six and a-half-hour delay in releasing the applicant from police custody after expiry of the 72-hours time limit, which was admitted to by the Government, amounted to an unlawful deprivation of liberty in violation of Article 5.1.⁴⁴ The applicant also complained that he had been assaulted by police. Although the Court did not establish that he was actively ill-treated by police, despite obvious signs of serious injury the applicant did not receive medical attention throughout the time he was in custody and the Court ruled that he had been subjected to inhuman treatment in violation of Article 3 of the European Convention on Human Rights.⁴⁵ The Court also ruled that there had been a violation of the procedural limb of Article 3 as the result of failure of the authorities to thoroughly and effectively investigate the applicant's complaint of ill-treatment.⁴⁶

In the *Paşa* case the applicant complained that he had been unlawfully deprived of his liberty after he was detained in police custody for two hours and twenty minutes after expiry of the 72-hours time limit.

there had been a breach of Article 5.3 on grounds that the domestic authorities did not convincingly demonstrate detention was necessary, and there 'were no relevant and sufficient reasons to order and prolong the applicant's detention pending trial' (paragraph 123).

³⁹ *Ignatenco v the Republic of Moldova* (Application no. 36988/07), Judgment 8 May 2011, <http://hudoc.echr.coe.int/eng?i=001-103319>

⁴⁰ *Lipencov v the Republic of Moldova* (Application no. 27763/05), Judgment 25 April 2011, <http://hudoc.echr.coe.int/eng?i=001-103003>.

⁴¹ *Paşa v. the Republic of Moldova* (Application no. 50473/11), Judgment 15 May 2018, <http://hudoc.echr.coe.int/eng?i=001-182997>.

⁴² *Ignatenco v the Republic of Moldova* (Application no. 36988/07), Judgment 8 May 2011, paragraph 67, <http://hudoc.echr.coe.int/eng?i=001-103319>

⁴³ *Ibid*, paragraph 68.

⁴⁴ *Lipencov v the Republic of Moldova* (Application no. 27763/05), Judgment 25 April 2011, paragraph 50, <http://hudoc.echr.coe.int/eng?i=001-103003>. Breach of the statutory 72-hours time limit was also at issue in the recent case of *Mătăşaru v the Republic of Moldova* (Application no. 53908/17), Judgment 30 November 2021, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-213712%22%7D>}. Having determined there was a violation of Article 5.1 on grounds that detention could not be regarded as devoid of arbitrariness because there was no justification for interfering with the applicant's right to freedom of expression under Article 10 of the European Convention on Human Rights, the European Court did not rule on the 20 minutes breach of the statutory time limit.

⁴⁵ *Ibid*, paragraphs 38-40.

⁴⁶ *Ibid*, paragraphs 42-46.

The Court observed that the complaint was identical to the complaint considered in *Ignatenco*, and unable to distinguish the two cases found the complaint manifestly ill-founded and inadmissible.⁴⁷

Examination of this small body of European Convention on Human Rights case law demonstrates that the European Court of Human Rights will strictly uphold adherence to the statutory 72-hours time limit as expressly required under Article 5.1. Although the Court will take into consideration circumstances surrounding delays, exceptions will not be allowed as the result of time taken to complete procedures which were envisaged in establishing the time limit.

c) International and national reports

Detention time limits in the Republic of Moldova have been raised by the CPT following country visits; the UN Committee Against Torture; the People's Advocate Office (PAO) in the Special Report on the death of Andrei Braguta and 2020 Annual Report.

Reporting on the 2015 visit to the Republic of Moldova⁴⁸ the CPT observed that despite operation of the 72-hours time limit the delegation were aware of a number of cases in which persons remanded in custody by the courts had been held in police detention facilities for up to 10 days before transfer to a penitentiary. Non-compliance with the statutory time limit was on the authority of the investigator for the purpose of conducting their criminal investigation. The CPT emphasised that in principle remand prisoners should be transferred to prison to protect against the risk of intimidation and ill-treatment and recommended that 'the Moldovan authorities take the necessary measures to ensure that persons remanded in custody are promptly transferred to a prison establishment.'⁴⁹

Reporting on the 2020 visit, after observing that delayed transfers were no longer commonplace the CPT commended the Republic of Moldova authorities for improved compliance with the 72-hours time limit.⁵⁰ However, the CPT expressed concern that transfers to prison were sometimes delayed after a judge remanded the person in custody, for up to 13 days, until identity documents were in order, and recommended that the Republic of Moldova remedy this situation.⁵¹ In their response to the Report, the Government of the Republic of Moldova expressly addressed CPT concerns:

⁴⁷ *Paşa v. the Republic of Moldova* (Application no. 50473/11), Judgment 15 May 2018, paragraph 19, <http://hudoc.echr.coe.int/eng?i=001-182997>. The European Court of Human Rights ruled that a second complaint regarding modification of a court order fixing the dates of detention on remand in custody, which was not in accordance with procedures laid down in the CPC and had been ruled unlawful by the Bălți Court of Appeal, was in violation of Article 5.1 (paragraphs 25-26). A third complaint by the applicant that he had been denied access to documents supporting the necessity to remand him in custody and he was therefore unable to challenge properly the reasons for his detention in contravention of the 'equality of arms' principles and, therefore, in violation of Article 5.4.

⁴⁸ Report to the Government of the Republic of Moldova on the visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 25 September 2015: CPT/Inf (2016) 16, <https://rm.coe.int/16806975da>.

⁴⁹ *Ibid*, paragraph 13. For the same reasons the CPT also cautioned the Republic of Moldova authorities against returning remand prisoners to police detention facilities for investigation purposes, paragraphs 14-15.

⁵⁰ Report to the Government of the Republic of Moldova on the visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 January to 7 February 2020: CPT/Inf (2020) 27, paragraph 16, <https://rm.coe.int/16809f8fa8>.

⁵¹ *Ibid*.

It should be noted that the delays in issuing identity documents by the Public Services Agency for persons in police custody persists, especially if the person has never previously been issued an identity document and / or has not been assigned a state identification number. In this sense, the authorities are examining the possibility of modifying the normative framework, mainly the Law No. 273/1994 on identity documents in the national passport system and the Enforcement Code.⁵²

Turning now to the concluding observations of the UN Committee Against Torture on the third periodic report of the Republic of Moldova, the Committee welcomed amendment of the Enforcement Code in 2012 establishing the 72-hours time limit in police Temporary Detention Isolators (TDI) under Article 175¹ (see above, 3i and footnote 21).⁵³ The Committee went on to express concern with pre-trial detention practice in the Republic of Moldova including, *inter alia*, the length of time persons are detained and the presumption that persons will be deprived of their liberty.

The Committee is concerned that:

- (a) Persons suspected of having committed an offence can be detained in so-called “police isolators” for a period of 72 hours after being arrested before being brought before a judge and that some have been detained for up to two months;
- (b) That preventive arrest and detention, when persons are most vulnerable to torture, and ill-treatment, is applied excessively, even in cases when the crime committed does not qualify for preventive arrest and detention, that the number of persons placed in pretrial detention has increased by more than 20 per cent since 2013; and that alternatives to detention are very rarely used; (...)⁵⁴

The Committee made several recommendations in regard to detention in police custody, including, *inter alia*, reform of the statutory time limit:

The State party should:

- (a) Ensure that all persons who are arrested on criminal charges are brought before a judge within 48 hours and that no one is held in pretrial detention for longer than prescribed by law, for offences prescribed by law, or in places of detention that have been deemed unfit for use; and provide redress to victims of unjustified prolonged pretrial detention;
- (b) Amend its legislation and take all necessary measures to shorten the duration of pretrial detention, which should be used as an exception, as a measure of last resort and applied for limited periods of time, in accordance with international standards; and consider replacing pretrial detention for minor crimes with noncustodial measures, including electronic surveillance; (...)⁵⁵

⁵² Response of the Government of the Republic of Moldova to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the Republic of Moldova from 28 January to 7 February 2020: CPT/Inf (2021) 6, page 2, <https://rm.coe.int/1680a2219d>.

⁵³ UN Committee against Torture, Concluding observations on the third periodic report of Republic of Moldova, CAT/C/MDA/CO/3, 14 November 2017, paragraph 4.(b), <https://www.refworld.org/publisher,CAT,,MDA,5a2922494,0.html>.

⁵⁴ *Ibid*, paragraph 10.

⁵⁵ *Ibid*, paragraph 11.

In the list of issues prior to submission of the fourth periodic report of the Republic of Moldova,⁵⁶ the UN Committee Against Torture requested further information on matters raised in the concluding observations on the third periodic report mentioned above.

(a) Steps taken to ensure that persons who are arrested on criminal charges and held in police isolation cells are brought before a judge within 48 hours; and that no one is held in pretrial detention for periods longer than prescribed by law;

...

(c) On any amendments to legislation with a view to shortening the duration of pretrial detention; specific steps taken to reduce preventive arrest and detention in particular for minor crimes; and on any consideration given to replacing pretrial detention for minor crimes with non-custodial measures, including electronic surveillance;⁵⁷

Concerns raised by the CPT and UN Committee Against Torture in regard to detention in police custody and the 72-hours time limit have been taken up in the Republic of Moldova by the PAO. The Special Report of an investigation into the death of Andrei Braguta, who died when in the custody of Penitentiary No. 16-Pruncul Chisinau on 26 August 2017,⁵⁸ records the eight days the deceased was detained by police and makes recommendations intended to ensure compliance with the 72-hours time limit. The PAO investigation found that flawed procedures were responsible for the delayed transfer to a penitentiary, including refusal to admit Braguta into custody because medical documents were not in full order⁵⁹ or without the correct identity documents, which was exacerbated by ineffective procedures for establishing the identities of detainees.⁶⁰ Explanations were not given to the investigation for failure to transfer on the weekend of 19/20 August.⁶¹ After considering the evidence the PAO concluded that Braguta was not transferred within the 72-hours time limit, which expired at 3.22 pm on 18 August, due to the state of his health. The PAO presuming that penitentiary medical doctors expected that Braguta's serious health problem would be attended to at the Institute of Emergency Medicine, which unfortunately did not occur.⁶² Based on the investigation findings, PAO recommendations relevant to this Review are as follows: i) that both the GPI and NAP commence recording decisions by penitentiaries or criminal prosecution centres to refuse to receive persons into custody; ii) the practice of penitentiaries in refusing to receive detainees due to the lack of medical or identity documents to cease; iii) penitentiaries to receive detainees and convicted persons seven days a week; and iv) police departments to take firm steps to avoid non-compliance with the 72-hours time limit arising from the lack of medical or identity documents.⁶³

⁵⁶ Committee against Torture, List of issues prior to submission of the fourth periodic report of the Republic of Moldova, adopted on 2 December 2020, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MDA/CAT_C_MDA_QPR_4_43747_E.pdf.

⁵⁷ *Ibid*, paragraph 3.

⁵⁸ Special Report on investigation's results from Office about the case of death of the national Andrei Braguta into state custody (developed under Article 22 (2) Law on The People's Advocate(Ombudsman) No. 52/2014), 2017, http://ombudsman.md/wp-content/uploads/2019/06/BRAGUTA_Special_Report-engl.pdf.

⁵⁹ *Ibid*, paragraph 38.

⁶⁰ *Ibid*, paragraph 44.

⁶¹ *Ibid*, paragraph 45.

⁶² *Ibid*, paragraph 46.

⁶³ *Ibid*, pages 17-18.

The PAO 2020 Annual Report⁶⁴ made references to the international reports mentioned above and reiterated previous recommendations to ensure that deprivation of liberty in the Republic of Moldova is a last resort, in accordance with a procedure prescribed by law and conforms to international standards, especially in regard to a pre-trial detention time limit of 48 hours.⁶⁵ Thus, the PAO recommended development of an effective mechanism to record compliance with the 72-hours time limit, and punishment of persons found responsible for non-compliance;⁶⁶ and for the Superior Council of the Magistracy to issue a circular advising on adherence to pre-trial detention international standards.⁶⁷

d) Published research

Research published by the PAO and the Soros Foundation Moldova in 2020⁶⁸ included a survey of 138 police officers, randomly selected across the Republic of Moldova and from different police departments, on their understanding of the law on police powers to apprehend, arrest and detain in police custody. Asked about their powers to detain persons in police custody 90% of respondents said that they relied on Article 166 of the CPC (see above, 3i). Analysing the data, the researchers found that routine police exercise of their powers to apprehend encroached on the right to liberty of persons and use of their powers as preventive measures may of itself amount to inhuman or degrading treatment. Asked about the requirement to present documents to a criminal investigative body or prosecutor within three hours of apprehension of a suspect under Article 166 (4) of the CPC (see above, 3i) respondents were of the view that the time limit was unworkable; the researchers observing that in practice it appears that the time limit is always exceeding. These research findings confirm the concerns expressed in the reports of international and national monitoring bodies presented above that persons are not always detained in police custody in the Republic of Moldova in compliance with national law and Article 5 of the European Convention on Human Rights.

Research on the practice of investigative judges,⁶⁹ published in 2013, examined their consideration of applications to arrest suspects or apprehended persons which were registered in the chancellery of the court after the expiry of the 72-hours time limit (to recap, an arrest warrant has to be filed at least three hours before expiry of the time limit, see above, Section 3.i). For the most part, the investigating judges considered that they were not required to reject an application if these terms had not been observed, which is contrary to a decision of the Supreme Court of Justice.⁷⁰ Research on the files of investigation judges concerning arrest decisions found that in 61.5% of applications examined arrest warrants

⁶⁴ Report on the Observance of Human Rights and Freedoms in the Republic of Moldova in 2020 http://ombudsman.md/wp-content/uploads/2021/06/Raport-2020-FINAL-RED_18-iunie-1.pdf.

⁶⁵ *Ibid*, pages 21; 23; 197.

⁶⁶ *Ibid*, page 24.

⁶⁷ *Ibid*.

⁶⁸ PAO and Soros Foundation Moldova, Thematic Report of the People's Advocate "Compliance with the fundamental guarantees of detention and pre-trial detention in police inspectorates", http://ombudsman.md/wp-content/uploads/2020/12/Raport_Retinere_2020_OAP_FSM_FINAL-proiect_pe-site.pdf.

⁶⁹ Vladislav Gribincea, Raisa Botezatu, Tudor Osoianu, *Report on Observing the Right to Liberty during Criminal Investigation in the Republic of Moldova (Raport privind respectarea dreptului la libertate la faza urmăririi penale în Republica Moldova)*, Soros Foundation- Moldova, Ch., 2013, page 21, available at: http://soros.md/files/publications/documents/Raport_Respectarea_Dreptului_print.pdf.

⁷⁰ The Court explained that an arrest warrant shall be rejected if these deadlines are exceeded, and the person shall be released, Plenum Decision no.1, page 16, http://jurisprudenta.csj.md/search_hot_expl.php?id=48.

were filed in compliance with statutory requirements; in 9% the minimum three hours was not complied with; and in 21.8% of cases compliance could not be established because there was no record of the time the application was registered with the court. In regard to the latter category of applications, significance attached to the lack of a standard procedure for registering applications with courts, including recording the time an application was filed.

e) Findings

The GPI are in a difficult position: responsible for meeting the 72 hours statutory time limit under current arrangements they may not be responsible for breaches as the result of Covid 19 induced depleted capacity; delayed confirmation of a detainee's identity; restricted times penitentiaries receive arrested persons; and incorrect documents accompanying transferees. In the opinion of the Review team, preventing these breaches of national law and Article 5.1 of the European Convention on Human Rights are not the sole responsibility of the GPI and are to be shared with their criminal justice partners. It is envisaged that any initiative developed by the authorities of the Republic of Moldova in response to this Review would be led by the GPI/MIA.

Collection of statistical data on adherence to the 72-hours time limit are important. Unfortunately, however, detailed statistical data are not currently available on the numbers of hours persons are detained in police custody: *for example*, numbers released after less than 24 hours; 24-48 hours; 48-72 hours; 3-5 days; 5-10 days, more than 10 days, and so forth. The Review team finds that GPI collection of disaggregated data from police districts broken down by the length of time detained in custody would considerably improve understanding of the problems currently faced, including the risk of normalisation of non-compliance with the statutory time limit. Regional variations would also help identify best practice, for example, police departments with a record of completing transfers to penitentiaries within 72 hours, which could be disseminated throughout the country. In the interest of openness and transparency, the GPI are encouraged to publish their statistical data which, in turn, may be independently analysed and researched.

The Review team notes that in examining statistical data of the GPI and NAP (see below, 4ii), due to the different priorities of the two departments in recording the total number of detainees (GPI) and total number of GPI detainees transferred (NAP) it is difficult to cross-reference the data. The Review, therefore, finds that there is merit in the PAO proposal that both the GPI and NAP should separately record reasons for penitentiary decisions not to receive arrested persons, recording practices that should be adopted for all transfers, whether successful or not, from GPI to NAP custody.

The co-operation between GPI and NAP for the purpose of conducting this Review is understood to represent the necessary first step to resolving current difficulties with complying with the 72-hours time limit, and the Review team welcomes the consensus reached on the usefulness of inter-departmental protocols and legislative reform. In light of European Convention on Human Rights case-law, recommendations of international bodies and PAO, and published research, the Review team is of the view that expansion of the collaboration between the GPI and NAP to include all stakeholders interested in the detention of persons by police would significantly improve the prospect of successfully addressing current difficulties.

It is apparent from the analysis above that the authorities of the Republic of Moldova (in the Government response to the CPT 2020 visit) and the PAO (in the Braguta and 2020 Annual Report) have given consideration to the need for reform of the law on detention in police custody. The Review recognises that the Public Prosecution Service (PPS), judges and magistrates, PAO, Public Service Agency, lawyers, civil society organisations and researchers with a published record in the field are stakeholders and should accordingly be invited to participate in the development of a new legislative and normative framework on detention in police custody.

The Review holds that at the same time as developing solutions to difficulties currently experienced by the GPI in complying with the 72-hours time limit, the authorities of the Republic of Moldova are in a position to take advantage of the opportunity to reduce the limit to 48 hours in accordance with the recommended international standard as presented above. In finding that the 72-hours time limit serves as a norm rather than a maximum, this Review has relied on inadequate statistical data, discussions held over two half days with GPI representatives at two meetings and two published research reports. Several factors have been suggested as reasons for non-compliance, including limited police resources, Public Prosecution Service criminal investigation directives, dependency on the Public Service Agency and police working culture (how police interpret law, for example). We propose that a more thorough review of statistical data and police custody decision making is required in order to understand what causes delay to the transfer of detainees. An important task of this review would be to establish to what extent non-compliance with the statutory limit is due to police resources, delays working with partners, police working culture, and other identified causes of delay. A thorough review of this description, we hold, has the potential to serve as the basis for revision of the legislative and normative framework to ensure adherence to a statutory time limit of 48 hours.

It follows from the above findings that this Review is in favour of the Republic of Moldova authorities embarking on a wide-ranging review and reform programme on detention in police custody, which is not restricted to ensuring compliance with the current statutory 72-hours time limit. Our principal recommendation, therefore, is that consideration is given to the creation of a multi-agency working group, co-ordinated by the GPI/MIA, to review and reform the legislative and normative framework on detention in police custody. See Section 5.1, below, for recommendations.

4. Escort and transfer of detainees

4i. Legislative and normative framework

Legal provisions for the escorting and transferring of detainees in the Republic of Moldova are found in primary and secondary legislation.

Primary legislation

Enforcement Code of the Republic of Moldova nr. 443/2004, Article 304, paragraph 3:

At the request of the criminal investigation body, the investigating judge or the court, the administration of the pre-trial detention place hands over the pre-trial detainee to the police escort subdivision to be brought before the respective authority.

Law no. 320/2012 on the activity of the Police and the status of the police officer, Article 21, paragraph 1 (k):

In the field of maintaining, ensuring and restoring public order and safety, the protection of the rights and legitimate interests of the person and the community, the Police has the following powers: (...) k) to ensure the detention of persons detained in pre-trial detention facilities, as well as their escort; (...)

Law no. 300/2017 on the Penitentiary Administration System, Article 13, paragraph 2 (h):

To achieve the objectives, the National Administration of Penitentiaries and subordinated institutions: (...) h) escort persons in respect of whom the sentence has not become final and convicts, including those transferred to / from abroad; (...)

Secondary legislation

Government Decision no. 547/2019 on the organization and functioning of the General Police Inspectorate, point 9, paragraph 1 (j):

In line with the fields of activity and the basic functions established by this Regulation, the Inspectorate shall ensure the exercise by the Police of the following powers:

(1) in the field of maintaining, ensuring and restoring public order and safety, protection of the rights and legitimate interests of the person and the community: (...) i) ensures the escort of the detained persons, including those detained, in compliance with the provisions of the Enforcement Code of the Republic of Moldova no. 443/2004; (...)

Government Decision no. 583/2006 on the approval of the Statute of execution of sentences by convicts, point 5:

detainee - a person deprived of liberty under the law, who is detained in penitentiaries, regardless of its status (convicted or pre-trial detainee).

4ii. Analysis

The Review analysis of the escort and transfer of detainees in the Republic of Moldova is separated into four parts, examining a) current escort/transfer arrangements; b) risk of violation of Article 3 of the European Convention on Human Rights; c) resourcing the transport of detainees; and, d) findings.

a) Current escort/transfer arrangements

The GPI and NAP quickly responded to a request by the Review for statistical data they have collected on the escort/transfer of detainees. GPI data on reasons for escorting detainees between 2019 and September 2021 are presented in Table 4.ii (a) and NAP data on reasons for GPI escorting NAP detainees in the first nine months of 2021 are presented in Table 4.ii (b).

Table 4.ii (a): GPI data on reasons for escorting NAP detainees, 2019 - September 2021

	2019	2020	Jan-Sep 2021
No. escorted for participation in criminal proceedings	1,591	1,015	952
No. escorted for participation in court hearings	19,657	9,961	7,592
No. escorted to a prosecutor's office	2,747	329	171
No. escorted to a penitentiary	8,043	3,136	2,385
Total no. of escorts	32,038	14,441	11,100

Table 4.ii (b): NAP data on reasons for GPI escorting NAP detainees, Jan-Sep 2021

	Jan-Sep 2021
No. of detainees escorted for criminal prosecution actions	664
No. of detainees escorted to court for first instance hearing	4,634
No. of detainees escorted for forensic/psychiatric expertise	123
Total no. of detainees escorted	5,421

In the same period the NAP recorded GPI transfers of 2,025 persons detained by GPI to penitentiaries and into the custody of the NAP for the first time.

It needs to be stressed at the outset that the NAP do not request transportation services from the GPI. Transfers are ordered by courts or criminal investigation bodies (for pre-trial detainees) and in executing these orders the NAP hands persons over to GPI employees to be escorted.

Examining the data presented in Tables 4.ii (a) and (b) it would appear, the same as in the GPI non-compliance with the 72-hours time limit data (see Section 3.ii, above), that the Covid 19 pandemic has had a significant impact on numbers of detainees escorted. The total number of escorts falling 55% in 2020 compared with 2019, and the projected 12 months total for 2021 (14,800 if the same rate of escorts were to continue in the remaining three months of the year) also over 50% lower than the 2019 total. It is noteworthy that the GPI and NAP record significantly different totals for the number of persons escorted in the first nine months of 2021: 11,100 and 7,446 (including the number of GPI detainees received by penitentiaries for the first time), respectively.

In the opinion of the Review team, this apparent discrepancy in the statistical data may reflect the confusion surrounding the existing legislative and normative framework on which current arrangements are based (see above, Section 4i). Regulations governing the division of powers and competencies of the NAP and GPI on the escort of persons from places of detention to the courts or criminal prosecution bodies, and their return, are not clear and consistent. The Enforcement Code expressly provides that police escort pre-trial detainees for participation in court hearings and criminal proceedings.⁷¹ This is slightly different to the provisions of the Law on the activity of the police and the status of the police officer,⁷² which

⁷¹ The Enforcement Code of the Republic of Moldova nr. 443/2004, Article 304, paragraph 3.

⁷² Law no. 320/2012, Article 21, paragraph 1 (k).

invests the GPI with exclusive powers to escort detained persons (i.e. those detained for a maximum of 72 hours, see Section 3, above). These powers, however, do not apply to all persons deprived of their liberty in the criminal justice estate of the Republic of Moldova (some pre-trial detainees and convicts are excluded). Moreover, the Law on the penitentiary administration system⁷³ provides that the NAP may only escort persons for whom sentence has not been finalised (having been decided by a court in the first instance), persons convicted of a criminal offence (after the final court decision) and extradited persons. Thus, it follows that the NAP does not have powers to escort unsentenced detainees.

In regard to secondary legislation, the Government Decision on the organization and functioning of the General Police Inspectorate,⁷⁴ invests the GPI with powers to escort apprehended and detained persons. According to the Government Decision on the approval of the Statute of execution of sentences by convicts⁷⁵ a detainee is defined as a person deprived of liberty under the law, who is detained in penitentiaries regardless of their status (whether convicted or pre-trial). Examining the regulatory provisions, the Review team finds that police have powers to escort apprehended and pre-trial detainees and convicts, whereas primary legislation provides the GPI with competences to only escort certain categories of persons deprived of their liberty.

Also, to be taken into consideration are the restrictions imposed by the NAP on days and times when penitentiaries receive transfers of GPI detainees (see above, Section 3.ii).

In the opinion of the Review team, the lack of coherence in the current legislative and normative framework results in practical problems with the escort/transfer of NAP detainees by the GPI. These problems are compounded by the lack of cooperation between the institutions that share escorting responsibilities - courts; criminal investigating bodies; NAP; GPI. This, in turn, causes further friction between the two primary stakeholders, the GPI and NAP and, especially in light of NAP policy on when inmates may be admitted to penitentiaries, the risk of breaches of Articles 3 and 5 of the European Convention on Human Rights and Council of Europe standards.

b) Risk of violation of Article 3 of the European Convention on Human Rights

As set out in Section 2.i, above, the absolute prohibition under Article 3 of the European Convention on Human Rights is not limited to serious cases of torture and includes acts of ill-treatment. The Review holds that current escort/transfer arrangements risk violation of Article 3. For example, if a penitentiary fails to provide sufficient food to a person that leaves NAP custody to be transported by police; and/or, if a detainee is kept in GPI custody overnight, or over a weekend, pending the reopening of NAP offices (which may also engage Article 5.1 of the European Convention on Human Rights as discussed above in Section 3.ii).

The GPI provided the Review team with details of one alleged ill-treatment case referred to the PPS in 2020 which is related to GPI transfer of NAP detainees. The facts of the case were as follows: on 23 April 2021 at around 08.30 hours on the request of a district court a detainee was to be escorted from a criminal investigation isolator to a court hearing

⁷³ Law no. 300/2017, Article 13, paragraph 2 (h).

⁷⁴ Government Decision no. 547/2019, point 9, paragraph 1 (j).

⁷⁵ Government Decision no. 583/2006, point 5.

scheduled for 10.00 hours. While boarding the detainee onto the escorting vehicle he said he was not well and signed a refusal to be escorted. Employees of the escort service tried to establish the grounds for his refusal and discovered that a duty doctor permitted escort to the court after a medical examination. When taking over responsibility for the detainee, the escort service employees were not informed that his health condition may deteriorate as the result of a head trauma. On arrival at court the detainee communicated that he had severe headaches and felt unwell. The escort service employees immediately requested assistance from the emergency medical service, and it was determined that the headaches were due to a past injury/trauma to the area of the head. An injection was given to relieve the pain and he was later escorted back to prison.

In response to a request from the Review team, the NAP provided statistical data on observable bodily injuries to escorted detainees recorded by penitentiaries in the first nine months of 2021, and total numbers recorded by the NAP between 2016 and September 2020: presented below in Table 4.ii (c). During January to September 2021, a total of 217 cases of observable bodily injuries to detainees transferred by police inspectorates were recorded in the following penitentiaries: Cahul - 11; Balti - 43; Chisinau - 157; Rezina - 6.⁷⁶

Table 4.ii (c): Observable bodily injuries to NAP detainees transferred by police inspectorates, 2016 - September 2020

	2016	2017	2018	2019	Jan-Sep 2020
Total no. of injuries	319	204	248	306	207

c) Resourcing the transport of detainees

Consistent with CPT standards set out above in Section 2.i, the Review holds that access to proper resources by institutions involved in the execution of penalties is of paramount importance. It needs to be emphasised that lack of resources does lead, frequently, to breaches of the European Convention on Human Rights: the European Court of Human Rights, as does the CPT, does not grant `exceptions` for breaches of the Convention due to claims by a member State that resources were not available, or failure to allocate sufficient resources for the execution of penalties.

Under current arrangements although the NAP provide transport services for persons detained in penitentiaries, and NAP escort subdivisions are responsible for escorting detainees to the Courts of Appeal, their capacity in terms of a fleet of escort vehicles and personnel is limited. NAP escort/transport personnel are assigned to each penitentiary according to specified criteria: the profile of the penitentiary; number, category, execution regime and risk posed by detainees; size of the penitentiary (physical and number of personnel) and technical capacities; number of local courts, their distance from the penitentiary and frequency of required journeys.

The Review team shares the concerns raised by the NAP at the 26 October meeting that they do not have sufficient financial, personnel and logistical resources to transport detainees on the scale currently provided by the GPI. If transport services were to be transferred from the

⁷⁶ No cases were recorded in the following penitentiaries: Taraclia, Lipcani, Leova, Cricova, Soroca, Rusca, Bender, Pruncul, Goian, Cricova, Branesti.

GPI to the NAP, a full and careful cost benefit analysis would have to consider the relocation of staff and vehicles, and future investment in a service that escorted more than 30,000 detainees in 2019.

d) Findings

Summarising a) to c), above, the Review team observes several deficiencies in the current detainee escort/transfer arrangements.

- Legislation and regulations lack clarity and consistency.
- Poor communication between stakeholders - courts, criminal investigation bodies, NAP and GPI.
- Persons detained in NAP custody have to be temporarily transferred into the custody of the GPI.
- Disparities in statistical data separately collected by the GPI and NAP.
- Custody transfers require formal interactions (including exchange of documents and medical examination) between the NAP and GPI which would not be required if the GPI did not escort NAP detainees.
- There are heightened risks of breaches of Article 3 and 5 of the European Convention on Human Rights.
- Limited resources are available to the NAP to deliver escort/transfer services.

In the opinion of the Review team a two-step approach is required to address these deficiencies. Here, some short-term solutions are suggested, and legislative and administrative solutions are recommended below in Section 5. In light of our finding that there is a lack of coherence in the primary legislation, we are sceptical that a protocol on escort/transfer arrangements agreed by the GPI and NAP and signed by respective ministers will solve current problems. The following short-term solutions are alternatively suggested.

- w) Organisation of a NAP and GPI round table forum to which members of the judiciary and criminal investigation bodies are invited to participate. The purpose of the round table to discuss and agree solutions that do not require amending/reforming the primary legislation and strengthen compliance with the European Convention on Human Rights and Council of Europe standards. For example, the Romanian legislation provides clear rules and procedures on: i) agreement for a timetable that allows the police to bring persons at the closest penitentiary at all times; ii) setting up and functioning of a special unit within the Romanian NAP (central structure) that organizes all transfers between penitentiaries (leaving each penitentiary to escort only the prisoners to courts/prosecutors' offices or hospitals and returning in the same day); and iii) prioritizing the transport activities (see, for example, the provisions in the Romanian legislation – article 5 paragraph (1) from the Decision of the General Director of the National Administration of Penitentiaries no. 432/2019 for the approval of the criteria for prioritizing the transport of detainees between penitentiary units). If the round table were to conclude that a protocol would be the best way to proceed, they would do so with the benefit of their own knowledge and experiences of the difficulties faced under current arrangements.

- x) Agreement between NAP and GPI that an independent medical examination is performed every time a person enters and leaves the custody of a detention authority, including transfer between facilities and to/from court. If there are insufficient medical personnel in the penitentiary system, consideration should be given to sub-contracting medical examinations to appropriately qualified medical practitioners.
- y) Organisation of a round table forum comprising the NAP, GPI, courts and PPS for the purpose of developing and implementing an integrated videoconferencing system that may serve to arrange court hearings and criminal investigation tasks remotely. That is without undermining the fairness and effectiveness of proceedings although the suspect/defendant appears while still confined in a penitentiary.
- z) NAP and GPI to agree measures ensuring the needs of detainees are met that may be escorted long distances and whom may be away from a penitentiary for a considerable amount of time (for example, arrangements to meet food, clothing and hygiene needs).

5. Recommendations

The following recommendations are based on analysis of legislative and normative frameworks, statistical data, European Court of Human Rights case-law and Council of Europe standards, relevant international and national reports, published research and discussions with the GPI and NAP. Recommendations for reform of the detention in police custody 72-hours time limit and arrangements for the escort/transfer of detainees are premised on compliance with Articles 3 and 5 of the European Convention on Human Rights and Council of Europe standards.

5i. Detention in police custody 72-hours time limit

- a) ***The Republic of Moldova authorities should appoint a Multi-Agency Working Group, co-ordinated by the GPI/MIA, tasked with developing a review and reform programme of detention in police custody.***
- b) Stakeholder partners of the GPI should include the NAP, PPS, judges and magistrates, PAO, Public Service Agency, lawyers, civil society organisations and researchers with a record in the field.
- c) Partners should give immediate priority to working together within the current legislative and normative framework to achieve compliance with the statutory 72 hours detention in police custody time limit and ensure that deprivation of the liberty of persons detained by police is always the last resort and for the minimum amount of time necessary. Informal working arrangements between partners that do not require ministerial involvement and facilitate compliance should be explored and developed.
- d) Review and reform of the legislative and normative framework should have the aim of reducing the statutory detention in police custody time limit to 48 hours: an aim which is consistent with the Committee of Ministers Recommendation 13 of 2006 (see above 2.ii).

- e) Review and reform of legislation and regulations governing identification of detainees and admissions to penitentiaries (at which times and with which documents) should facilitate compliance with the proposed 48-hours time limit.
- f) As part of the review element of the programme, GPI should collect and publish disaggregated data from all police districts on the amount of time persons are detained in police custody and reasons for their detention, including decisions of penitentiaries not to receive detained persons and why the statutory time limit has been exceeded, if relevant. The NAP should also record, collect and publish statistical data on transfers of persons detained by police including reasons why they have not been received into custody, if relevant.

Sii. Escort and transfer of detainees

- a) ***The Republic of Moldova authorities should appoint a Multi-Agency Working Group tasked with developing a review and reform programme of the legislative and normative framework for escorting and transferring detainees.***
- b) Working Group partners of the GPI and NAP should include judges and magistrates, PPS, PAO, civil society organisations and researchers with a record in the field.
- c) The Working Group should give priority to evaluating the current legal framework (including, disparities in GPI and NAP statistical data) and reach agreement on the need for legislative reform which protects the human rights of persons detained in custody and the competencies of police and prison officers involved in the transfer/escorting of detainees. In-depth legislative reform is required in this field.
- d) A basic principle that should be observed is that the institution that has custody of a person deprived of their liberty should arrange and deliver escort/transfer services: the NAP to transport persons detained in the penitentiary system and the GPI to transport persons detained in police remand centres.
- e) Much care and attention should be taken to ensure that the legislation contains clear procedures and rules on functions to be separately performed by institutions responsible for all matters relating to the escort/transfer of detainees - judges, criminal investigation bodies, NAP and GPI. The legislation should clearly and consistently establish the competences/tasks of each institution.
- f) Although the Review is of the opinion that the short-term solutions proposed above in Section 4.ii d) may be more effectively developed by informal co-operation between the GPI and NAP, it would be open to the Working Party proposed at 5.ii a) above to progress and conclude a programme of work commenced informally.
- g) Romanian legislation and regulations on the deprivation of liberty,⁷⁷ with specific sections on the execution of preventive measures involving deprivation of liberty,

⁷⁷ Law no. 254/2013 on the execution of custodial sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal trial; and the Government Decision no. 157/2016 for the approval of the Regulation implementing the Law No 254/2013 on the execution of custodial sentences and of measures involving deprivation of liberty ordered by the judicial bodies during the criminal trial.

transfer between police centres and penitentiaries and cooperation between the GPI and NAP,⁷⁸ may serve as a useful example, a starting point perhaps, for the Republic of Moldova authorities in their deliberations on legislative reform.

- h) Resource allocation will figure prominently in the proposed review and reform programme and particular attention should be given to ensuring that human and financial resources available to the GPI and NAP to escort/transfer do not risk compliance with Article 3 of the European Convention on Human Rights and Council of Europe standards. Anticipating that there may be a need to transfer GPI personnel, vehicles and garage/maintenance premises to the NAP, care should be taken to ensure that duties and competencies are not transferred before the required resources are reallocated.

6. Conclusion

This review of the normative framework with regard to the detention and escort of persons in police custody in the Republic of Moldova was initiated by the GPI approaching the Council of Europe for assistance with difficulties police currently face complying with domestic law and international standards. It was apparent from GPI evaluation documents shared with the Council of Europe that there are a range of problematic areas regarding safeguards for suspects detained in police custody which risk violation of the European Convention on Human Rights. It would not have been practically possible in the limited time available to the Review team to analyse and make recommendations on all of the shortcomings identified by the GPI, and a meeting between Review consultants and the GPI was arranged at which the GPI were asked to clarify their concerns and priorities. Recognising that dialogue with the NAP is necessary if there is to be progress on the difficulties currently experienced by the GPI when escorting/transferring NAP detainees, a second meeting was organised with GPI and NAP representatives. Encouraged by the consensus reached by the GPI and NAP at that meeting, on causes of problems and their need to work together to find solutions, this Review has also stressed the importance of partners working collaboratively to problem-solve. Thus, the appointment of multi-agency working groups have been recommended to address problems identified with law, policy and practice in regard to the detention in police custody 72-hours time limit and transport arrangements for detainees.

In the legislation and regulations governing the escort/transfer of detainees several flaws were identified (see Section 4.ii, above) and the statutory detention in police custody 72-hours time limit requires reform if to be aligned with the international standard of 48 hours. An inclusive approach to legislative reform, drawing together all stakeholders that have a range of experiences and opinions on how the law should be reformed and implemented in practice, will most probably achieve the desired goal of compliance with the European Convention on Human Rights and Council of Europe standards.

⁷⁸ Law no. 254/2013, Title IV, Execution of preventive measures involving deprivation of liberty.