



## **ANALYTICAL REPORT**

**Respecting the rights of asylum seekers, beneficiaries of international protection, applicants for stateless status, recognised stateless persons and foreigners in difficulty in 2023**

**Chisinau, 2023**

## **LIST OF ABBREVIATIONS**

**ECtHR** – European Court of Human Rights

**ECHR** – European Convention on Human Rights

**CES** – Commission for Emergency Situations of the Republic of Moldova

**UNHCR** – UN Refugee Agency

**CDA** – Centrul de Drept al Avocatilor/Law Centre for Advocates

**MIA** – Ministry of Internal Affairs

**GIM** – General Inspectorate for Migration

**GIBP** – General Inspectorate of Border Police of the Ministry of Internal Affairs

**CTPF** – Centre for Temporary Placement of Foreigners of the General Inspectorate for Migration

**ASD** – Asylum and Statelessness Directorate of the General Inspectorate for Migration

**BCP** – Border Crossing Point

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## INTRODUCTION

Centrul de Drept al Avocatilor/Law Center for Advocates (CDA) is a public, non-commercial, apolitical, non-profit association, registered on February 24, 1997 at the Ministry of Justice of the Republic of Moldova.

CDA's mission is to promote respect for human rights and fundamental freedoms and to provide legal support to asylum seekers, refugees, beneficiaries of humanitarian protection, stateless persons, foreign citizens and undocumented persons based on effective, equidistant and fair justice.

The achievement of the mission takes place through the following basic activities and services:

- Providing free legal assistance to all refugees, beneficiaries of humanitarian protection, stateless persons, foreign citizens in difficulty, asylum seekers and undocumented persons;
- Elaboration of training programs and delivery of trainings for various target groups of professionals in the field of human rights, implicitly in the field of asylum and migration, including lawyers, judges, prosecutors, policemen, social workers and other professionals, whose activity is related to interaction and cooperation with foreigners, stateless persons and undocumented persons who are on the territory of the Republic of Moldova;
- Conducting advocacy activities on the access of refugees, asylum seekers, beneficiaries of humanitarian protection, stateless persons and persons at risk of becoming stateless to the social, health and educational protection system;
- Monitoring policies, legislation and activities of state institutions with responsibilities in the field of migration, asylum, statelessness and naturalization.

On February 24, 2022, the Russian Armed Forces launched a full-scale invasion of Ukraine and important regions on the territory of Ukraine became and remain to this day areas of armed conflict. Millions of people in Ukraine have been forced to flee their homes in search of safety, protection and assistance outside Ukraine or inside the country in less dangerous regions. This armed conflict has generated one of the largest refugee crises in the world. According to UNHCR statistics<sup>1</sup>, updated on December 28, 2023, 6,338,600 refugees from Ukraine have been registered globally, of which - 5,935,000 - in Europe.

Since the first day of the war in Ukraine, CDA team members have been fully involved in monitoring human rights at state border crossing points and refugee accommodation centers.

In response activities to the flow of refugees from Ukraine, CDA has developed a network of over 100 legal advisers, who have provided legal assistance and useful information to refugees in detention centres and border crossing points, at telephone advice lines, through online communication platforms, social networks and by distributing printed information materials.

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<sup>1</sup> <https://data2.unhcr.org/en/situations/ukraine>

During the refugee crisis, in addition to the legal assistance provided, CDA representatives are also involved in other activities, such as identifying the vulnerabilities of refugees, facilitating the obtaining of financial and material aid, protecting children, organizing information sessions, trainings for state employees involved in activities with refugees from Ukraine.

In response to the massive influx of refugees from Ukraine, the European Union, by Implementing Decision from March 4, 2022, No 2022/382 of the Council (EC), decided to grant temporary protection to persons arriving from Ukraine, triggering the application of Temporary Protection Directive No 2022/382. 2001/55/EC. On January 18, 2023, the Government of the Republic of Moldova approved granting temporary protection to refugees from Ukraine, as well as to certain third-country nationals, starting of March 1<sup>st</sup> , 2023. This milestone provided a safer legal status for displaced persons from Ukraine. Respectively, during 2023, CDA focused mainly on providing support to displaced persons from Ukraine, including the process of obtaining temporary protection.

At the same time, most of the issues highlighted in previous reports and studies, prepared by the CDA or with the participation of the CDA, have not yet been resolved. Moreover, the issue of respect for human rights has become topical in the context of the massive and spontaneous influx of displaced persons who cannot return to their country of origin.

Given the complexity of the issue of ensuring respect for human rights in the Republic of Moldova, CDA aimed to carry out the Report on respect for the rights of asylum seekers, beneficiaries of international protection, stateless persons, persons at risk of becoming stateless persons, foreigners in difficulty from the perspective of the quality of the national regulatory framework, taking into account the findings of the report prepared in 2021. The information reflected in this Report covers the period of 2023.

The main purpose of the report is:

- Analysis and generalization of legislative and law enforcement issues in CDA's fields of activity.
- Informing the UN Refugee Agency (UNHCR), the Ombudsperson's Office, the Ministry of Internal Affairs, the General Inspectorate of Border Police, the General Inspectorate for Migration and other relevant authorities/institutions about the main findings of the report.
- Encourage national public authorities and institutions to pay more attention to the problems of persons belonging to the categories mentioned.
- Contribute to the improvement of legislation and law enforcement practices in areas of interest to CDA beneficiaries.
- Informing public opinion.

Previously, relevant to the topic of this Report, CDA elaborated and participated in the elaboration of studies and reports, as follows:

- Study *"Implementation of temporary protection granted on the territory of the Republic of Moldova to displaced persons from Ukraine: situation after six months"*;

- Study "*Capacity of the asylum system in the Republic of Moldova*";
- Report No.1 on monitoring the observance of the rights of foreign persons in Ukraine in the context of the state of emergency for the period 25 February – 30 April 2022;
- Report no.2 on monitoring the observance of the rights of refugees from Ukraine in the context of the state of emergency for the period May – July 2022;
- Thematic report "*Respecting the rights of asylum seekers, beneficiaries of international protection, applicants for stateless status, recognised stateless persons and foreigners in difficulty in 2021*".

## PARTNERSHIPS 2023

The activities in 2023 were carried out by CDA in partnership with:

- **International agencies and networks:**
  - UN Refugee Agency (UNHCR)
  - United Nations Development Programme (UNDP Moldova)
  - Council of Europe Office in Chisinau
  - International Organization of La Francophonie
  - U.S. Embassy in Moldova
- **National Human Rights Protection Institutions:**
  - Ombudsperson's Office
  - Equality Council
- **Public authorities and institutions:**
  - Ministry of Internal Affairs (MIA)
    - General Inspectorate of Border Police (GIBP)
    - General Inspectorate for Migration (GIM)
  - Ministry of Labour and Social Protection
  - Public Services Agency (PSA)
  - National Institute of Justice (NIJ)
  - Local public administration authorities
- **International non-governmental organizations and networks:**
  - Oxfam International
  - HEKS/EPER
  - INTERSOS
  - Acted
  - Danish Refugee Council (DRC)
  - Catholic Relief Services (CRS)
- **National public associations:**
  - AVE Children
  - GENDRDOC-M

- Keystone Moldova
- Charity Center for Refugees (CCR)
- CERI Moldova

## LEGISLATIVE AND LAW ENFORCEMENT ISSUES IN THE FIELDS OF ACTIVITY OF CDA

### GENERAL

#### **Inconsistency of some laws with the provisions of the Administrative Code**

On 19.07.2018, the Parliament adopted the Administrative Code, which was published in the Official Gazette on 17.08.2018. Section 257 of the CA, paragraph 3, provides that:

*"The Government, within 6 months from the publication of this Code:*

*a) develop and submit to Parliament proposals on bringing the legislation in force into conformity with this Code;*

*b) bring its normative acts into conformity with this Code and ensure the elaboration of normative acts necessary for its implementation".*

#### **Problem**

Previously, it was found that most of the administrative procedures regulated by the Law on the regime of foreigners in the Republic of Moldova nr. 200/2010 were not brought into line with the provisions of the Administrative Code. The regulation of all administrative procedures in Law 200/2010 will serve as a guide for the officials of the General Inspectorate for Migration in the administrative procedures preceding different types of decisions issued by the GIM, but will also provide foreigners with the procedural guarantees provided by the Administrative Code. The clear regulation of these procedures will provide a benchmark for administrative courts in cases of examination of actions challenging GIM decisions.

The same situation - inconsistency with the norms of the Administrative Code - is valid for decisions of non-admission to the territory, but also for other decisions issued by the General Inspectorate of Border Police, based on the Law on the State Border of the Republic of Moldova nr. 215 of 04.11.2011.

#### **Proposal**

Initiate the development of administrative procedures within GIM and GIBP with subsequent inclusion of these procedures in the relevant normative acts.

### TEMPORARY PROTECTION

According to the Law on asylum in the Republic of Moldova nr. 270/2008, temporary protection is a form of exceptional protection intended to provide, in the event of a mass and spontaneous influx of displaced persons unable to return to their country of origin, immediate and

temporary protection to such persons, if there is a risk that the asylum system will not be able to process this flow without adverse effects for its efficient functioning, in the interests of the persons concerned and other persons in need of protection. Temporary protection is granted by Government decision, which establishes the measures and the period for which temporary protection is granted. Temporary protection must be applied with due respect for human rights and fundamental freedoms and obligations regarding non-refoulement.

In response to the massive influx of refugees from Ukraine, temporary protection was granted on the territory of the Republic of Moldova by Government Decision nr. 21 of 18 January 2023, as of 1 March 2023, more than one year after the circumstances justifying the granting of this form of protection appeared. Temporary protection is granted to displaced persons from Ukraine, as well as to certain third-country nationals, and provides access to a range of rights and services, including the right to stay lawfully, access to employment, temporary accommodation, emergency and primary health care, education for minors in public general education institutions, and social assistance for families with children and unaccompanied children.

Government Decision nr. No 21/2023 transposes Articles 4 (1), 6, 8 (1), 9, 10, 12, 13, 14 (1) of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, and Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection.

## **Regulation of the temporary protection mechanism**

### **Problem**

Although the national regulatory framework governing the temporary protection mechanism mostly corresponds to EU legislation in this area, its implementation and implementation have highlighted that the regulations provided by Law 270/2008 were not sufficient to quickly activate the temporary protection mechanism and that the authorities were not prepared for mass arrivals. Consequently, in the opinion of CDA, it is necessary to regulate in detail the minimum standards for granting temporary protection, the mechanism of its implementation, as well as the responsibilities of the authorities according to the fields of competence, either in a separate chapter of Law 270/2008 or in a separate normative act, and the implementation of temporary protection to be the responsibility of the executive, limiting itself to ascertaining the circumstances justifying its establishment and giving concrete expression to the precise group of persons eligible for temporary protection in relation to the circumstances established.



## Proposal

The detailed regulation of the minimum standards for granting temporary protection, of the mechanism for its implementation, as well as of the responsibilities of the authorities according to the fields of competence, in a separate chapter of Law 270/2008 or in a separate normative act, and the implementation of temporary protection should fall to the executive, limiting itself to ascertaining the circumstances justifying its establishment and concretization of the exact group of persons who can benefit of temporary protection in relation to the circumstances established.

## Categories of persons eligible for temporary protection

### Problem

According to Government Decision nr. 21/2023, in the Republic of Moldova temporary protection is granted to the following categories of persons: (1) Ukrainian citizens residing in Ukraine before February 24, 2022; (2) Ukrainian citizens who were on the territory of the Republic of Moldova before February 24, 2022; (3) stateless persons and third-country nationals other than Ukraine who were beneficiaries of international protection or an equivalent form of national protection in Ukraine before 24 February 2022 and who cannot safely return to their country or region of origin; (4) family members of those persons. In the case of families already constituted in the country of origin and separated due to circumstances during the mass influx, to the extent that the family was present and resided in Ukraine before 24 February 2022, the following persons shall be considered family members: the spouse of the supporter; partner – third-country national/stateless person living with a nominated person and with whom he/she has at least one child; minor unmarried children, whether in or out of wedlock or adopted under the national law of their country of origin; the dependant of the holder, including on grounds of disability or medical reasons; dependent parents of the holder or his/her spouse; persons over whom guardianship or trusteeship is established.

In the process of implementing the Government Decision nr. 21/2023 several questions have arisen regarding some categories of persons who cannot benefit from temporary protection under the national regulatory framework.

Specifically, there are several categories:

***Stateless persons and third-country nationals other than Ukraine who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law and who are unable to return in safe and stable conditions to their country or region of origin, as well as their family members.*** Although the Law on asylum in the Republic of Moldova nr. 270 of 18.12.2008 provides alternative forms of protection, namely refugee status and humanitarian protection, however they differ essentially from temporary protection, both in terms of the content of rights and obligations and in the granting procedure. According to the law, the term of examination of the asylum application can last up to 6 months, being issued a temporary identity document of asylum seeker, valid for a period of 30 days, with the possibility of extension for other terms of

30 days, until the final decision of the application. Also, major differences can be attested in terms of access to medical and social services.

The European Commission encouraged EU Member States *"to consider that these people have more significant ties to Ukraine than to their country or region of origin and therefore their country of origin is Ukraine. This is even more true for stateless persons, who by definition do not have a country of origin to return to<sup>2</sup>."* The Commission recommended that Member States apply equal treatment to these categories of persons, provided that they can demonstrate significant and lasting links with Ukraine on the basis of a valid permanent residence permit issued in accordance with Ukrainian law.

***Family members of non-Ukrainian citizens who have taken refuge in Moldova but have a Ukrainian citizen family member (e.g. spouse) who is in Ukraine or another country.*** In its observations of July 7, 2023, on the implementation of Temporary Protection, the Protection Working Group of the Refugee Coordination Forum encouraged the Ministry of Internal Affairs to interpret or amend the eligibility criteria for temporary protection in accordance with the provisions of Government Decision No. 21/2023, to allow non-Ukrainian family members of Ukrainian citizens still residing in Ukraine, have access to temporary protection in the Republic of Moldova. This would allow family members to remain in close contact with each other, especially if the Ukrainian family member cannot leave Ukraine, for example due to recruitment requirements.

***Caregiver, nationals of third countries other than Ukraine, who are taking care of a Ukrainian national.*** In the process of implementing the temporary protection mechanism, situations were identified in which non-Ukrainian caregivers, who are taking care of a Ukrainian citizen, were declared ineligible for temporary protection, because they do not fall into any of the categories of persons set out in point 1 of the Government Decision nr. 21/2023 (real situation: the person with special needs (locomotor disabilities) is a Ukrainian citizen and the caregiver is a citizen of Azerbaijan). Such circumstances could lead to situations where the caregiver is forced to leave the territory of the Republic of Moldova on the grounds that he or she is not on the list of beneficiaries of temporary protection, leaving the person in need of care without a caregiver and breadwinner. In other words, the right of the person in need of care, to a caregiver with whom he has already established a connection, whom he trusts and who can provide adequate care, is affected.

## Proposal

Extension of the categories of persons eligible for temporary protection on the territory of the Republic of Moldova, in accordance with Council Implementing Decision (EU) 2022/382 from 4 March 2022 attesting the existence of a mass influx of displaced persons from Ukraine.

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<sup>2</sup> Communication from the European Commission on operational guidance for the implementation of Council Implementing Decision (EU) 2022/382 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection, [https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52022XC0321\(03\)](https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52022XC0321(03))

## Progress

At the time of entry into force of Government Decision no. 21/2023, parents who are nationals of third countries other than Ukraine, with children who are Ukrainian citizens, were not eligible for temporary protection and could apply for refugee status, as a form of protection, following the ordinary procedure, although their children benefit from temporary protection - a form of protection that produces effects on the person from the date of manifestation of the will to benefit from it. This situation resulted in different types of protection being granted to members of the same family and increased the risk of family separation. As a result of several warnings on this situation, by ESC Order nr. 80 of 04.09.2023 the list of categories of persons who are considered family members was extended, in the case of families already constituted in the country of origin, to the extent that the family was present and resided in Ukraine before February 24, 2022. From the moment of issuance of this provision, for the period of the state of emergency, *parents or legal representatives, nationals of third countries other than Ukraine, accompanying the minor child benefiting from temporary protection, shall be considered family members*. As a result of this provision, the above-mentioned category of persons may benefit from immediate protection on the territory of the Republic of Moldova.

## Refusal of temporary protection

### Problem

According to the Law on asylum in the Republic of Moldova no. 270/2008, decisions rejecting asylum applications, decisions on cessation or cancelling of refugee status, decisions on cessation or cancelling of humanitarian protection may be challenged through administrative litigation without observing any prior procedure.

According to Article 39 of the Administrative Code, *'Judicial review of administrative activity shall be guaranteed and may not be restricted. Any person claiming a right aggrieved by a public authority or by failure to settle a claim within the legal deadline may apply to the competent court*. According to Article 119 of the Administrative Code, *'An individual administrative act may be issued in writing, orally or by conclusive conduct. The form of the individual administrative act shall be chosen by the public authority issuing the administrative act on the basis of discretionary law corresponding to its obligations. The written administrative act may be issued in paper form or in the form of an electronic document. At the request of a participant, the individual administrative act issued orally shall be confirmed in writing within one week. The application shall be submitted within one month of service of the administrative act. The public authority may issue a written confirmation ex officio'*.

It is currently unclear whether the right of appeal generally applies where displaced persons from Ukraine who have been refused temporary protection for various reasons, including the existence of exclusion clauses in Art. 25 of Law 270/2008, can apply to the administrative court.

Building on the principle of free access to justice, it is important that every applicant for temporary protection has access to an effective remedy if he or she is not offered temporary protection. At the same time, the State must have effective appeal procedures for applicants for temporary protection and ensure written reasons for decisions rejecting applications for temporary protection.

## Proposal

Reasons in writing for decisions rejecting applications for temporary protection and regulating the right to appeal against the refusal to grant temporary protection.

## Free movement of beneficiaries of temporary protection

### Problem

According to point 29 para. (3) of the Conditions for granting temporary protection to displaced persons from Ukraine, approved by Government Decision nr. 21/2023, temporary protection ceases if it is found that "*the person has left the territory of the Republic of Moldova and is outside the territory of the Republic of Moldova for a **cumulative period of more than 45 days***".

It is widely acknowledged that a certain number of refugees make permanent trips between Ukraine and the Republic of Moldova to visit family members, to issue documents, to check their properties and for other reasons. Many of them chose to stay in Moldova due to their proximity to Ukraine. According to information presented by CDA legal advisers, the cumulative period of 45 days of absence on the territory of the Republic of Moldova causes certain reservations about the desire to apply for temporary protection.

The GIM specified that although it is a precondition for the cessation of temporary protection, it does not prevent the foreigner from repeatedly applying for temporary protection and the legislation does not prohibit the repeated granting of this form of protection. In the CDA's opinion, besides the fact that there are no regulations and procedures for the repeated submission of the application for obtaining temporary protection in case of cessation of protection in the analysed situation, the option suggested by the GIM involves additional resources for both refugees and authorities: financial resources, human resources, time resources, technological resources, etc.

The analysis of the de facto situation, compared to human rights standards, requires the conclusion that the establishment of the 45-day period of stay outside the territory of the Republic of Moldova, which serves as a basis for the termination of temporary protection, seems to be unjustified and disproportionate to the legitimate aim pursued. However, the Information Note to the draft Government Decision on granting temporary protection<sup>3</sup> does not contain any arguments justifying this limitation of the right to free movement.

This subject was approached by the Ombudsman before the Constitutional Court, in the Notification on constitutional review of Article 26 para. (3) of the Law on asylum in the Republic of Moldova nr. 270/2008, registered with the Constitutional Court on August 4, 2023<sup>4</sup>.

## Proposal

Review of the grounds for cessation of temporary protection limiting the right to free movement, established in point 29 para. (3) of the Conditions for granting temporary protection to displaced persons from Ukraine, approved by Government Decision nr. 21/2023.

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<sup>3</sup> <https://gov.md/sites/default/files/document/attachments/subiect-05-nu-771-mai-2022.pdf>

<sup>4</sup> [www.constcourt.md/public/ccdoc/sesizari/196a\\_2023.08.04.pdf](http://www.constcourt.md/public/ccdoc/sesizari/196a_2023.08.04.pdf)

## Access to education for minors benefiting from temporary protection

### Problem

According to paragraph 17 of the Conditions for granting temporary protection to displaced persons from Ukraine, approved by Government Decision no. 21/2023, *the Ministry of Education and Research ensures access to education for minors beneficiaries of temporary protection in public general education institutions **within the possibilities of the educational system** and under the same conditions as for minor citizens of the Republic of Moldova.*

With the granting of temporary protection, the state guarantees access to education for minors beneficiaries of temporary protection in public institutions of general education within the possibilities of the educational system and under the same conditions as for minors citizens of the Republic of Moldova. The responsibility for ensuring access to the education system was placed on the Ministry of Education and Research.

Starting from the fact that Government Decision no. 21/2023 transposes Article 14 (1) of Directive 2001/55/EC of the Council of the European Union<sup>5</sup>, the State's reservation to ensure access to education within the possibilities of the education system could be qualified as a restriction of the right to education and could present a major obstacle to access to education, especially in regions hosting large numbers of refugees.

### Proposal

Initiating the procedure for revising point 17 of GD 21/2023 in order to exclude the phrase "*within the limits of the possibilities of the educational system*".

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<sup>5</sup> 'Member States shall grant persons under 19 years enjoying temporary protection access to the education system under the same conditions as nationals of the host Member State. Member States may stipulate that such access shall be limited to the State education system'.

## ACCESS TO THE ASYLUM PROCEDURE

Although the right to asylum enshrined in international law covers a number of fundamental human rights, it remains an independent right aimed at ensuring personal safety and security and the prospect of continuing life safely. The institution of asylum includes, inter alia, (i) access by asylum seekers to processes for determining status and protecting needs that are equitable and effective and comply with the 1951 Convention and the 1967 Protocol; (ii) the obligation to admit refugees to the territories of states; (iii) the obligation to provide UNHCR with rapid, unhindered and secure access to applicants for protection; (iv) the obligation to apply rigorously the exclusion clauses laid down in Article 1F of the 1951 Convention; (v) the obligation to treat asylum seekers and refugees in accordance with applicable human rights standards and refugee law; (vi) the responsibility of host States to protect the civil and peaceful character of asylum; and (vii) the obligation of refugees and asylum seekers to comply with and comply with the laws of host states.

Access to territory for persons fleeing persecution in their countries of origin is one of the essential rights laid down in the 1951 Convention and relevant European legal instruments. States may not impose penalties on refugees for their illegal entry and presence on their territory, provided that they present themselves to the authorities and invoke a valid reason for such illegal entry or presence.

### Insufficient safeguards to ensure effective access to the asylum procedure

#### Problem

The principle of non-refoulement is essential for the realisation of the right to seek asylum. This right shall prohibit, without discrimination, any conduct by the State leading to return in any manner to unsafe foreign territory, including rejection at the border or non-admission to the territory. In order to ensure compliance with the principle of non-refoulement and to make the right to asylum effective, access to the asylum procedure must be ensured to every person who may be in need of international protection. In other words, in the context of asylum, the principle of non-refoulement entails the obligation to grant persons seeking international protection access to territory and to fair and efficient asylum procedures in order to determine whether or not the person should be granted international protection.

According to Law 270/2008, the competent authorities ensure access to the territory of the Republic of Moldova of any foreigner at the state border, from the moment of manifestation of will. No asylum seeker may be expelled or returned from the border or from the territory of the Republic of Moldova. Asylum seekers are not sanctioned for illegal entry or stay in the country, and their treatment must comply with international human rights standards. The competent authorities have the obligation to ensure access to the asylum procedure to any foreigner on the territory of the country or at the state border, from the moment of manifestation of the will expressed in writing or orally, showing that he/she requests the protection of the Republic of Moldova.

In the opinion of CDA, Law nr. 270/2008 does not contain sufficient safeguards to ensure and improve effective access to procedures for applicants for international protection and reflects the rationale that access to international protection is a key precondition for ensuring compliance with the principle of non-refoulement. In particular, the law does not contain regulations on:

- registration of asylum applications as soon as possible;
- the obligation to inform and advise persons apprehended or present at border crossing points, including transit zones, of the possibility of lodging an application for asylum;
- the responsibility of first contact officials to identify the special needs of vulnerable persons and refer them to national authorities with a view to obtain the necessary support and/or further assessment.

It should be noted that according to the EU Asylum Act, access to the asylum procedure is based on a three-step approach consisting of presenting, registering and lodging an application. The distinctions between the terms, used in Article 6 of Directive 2013/32/EU "**submission** of an application", "**registration** of an application" and "**lodging** of an application", can be summarised as follows:

**Submission of the application** - *request made to apply for international protection, which triggers rights and obligations.* The person shall be deemed to have made an application at the time when he or she expressed his or her wish for international protection in any form. The applicant does not necessarily have to use specific words such as 'international protection' or 'asylum' and the defining element must be that the person expresses fear of persecution or serious harm upon returning to his/her country of origin or, in the case of a stateless person, to his/her previous country of residence. The applicant must enjoy his rights from the moment of submission of the application.

**Registration of the application** - *immediate registration of the application by the competent authority to which it was forwarded.* At this stage, the authorities responsible for receiving applications, including the border guards, should register applications together with applicants personal data. These authorities should inform the applicant of his rights and obligations and of the consequences for the applicant in case of non-compliance with those obligations. The applicant must be provided with a document certifying that the application has been submitted. The time limit for lodging an application starts to run from the moment an application is registered.

**Lodging of the application** - *completion of a relevant administrative formality, according to which the applicant must lodge the application.* The lodging of the application is the document formalising the application for asylum. The applicant shall be provided with the necessary information on how and where to lodge his or her application and shall be given an effective opportunity to do so. At this stage, the applicant must submit all the elements at his disposal which are necessary to substantiate and complete the application. The time limit for the administrative procedure starts to run from the moment an application is lodged. At that time, the applicant must be issued with a document certifying his/her status as an applicant and

which should be valid for the entire duration of his/her right to remain in the territory of the state.

In order to facilitate access to the asylum procedure at border crossing points, including transit zones, three specific safeguards need to be put in place<sup>6</sup>:

- providing information on the possibility of applying for asylum;
- ensuring, through interpretation services, the basic communication necessary to enable competent authorities to understand whether persons are expressing a wish to receive international protection and to facilitate access to the asylum procedure;
- ensuring effective access for organisations and individuals providing counselling and advice to asylum seekers, to asylum seekers at border crossing points, including transit zones.

At the same time, in order to facilitate access to the asylum procedure, it is necessary to proactively identify persons who may wish to apply for international protection, by providing relevant information on the right to apply for asylum, by guiding them to appropriate procedures, by ensuring respect for their rights. The obligation to provide information on the possibility of applying for international protection implies that the authorities likely to receive applications for international protection have relevant information and that their staff receive the necessary level of training appropriate to their tasks and responsibilities, and have instructions on where and how to lodge applications for international protection.

At the same time, the measures taken at border crossing points mark one of the main moments when the special needs of vulnerable persons can be declared or detected. First contact officials are responsible for identifying the special needs of vulnerable persons and referring them to national authorities for necessary support and/or further assessment.

In all cases, everyone, whether or not explicitly applied for international protection, enjoys the right to asylum, the right to dignity, the right to life, the right not to be exposed to torture or to inhuman or degrading treatment or punishment, based on the principles of non-refoulement, non-discrimination, confidentiality, the best interests of the child, fairness and efficiency in the asylum procedure, individual, impartial and objective assessment of the application.

## Proposals

- Examine the appropriateness of regulating access to the asylum procedure based on the three-step approach: presenting, registering and lodging an asylum application.
- Develop regulations, methodological instructions and operational standards in line with human principles and rights, providing support and guidance to ensure effective and equitable access to the asylum procedure, including vulnerable persons.
- Identify training needs for staff of competent authorities for receiving asylum applications, taking into account their role in ensuring access to the asylum procedure respecting human rights and refugee protection standards.

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<sup>6</sup> <https://euaa.europa.eu/ro/publications/instrumente-practice-pentru-functionarii-de-prim-contact-ghid-practic>



## Access to the asylum procedure for vulnerable groups and people with special needs

### Problem

Law 270/2008 does not establish a definition of vulnerable persons and does not contain a list of asylum seekers who would need special procedural guarantees in the asylum procedure, but contains certain provisions on the procedure for certain categories of persons with special needs: unaccompanied minors, victims of torture or violence and persons with mental disorders (mental illnesses or deficiencies). The procedural safeguards offered by the national asylum system to persons with special needs are limited and insufficient to meet their needs to ensure effective access to the asylum procedure.

Law nr. 270/2008 covers only certain aspects of the asylum procedure applied in relation to asylum seekers with special needs, often regulations being fragmented, lacking coherence and clarity of the procedure at all its stages. The lack of provisions on the obligation to identify the special procedural needs of vulnerable persons affects their effective access to special procedural guarantees and hinders the effective exercise of asylum and other human rights.

The EU Asylum Acquis provides a non-exhaustive list of categories of applicants for international protection considered vulnerable persons, including: minors, unaccompanied minors, persons with disabilities, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons suffering from serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. At the same time, persons with disabilities, persons with mental disorders, persons with serious illnesses and persons who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence belong to the category of vulnerable persons who are granted special protections and whose specific situation must be taken into account.

### Proposals

- Providing a definition for the notion of "persons with special needs" in the content of Law nr. 270/2008.
- Extension of the categories of persons in need of special procedural guarantees, in line with the EU asylum acquis.
- More detailed regulation of procedural guarantees offered to persons with special needs.
- Completion of Law nr. 270/2008 with regulations establishing the obligation to identify the special needs of vulnerable asylum seekers.
- Develop mechanisms for rapid and efficient identification of vulnerable persons, assessment of their special procedural needs in order to provide relevant support, according to these special needs.

**The procedure for examining asylum applications submitted by persons for whom international restrictive measures are applied or have previously been declared undesirable on the territory of the Republic of Moldova, are in international search, pose danger to state security or are in other similar situations.**

*According to Articles 18 and 20 of Law no. 270/2008, a foreigner is excluded from refugee status and humanitarian protection if there are reasonable grounds to believe that he has committed a crime against peace, humanity, or a war crime; has committed a serious, particularly serious or exceptionally serious non-political crime before entering the territory of the Republic of Moldova, has committed acts contrary to the purposes and principles of the United Nations, has planned, facilitated or participated in the commission of terrorist acts, as defined in international treaties to which the State is a party or poses a danger to public policy or state security.*

Asylum applications lodged by persons who, by virtue of their activity or membership of a particular group, present a danger to national security or public order shall be examined under a rapid procedure. Asylum seekers who pose a danger to national security or public order are returned from the territory of the Republic of Moldova under the Law on the regime of foreigners in the Republic of Moldova nr. 200/2010, with detention, as appropriate. At the same time, the foreigner who has carried out, carries out or in whose regard there are serious indications that he intends to carry out activities likely to endanger national security or public order is declared undesirable, which implies his removal from the territory of the country. The decision on declaring the foreigner undesirable may be challenged in court.

Although, according to Law no. 200/2010 and Law no. 25/2016<sup>7</sup>, persons who are presumed to pose a danger to national security or public order and persons prohibited from entering the territory of the Republic of Moldova, including as an international restrictive measure, are not allowed to enter the territory of the country, if they apply for asylum at the border crossing point they become asylum seekers and are to be provided with all procedural guarantees according to Law 270/2008.

In order to optimize the procedure for examining asylum applications submitted by persons for whom international restrictive measures are applied, or have previously been declared undesirable on the territory of the Republic of Moldova, are in international search, pose a danger to state security or are in other similar situations, the practice established in EU Member States could be taken over, according to which such applications can be examined not only in an accelerated (rapid) procedure, but also in the asylum procedure at the border. It should be noted that the asylum procedure at the border involves the detention of the applicant and applies in accordance with Articles 8 to 11 of Directive 2013/33/EU, which governs the detention of asylum seekers, safeguards for detained applicants, detention conditions and conditions of detention of vulnerable persons and applicants with special reception needs.

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<sup>7</sup> Law on the Application of International Restrictive Measures nr. 25 of 04.03.2016

## Proposal

Examination of the opportunity to introduce the asylum procedure at the border into the national asylum system, ensuring guarantees in case of detention of asylum seekers.

## STATELESSNESS

### Rights of applicants for stateless status

#### Problem #1

Article 20 paragraph (1) of the Law on Citizenship of the Republic of Moldova nr. 1024/2000 sets out the grounds for refusal to grant citizenship of the Republic of Moldova.<sup>8</sup>

By Law no. 132 of 21.12.2017 amending and supplementing the Law on Citizenship of the Republic of Moldova no. 1024/2000, para. (2) of Article 20 of Law nr. 1024/2020, according to which "*the provisions of para. 1 (c) shall not apply to the persons specified in Article 12 (c). (2) if they are not nationals of another State*". Revocation of para. (2) of Article 20 of Law no. 1024/2000 generate and/or perpetuate statelessness situations among persons born outside the territory of the Republic of Moldova, who do not hold the citizenship of other states, but who have expressed their desire 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 ASSR, their descendants.
- c) persons deported or refugees from the territory of the Republic of Moldova since 28 June 1940, as well as their descendants.
- d) persons who on June 23, 1990, were legally and habitually resident on the territory of the Republic of Moldova and who continue to reside today.

The revocation of paragraph 2 of Article 20 of the Law on Citizenship of the Republic of Moldova no. 1024/2000, as amended by Law no. 112 of 09.06.2011, contravenes:

1. The principle of priority of norms of international treaties, stipulated in paragraph 1 of Article 8 of the Constitution of the Republic of Moldova and Articles 4, 9, 10

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**8 Article 20.** Grounds for refusal to grant or regain citizenship

(1) The citizenship of the Republic of Moldova may or may not be regained by a person who:

- a) has committed international, military or crimes against humanity;
  - b) has been involved in terrorist activity;
  - c) during the period of examination of the application, executes or has to serve the criminal sentence involving deprivation of liberty on the basis of the court sentence, has an unbroken criminal record or is under criminal investigation;
  - d) carries out activities that endanger state security, public order, health and morality of the population;
  - e) does not fully meet the conditions for acquiring citizenship of the Republic of Moldova, established by this Law;
  - f) in the process of granting or regaining citizenship, presents false information or conceals some pertinent data.
- (2) – revoked.

para. (2) of the Law on Citizenship of the Republic of Moldova nr. 1024/2000.

2. The provisions of Articles 7 and 15 of the Universal Declaration of Human Rights, to which the Republic of Moldova adhered by Parliament Decision No. 217-XII of 28.07.1990.
3. The provisions of Article 4 of the Convention on the Reduction of Statelessness of 30.08.1961, to which the Republic of Moldova adhered by Law nr. 252 of 08.12.2011.
4. The provisions of Article 4 letters a) and b), Article 6 para. (1) letter a) and paragraph 4 letter b) of the European Convention on Citizenship, of 1997, ratified by the Republic of Moldova by Parliament Decision no. 621 of 14.10.1999.
5. The general principles of citizenship, provided in Article 7 letters a), b) and d) of the Law on Citizenship of the Republic of Moldova nr. 1024/2000.

## Proposal

Revocation of Article I, item 10 of Law nr. 132 of 21.12.2017 in the part related to the phrase: **"... paragraph (2) shall be revoked"**, by which paragraph 2 of Article 20 of the Law on Citizenship of the Republic of Moldova no. 1024/2000 was revoked, as amended by Law no. 112 of 09.06.2011 and Return to Article 20 of the Law on Citizenship of the Republic of Moldova no. 1024/2000, as amended by Law no. 112 of 09.06.2011

## Problem #2

The rights of applicants for stateless status are provided for in Article 873 para. (1) of the Law on the regime of foreigners in the Republic of Moldova no.200/2010. Except for procedural rights (interpreter, notifications, etc.), applicants for stateless status have only two rights: the right to be on the territory of the country during the procedure and the right to work.

Unlike those mentioned, asylum seekers benefit from a wider spectrum of rights, which are specified in Articles 28, 29, 30 of the Law on asylum in the Republic of Moldova nr. 270/2008. In addition to procedural rights, asylum seekers have the same right to be on the territory of the country during the procedure (not to be returned) and the right to work. In addition to the two rights mentioned, asylum seekers enjoy the following rights enshrined in law:

- to benefit from legal aid at any stage of the asylum procedure, according to the law.
- to be informed of the possibility of contacting 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 in 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, according to the legislation in force, and minor asylum seekers - access to medical assistance under the same conditions as minor citizens of the Republic of Moldova.
- to have access to compulsory education under the same conditions as citizens of the

Republic of Moldova.

- to benefit, in the case of families with children, as well as unaccompanied minors, from all social assistance measures granted, in accordance with the legislation in force, to children citizens of the Republic of Moldova.

## Proposal

Amend the Law on the regime of foreigners in the Republic of Moldova nr. 200/2010 by completing the list of rights of stateless applicants, offering the same rights as asylum seekers.

## Avoiding statelessness and reducing statelessness

### Problem

On 31.12.2023, 1889 stateless persons were registered in the State Register of Population, of which 4 holders of the provisional residence permit for stateless persons. A number of 1885 persons hold identity cards for stateless persons, of which 887 hold identity cards for stateless persons with expired validity.

According to the country of origin, stateless persons come from Moldova - 956 persons, Russian Federation - 414 persons, Ukraine - 265 persons, Kazakhstan - 93 persons, Belarus - 26 persons, Uzbekistan - 23 persons, Georgia - 21 persons, Azerbaijan - 20 persons, Turkmenistan and Tajikistan - 10 persons each, Palestine - 7 persons, Germany - 8 persons, Latvia - 6 persons, Estonia - 5 persons, Lithuania - 4 persons, other countries – 19 persons.

Since 2012, when the procedure for determining stateless status was established in the Republic of Moldova, the GIM has recognized the stateless status for 509 persons. These persons correspond to the concept of stateless person in Law 200/2010 and the 1954 UN Convention relating to the Status of Stateless Persons.

From discussions with specialists in the field, it appears that most of the persons documented, until 2012, with identity documents for stateless persons, were citizens of the Republic of Moldova and renounced to citizenship under the pretext of acquiring citizenship of another state. Despite this, so far about 1380 people continue to be listed in the State Register of Population as stateless. If these persons have become citizens of other states, the information about their status in the State Register of Population is to be corrected from stateless to foreign. If these persons have failed to acquire citizenship of another state, in accordance with the provisions of Article 22 para. (2) of the Law on Citizenship of the Republic of Moldova nr. According to Regulation (EC) No 1024/2000, the decrees (or parts of decrees) approving their applications to renounce the citizenship of the Republic of Moldova are to be revoked in respect of these persons.

By ratifying the Convention relating to the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961", the Republic of Moldova assumed the

obligation not to generate stateless persons, when it is possible to grant citizenship, and to reduce by naturalization the number of stateless persons. Despite this, Republic of Moldova still reports a constant number of stateless persons on its territory, half of whom were born on this territory and are eligible to be recognized citizens of this state. The status of a considerable part of the remaining stateless persons could be changed after a check of their status (citizenship).

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

At the Global Refugee Forum 2023, which took place on December 13-15, 2023 in Geneva, Moldova announced that it is committed to meet nine goals, including "*supporting and developing protection measures and ending statelessness*", and pledged to become part of the Global Alliance to End Statelessness.

## Proposals

- Initiate a verification of the current situation of stateless persons in order to establish their current status (third country citizenship).
- Exclusion from the list of stateless persons, of those who have acquired citizenship of third countries.
- Revoke decrees approving abdication 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.
- Initiating procedures for acquiring citizenship of the Republic of Moldova, with regard to stateless persons who meet the criteria set out in Article 10 of the Law on Citizenship of the Republic of Moldova nr. 1024/2000 (birth, recognition, adoption, recovery, naturalisation).

## Progress

In the previous report of the CDA,<sup>9</sup> some provisions of the Law on Citizenship of the Republic of Moldova no. 1024/2000 were addressed, in the wording of Law no. 132/2017, which generated 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 to stay on the territory of this state at the time of birth of the child. Thus, Article 11 para. (1) letter C) of the Law stipulated that the child "*born on the territory of the Republic of Moldova to parents who have the citizenship of another state or one of whom is stateless or beneficiary*

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<sup>9</sup> <https://cda.md/wp-content/uploads/2022/02/Respectarea-drepturilor-solicitantilor-de-azil-....-in-2021.-Studiu-tematic-RO.pdf>

*of international protection, and the other is a foreign citizen, provided that, at the time of birth, at least one of the parents holds the right of residence or benefits from international protection granted by the competent authorities of the Republic of Moldova" or is recognized stateless by the competent authorities of the Republic of Moldova".*

After several requests addressed to institutions with the right of legislative initiative and to ensure respect for human rights, as a result of the legislative initiative of a Member of Parliament, the wording of Article 11 of Law no. 2024/2000 was amended by Law no. 142 of 08.06.2023, excluding the phrase "*provided that, at the time of birth, at least one of the parents holds the right of residence*". The exclusion of the mentioned phrase will guarantee the right of any child born on the territory of the Republic of Moldova to the citizenship of this state and will prevent situations of statelessness of children born to parents with expired residence documents / visa or parents without residence documents, in transit.

## **ACCESS TO HEALTHCARE FOR ASYLUM SEEKERS, APPLICANTS FOR STATELESS STATUS AND BENEFICIARIES OF TEMPORARY PROTECTION**

### **Problem**

Asylum seekers, applicants for stateless status and beneficiaries of temporary protection who are not employed are not included in the list of persons<sup>10</sup> who can access medical services through the mandatory health insurance system as a result of paying the mandatory health insurance. In this situation, asylum seekers and stateless applicants benefit only from primary and pre-hospital emergency medical assistance in case of acute life-threatening conditions, and beneficiaries of temporary protection – primary health care (except for the prescription of compensated medicines and medical devices), pre-hospital urgent medical assistance, hospital medical assistance in case of medical-surgical emergencies (emergencies major medical-surgical, grade II and III), specialized outpatient care (outpatient dialysis services), dental care (emergency dental services)<sup>11</sup>.

### **Good practices:**

1. Asylum seekers, stateless applicants and beneficiaries of temporary protection, employed in the labour market, benefit from the status of insured person in the mandatory health insurance system, granted on the basis of information related to employment relationships for establishing social and medical rights submitted by employers to the State Tax Service.
2. Asylum seekers and beneficiaries of temporary protection minors have access to

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<sup>10</sup> See Art. 9 of the Law on mandatory health insurance nr. 1585 of 27.02.1998; Art. 26 of the Law on Health Care nr. 411 of 28.03.1995

<sup>11</sup> See Order of the Ministry of Health nr. 143 of 28.02.2023 on medical services provided to beneficiaries of temporary protection.



medical assistance under the same conditions as minors citizens of the Republic of Moldova. Consequently, asylum seekers from the mentioned categories benefit from medical services financed by the National Health Insurance Company (NHIC), through public and private medical and sanitary institutions.

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

The UN Human Rights Protection Mechanisms have repeatedly recommended Moldova to ensure without discrimination the access of asylum seekers, refugees and stateless persons to healthcare services and to ensure that **every person** is enrolled in the mandatory health insurance system<sup>12</sup>.

## Proposal

Amendment of the relevant regulatory framework in order to ensure access to healthcare services without discrimination, along with the citizens of the Republic of Moldova, for asylum seekers, beneficiaries of international protection, beneficiaries of temporary protection and stateless persons.

## DOCUMENTATION OF PERSONS IN THE NATIONAL ASYLUM SYSTEM

### Problem #1

According to paragraph 3 of the Regulation on issuance of identity documents and registration of residents of the Republic of Moldova, approved by Government Decision no. 125 of 18.02.2013, *"Residents of the Republic of Moldova shall be considered its citizens residing in the country, regardless of the existence of their registration at home or residence, foreigners with the right to stay on the territory of the Republic of Moldova and persons to whom it has been recognized by the competent authorities of the Republic of Moldova **stateless or refugee status, as well as persons granted humanitarian protection, temporary protection or political asylum, with the exception of foreigners who are members of the diplomatic corps.***

Paragraph 1171 of the Regulation stipulates that: *'A person who is unable to be registered at home or temporary residence shall obtain the identity card or, where applicable, the provisional identity card without such indication. At the request of the person who emigrated*

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<sup>12</sup> See: Recommendation of the Committee on Social, Economic and Cultural Rights E/C.12/MDA/CO/3 (CESCR 2017 ), <https://uhri.ohchr.org/en/document/b318d7c8-3d8f-4cfd-9a90-3148a1fdfac4>; Recommendation of the Committee on the Elimination of Racial Discrimination CERD/C/MDA/CO/10-11 (CERD 2017), <https://uhri.ohchr.org/en/document/311357e6-7af2-41e4-96c9-a0771b46152f>; Committee on the Elimination of Discrimination against Women CEDAW/C/MDA/CO/6 (CEDAW 2020), <https://uhri.ohchr.org/en/document/68c7f20b-2621-454c-89e2-d7e2a18e3e10>;



*authorized, the provisional identity card shall be issued without registration at home and/or temporary residence on the territory of the Republic of Moldova."*

The rules laid down make it possible to state that in situations where a stateless person, refugee or beneficiary of humanitarian protection, who does not have the possibility of being registered at home or temporary residence, must obtain an identity card without mentioning his domicile or temporary residence.

In its activity, CDA has repeatedly addressed the General Inspectorate for Migration, requesting the issuance of identity cards for concrete persons - stateless persons, refugees or beneficiaries of humanitarian protection - without mentioning home registration. The reason for these requests were situations in which the beneficiaries did not have their residence or were unable to present the notarial agreements of the owners or the refusal of the owners to provide such an agreement.

The GIM rejects these requests, maintaining the position that only citizens of the Republic of Moldova can be issued identity cards without indicating their domicile. In CDA's opinion, this approach of GIM is discriminatory, because the Regulation on issuance of identity documents and evidence of residents of the Republic of Moldova, approved by Government Decision nr. 125/2013 includes stateless persons, refugees and beneficiaries of humanitarian protection in the category "inhabitants of the Republic of Moldova", and in item 1171, provides for the option of issuing identity cards without mentioning their domicile for all residents of the Republic of Moldova.

## **Proposal**

Eradicate the GIM practice of refusing to issue identity cards to stateless persons, refugees and beneficiaries of humanitarian protection in situations where persons do not have the possibility to be registered at home or temporary residence.

## **Problem #2**

According to Article 58 para. (2) and (3) of the Law on asylum in the Republic of Moldova nr. 270/2008, *'(2) The period for examining an asylum application shall be up to 6 months. 3. If a decision cannot be taken within the time limit laid down in paragraph 3, the decision shall be taken within the time limit laid down in paragraph 3. (2) For reasons beyond the control of the Directorate for Asylum and Integration, this period may be extended, provided that the necessary actions are taken to adopt such a decision. The term may be extended for one month at a time but shall not exceed 3 months'*.

According to Article 32 of the Law, *"(1) Until the asylum application is resolved, the Asylum and Integration Directorate shall issue to the asylum seeker a temporary identity document [...]. The temporary identity document of an asylum seeker is valid for a period of 30 days, with the possibility of extending it for other periods of 30 days, until the final settlement of the application"*.

The term of validity of the temporary identity document of asylum seeker may be subject to criticism from the perspective of realization of human rights, including the right of asylum seekers to work, receive medical assistance, access to compulsory education, benefit from social assistance measures, as appropriate. However, if the document is valid for a period of 30 days, with the possibility of extension for other periods of 30 days, until the final settlement of the application, its holders are in an uncertain situation when they try to benefit from those rights.

## Proposal

Revision of the term of validity of the temporary identity document of asylum seeker, established in art. 32 of Law nr. 20/2008, to extend it throughout the asylum procedure or without mentioning its validity.

## Problem #3

According to Article 37 of Law no. 270/2008, the beneficiary of international protection is issued an identity card, and upon request can obtain a travel document that allows him to travel outside the territory of the Republic of Moldova. Thus, in order to ensure the documentation of beneficiaries of international protection, the following types of identity documents are distinguished in the national passport system<sup>13</sup>:

**IDENTITY CARD FOR REFUGEES** – identity document issued for a period of five years to persons who have been recognized refugee status, regardless of age, for use on the territory of the Republic of Moldova

**IDENTITY CARD FOR BENEFICIARIES OF HUMANITARIAN PROTECTION** – identity document issued for a period of three years to persons who have been granted humanitarian protection, regardless of age, for use on the territory of the Republic of Moldova.

**TRAVEL DOCUMENT (CONVENTION RELATING TO THE STATUS OF REFUGEES OF 28 JULY 1951)** – identity document issued for a period of 5 years to persons who have been recognized refugee status, regardless of age, to travel abroad.

**TRAVEL DOCUMENT (HUMANITARIAN PROTECTION)** – identity document issued for a period of 3 years to persons who have been granted humanitarian protection, regardless of age, to travel abroad.

The method of issuance and models of identity cards and travel documents are approved by the Government<sup>14</sup>.

Although the national normative framework regulating the field of identity and travel documents for refugees is consistent with the 1951 Convention and, implicitly, with the main international treaties in the field of human rights to which the Republic of Moldova is a party,

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<sup>13</sup> Law no. 273 of 09.11.1994 on identity documents in the national passport system, available at: [https://www.legis.md/cautare/getResults?doc\\_id=136504&lang=ro](https://www.legis.md/cautare/getResults?doc_id=136504&lang=ro).

<sup>14</sup> Government Decision no. 522 of 06.11.2019 on the models of identity documents in the national passport system, available at: [https://www.legis.md/cautare/getResults?doc\\_id=136007&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=136007&lang=ro#).

there are some aspects to highlight, which, in CDA's opinion, would be improved. In particular, reiterating the types of identity documents valid in the national passport system, it is worth mentioning that the designations "*Identity card for refugees*" and "*Identity card for beneficiaries of humanitarian protection*" could be subject to criticism from the perspective of the right to privacy in the context of personal data protection, regardless of citizenship and residence. However, foreigners, in particular refugees and beneficiaries of humanitarian protection, may be subject to discrimination, may become victims of hate speech and hate crime by virtue of their status. At the same time, the Principle of Confidentiality must be taken into consideration when offering asylum. However, not all persons who are entitled to see/verify the identity documents of foreigners are also entitled to know the legal status of the holders (for example: preschool educator, teacher, postal official, etc.). The State, by granting asylum, is obliged to keep this fact confidential.

Although the elaboration and approval of identity document models, including the establishment of their name, is the prerogative of each state, the comparative analysis of authentic identity and travel documents<sup>15</sup> shows that an impressive number of states avoided mentioning in the name of the identity document the legal status of the person (eg citizen, refugee, beneficiary of humanitarian protection), but agreed two names of identity documents "*Identity Card*" – for citizens of that state and "*Residence document*" – for non-citizens legally residing in the territory of that state.

Given the rapid technological progress and taking into account the fact that the "State Register of Population" was created in the Republic of Moldova – the sole source of personal data for all information systems of public administration authorities using information about individuals<sup>16</sup> – the state has the possibility to conduct automated records and control of all foreigners with temporary or permanent residence right on the territory of the Republic of Moldova, as well as records of issued documents. In this context, it is appropriate to study international practice and review the name of identity documents issued to beneficiaries of international protection, so that no machine-readable information is included in the document, including highlighting their status. Relevant in this respect is Regulation (EC) No 1030/2002 of Council from 13 June 2002 laying down a uniform format for residence permits for third-country nationals<sup>17</sup>.

## Proposal

Review the names of identity documents issued to beneficiaries of international protection - "*Identity card for refugees*" and "*Identity card for beneficiaries of humanitarian protection*" - to avoid mentioning their status.

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<sup>15</sup>The online public register of authentic identity and travel documents (PRADO) provides online access to images, technical descriptions and validity terms of the most commonly used travel and identity documents issued by most countries of the world, available at: <https://www.consilium.europa.eu/prado/ro/prado-start-page.html>.

<sup>16</sup> Government Decision no. 333 of 18.03.2022 approving the Concept of the automated information system "State Register of Population" and the Regulation on the State Register of Population, available at: [https://www.legis.md/cautare/getResults?doc\\_id=134285&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=134285&lang=ro#).

<sup>17</sup> <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:02002R1030-20171121>

## Problem #4

According to Article 22 of Law no. 270/2008, the Asylum and Integration Directorate (Directorate for Asylum and Statelessness) registers the personal data of beneficiaries of temporary protection on the territory of the Republic of Moldova and adopts the necessary measures to provide persons benefiting from temporary protection with the necessary documents for the entire duration of protection. Each beneficiary of temporary protection shall be issued with an identity document free of charge granting him permission to stay on the territory of the Republic of Moldova. The model of the identity document also has implications for the exercise of certain rights.

Beneficiaries of temporary protection shall be issued identity documents valid until 1 March 2024. Starting from the fact that by Government Decision nr. 21/2023 temporary protection was granted for a period of one year, starting from 1 March 2023, this validity term is objective, regardless of the date on which the identity document was issued. However, even if the normative acts in force do not regulate the possibility of renewing identity documents if the duration of temporary protection is extended, that obligation remains valid. In order to reduce the administrative burden related to the renewal of identity documents, there is the option of granting documents for a period of two years, being clear that temporary protection can cease at any time in accordance with the provisions of paragraph 29 of Government Decision nr. 21/2023. If this possibility is not used, it is likely that identity documents will need to be renewed twice, for periods of six months.

At the same time, a longer period of validity of the identity document would offer certain advantages to beneficiaries of temporary protection, increasing their prospects for socio-economic inclusion in the host country and would exempt the state from additional costs if the duration of temporary protection is extended.

## Proposal

Review of the wording of the validity period included in the identity document of the beneficiary of temporary protection, from the perspective of extending the duration of temporary protection on the territory of the Republic of Moldova.

## Progress

*In the Report on the observance of the rights of asylum seekers, beneficiaries of international protection, applicants for stateless status, recognized stateless persons and foreigners in difficulty in 2021*, it was mentioned that identity documents of beneficiaries of international protection and stateless persons are more expensive than identity documents and travel documents of citizens of the Republic of Moldova.

The Supreme Court of Justice, by its decision of 19.07.2019, in file no. 3r-154/19 filed at the request of summons submitted by the CDA to the PSA, established the fact of direct discrimination of stateless persons, refugees and beneficiaries of humanitarian protection compared to citizens of the Republic of Moldova, on the criteria of citizenship, by imposing a differentiated price for manufacturing and issuing identity documents; item 9,11,16,18,19 of

Chapter 5.5 of Annex no. 1 to the order of the Public Services Agency nr. 1 of 19.07.2017 on the temporary application of nomenclatures and tariffs for services provided by Public Services Agency. In this context, CDA recommended equivalence of the cost of identity and travel documents issued to stateless persons and beneficiaries of international protection with the cost of identity and travel documents issued to citizens of the Republic of Moldova.

By PSA Order no. 66 of 29.01.2021, the Internal Nomenclature of services provided by the Public Services Agency and their tariffs was approved. According to the document, tariffs for manufacturing and personalizing identity cards and travel documents for stateless persons and beneficiaries of international protection were adjusted to tariffs for issuing identity card and passport to Moldovan citizens.

## **DETENTION**

Public detention is a measure restricting freedom of movement, ordered by the court against the foreigner who did not execute the return decision or who could not be returned within the period provided by the legislation, who crossed or attempted to irregularly cross the state border, who entered the country during the previously ordered prohibition period, whose identity could not be established, who has been declared undesirable, against whom expulsion has been ordered or if there is a risk of absconding.<sup>18</sup>

Detention is the only measure ordered by the court against foreigners, provided by Article 64 of the Law on the regime of foreigners in the Republic of Moldova nr. 200/2010. Public custody is a measure to ensure the removal of the foreigner from the territory. Persons detained are placed in the Centre for Temporary Placement of Foreigners (CTPF), subordinated to the General Inspectorate for Migration.

During 2023, 133 foreigners were detained, including persons who were suspects/accused in criminal cases.

## **Detention of persons under criminal investigation**

### **Problem**

In 2023, the practice of detention and accommodation in CTPF continued at the criminal investigation phase of foreigners, who have the status of suspect / accused / defendant in criminal trials, with 21 cases being registered. The Code of Criminal Procedure expressly provides for the categories of preventive measures (Article 175) and other procedural measures of coercion (Article 197) that may be applied to these categories of persons. Most often, foreigners who have the status of suspect / accused / defendant in criminal proceedings are taken into public custody, being applied a preventive measure established by the prosecutor or by the court - the obligation to go to the criminal investigation body or court or the obligation not to leave the country.

The lawyers representing the persons in the examination in the courts of the GIM's request

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<sup>18</sup> See: article . 64 of the Law on the regime of foreigners in the Republic of Moldova nr. 200 of 16.07.2010

regarding detention continued to communicate the situations in which judges order the detention or extension of the duration of detention of foreigners, without taking into account the fact that preventive or other procedural measures of coercion have already been applied to them.

In the circumstances exposed, detention is misused and could be qualified as an 'alternative measure' to preventive measures to other procedural measures of coercion regulated by the Code of Criminal Procedure.

## Proposal

The prohibition of detention of foreigners, who are not allowed to leave the territory of the Republic of Moldova as a result of the suspension of the right to free movement abroad for the reasons set out in Article 12 of the Law on the regime of foreigners in the Republic of Moldova nr. 200/2010.

## Detention of asylum seekers

### Problem

In previous reports<sup>19</sup>, CDA has addressed the detention of asylum seekers. CDA noted that the detention of asylum seekers in public custody, supported by the courts by taking them into public custody and extending the terms of detention of these persons, constitutes a method of intimidation exercised with the aim of forcing asylum seekers to withdraw their asylum application and return to their country of origin.

During 2023, 133 people were detained, 23 of whom applied for asylum while in detention. In 21 cases, the competent court ordered the release of foreigners from detention, refusing the request to extend the duration of detention, and in four other cases the term of detention was extended. Two other applications were submitted for examination to the asylum subdivision of the General Inspectorate for Migration.

CDA reiterates that the legislation of the Republic of Moldova does not provide for the detention of asylum seekers, except for situations where, for reasons of national security or public order, return from the territory of the country is required<sup>20</sup>. Respectively, from the moment of applying for asylum, the foreigner is no longer subject to the Law on the regime of foreigners in the Republic of Moldova nr. 200/2010 and is to be **released immediately**, without waiting for the expiry of the detention deadline set by the court. The CDA warns that detention of asylum seekers constitutes a serious violation of human rights.

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<sup>19</sup> <https://cda.md/wp-content/uploads/2022/02/Respectarea-drepturilor-solicitantilor-de-azil-....-in-2021.-Studiu-tematic-RO.pdf>

<sup>20</sup> See: art. 11 of Law nr. 270 of 18.12.2008 on asylum

## Proposal

Amendment of the Law on the regime of foreigners in the Republic of Moldova nr. 200/2010 with regulations expressly ordering the release from public custody of foreigners who have applied for asylum or the granting of stateless status.

## Lack of alternatives to detention

### Problem

According to Law nr. 200/2010, the foreigner who did not execute the return decision or who could not be returned, who crossed or attempted to irregularly cross the state border, who entered the country during the previously ordered prohibition period, whose identity could not be established, who was declared undesirable, may be detained, against whom expulsion has been ordered or if there is a risk of absconding. Unaccompanied minors and families with minors shall be detained only as a last resort and for as short a period as possible. The national regulatory framework does not contain regulations on alternatives to public custody.

The use of alternatives to detention benefits both the state and individuals, since, on the one hand, they are more cost-effective and, on the other, they are less intrusive and ensure greater respect for human rights than deprivation of liberty. Similar to detention, alternatives to this measure must also be governed by laws and regulations in order to avoid arbitrarily imposing restrictions on freedom in general or freedom of movement. The principle of legal certainty requires appropriate regulation of these alternatives, and regulations must specify and explain the alternatives available, the criteria that apply to their use, and the authorities responsible for their implementation.

Alternatives to detention that restrict asylum seekers' freedom can have an impact on human rights and are subject to human rights standards, including regular review of each case by an independent institution. Persons subject to alternatives to detention should have timely access to effective appeal mechanisms, as well as effective remedies, where appropriate. Alternatives to detention must not only be available on paper but must also be accessible in practice.

In designing alternatives to detention, it is important to respect the principle of least intervention and to pay particular attention to the specific situation of vulnerable groups, such as children, pregnant women, the elderly, or persons with disabilities or who have experienced trauma.

Detention of migrant children is a major challenge, including the detention of families with minors. Although detention is not effectively taken against children accompanying family members or legal representatives, they are detained together with their family or legal representative, thus being subject to measures restricting certain rights. Where children are also involved, the ECtHR exceptionally considered that deprivation of liberty could only be necessary to achieve its purpose, namely the expulsion of the whole family. The presence of a child in a place of detention for adults does not comply with Art. 5 para. 1 (f) of the Convention, unless the authorities had recourse to this measure as a last resort and only after verifying that



another less restrictive measure could not be applied. In this regard, the judgment of the European Court of Human Rights of 17 January 2023 in the case *Minasian and Others v. Moldova* is also relevant. 5 § 1 of the Convention – detention of minor children without any legal basis, accompanying their mother in detention and failure of national courts to examine whether detention of children is a measure of last resort and whether the detention centre is suitable for housing families with minor children; violation of Article 5 § 4 of the Convention – inability of children to challenge the legality of their detention.

## Proposals

- Amendment of Law nr. 200/2010 by introducing regulations that would provide for more non-custodial measures alternative to detention.
- The express establishment in the text of Law no. 200/2010 of the procedure of detention (detention) only as a last resort, for the shortest possible time, subject to proportionality and necessity tests and only after due examination of all alternative non-custodial measures.

## Territorial jurisdiction to take and extend the duration of detention

### Problem

The detention of persons and the extension of the duration of detention is ordered by the court on the basis of the petition submitted by the GIM. Law nr. 200/2010 does not contain regulations on the territorial jurisdiction of courts. The territorial offices of the GIM submit these petitions to the Balti Court, Comrat Court and Chisinau Court. The GIM request the placement of persons in the Center for Temporary Placement of Foreigners, which is located in Chisinau, 88 Petricani Street. In order to extend the term of detention, the GIM applies to the same court, which previously ordered the initial detention. Thus, in order to examine the request to extend the detention, the GIM transfers the detainee to Balti or Comrat, accompanied by GIM staff, even if all participants in these court hearings are in Chisinau. This situation entails additional expenses for the periodic transportation of persons more than 100 km from the place of stay of the CTPF, in order to examine the steps to extend detention. These situations are generated by the fact that the legislature failed to establish in Law no. 200/2010 territorial jurisdiction to examine the GIM's request for detention and extension of detention.

If for the examination of detention petitions it is natural to address to the courts in whose territorial jurisdiction the Cahul, Chisinau, Balti offices of the General Inspectorate for Migration operate, then in order to examine the requests to extend the term of detention it would be appropriate to address these requests to the Chisinau Court in whose territorial jurisdiction the CTPF is located. By analogy with the provisions of Article 54 para. (3) of Law nr. 200/2010, according to which the appeal against the return decision, filed by the foreigner taken into public custody, is made to the court in whose jurisdiction the Centre for the Temporary Placement of Foreigners is located.



## Proposal

Supplementing Article 64 para. (5) of Law nr. 200/2010 with special rules regarding the examination of the request for extension of the duration of detention by the court in whose jurisdiction the Centre for Temporary Placement of Foreigners falls.

## INTERNALLY DISPLACED PERSONS

### Problem

Although the Republic of Moldova has made significant progress in the field of asylum, with the accession to the 1951 Convention relating to the Status of Refugees and, subsequently, with the adoption of the normative framework in the field of asylum according to international standards, no firm action has been taken in terms of protection of internally displaced persons.

CDA has repeatedly mentioned that, although there are regular cases of refuge (internal movement) of Moldovan citizens residing on the left bank of the Dniester, so far there are neither legal procedures nor regulated infrastructure for people who urgently flee in connection with persecutions by the Tiraspol administration. These people are "invisible" to the authorities. The Republic of Moldova provides a much lower degree of assistance/protection to internally displaced persons than to asylum seekers or beneficiaries of international protection.

There were cases when refugees from Transnistria were accommodated in the Centre for Temporary Accommodation of Asylum Seekers and Beneficiaries of International Protection, subordinated to the General Inspectorate for Migration. The accommodation of internally displaced persons in this unit took place at the request of the Bureau of Reintegration Policies, in the absence of an alternative legal solution. Subsequently, in the absence of guarantees of legal and social protection, some of the people originating from the eastern districts applied for asylum in EU countries, which granted them protection, because the Republic of Moldova does not have an effective remedy to protect internally displaced persons from Transnistria, who have a well-founded fear of returning to Transnistria due to the increased risk to life, their bodily integrity and freedom.

In particular, in the Republic of Moldova there is no special law regulating the notion and status of internally displaced persons, even if the conflict in the Transnistrian region still persists on the territory of the country. Similarly, within the General Inspectorate for Migration there are no specific procedures regarding internally displaced persons. Although the Law on asylum in the Republic of Moldova nr. 270/2008 regulates the notion of 'displaced persons', which refers only to foreigners forced to leave their country or region of origin.

According to some estimates, for 30 years about 130,000 people fled from the eastern districts as a result of the war on the Dniester.

## **Proposal**

Elaboration and adoption of a normative act to ensure the protection of internally displaced persons, citizens of the Republic of Moldova, who take refuge on the territory controlled by the constitutional authorities of the Republic of Moldova.