

RIGHTS OF SUSPECTS IN POLICE DETENTION.
A RESEARCH CONCLUSIONS

This scientific research was developed by the Justice Program of the Soros Foundation-Moldova.

The research represents a regional initiative of the Legal Aid Reformers Network (LARN), and was conducted simultaneously in Georgia, Ukraine and Moldova.

The research methodology is based on the results of the similar initiative conducted in England and Wales, France, Scotland and the Netherlands. This initiative was supported by Open Society Justice Initiative Budapest

Project partners:

Ministry of Internal Affairs of the Republic of Moldova
General Inspectorate of Police

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The opinions stated herein are those of the authors and do not necessarily reflect those of the Soros Foundation-Moldova.



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Rights of Suspects in Police Detention. A Research Conclusions

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Editura Cartier, SRL, str. București, nr. 68, Chișinău, MD2012.

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Editura Codex 2000, SRL, Strada Toamnei, nr. 24, sectorul 2, București.

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Comenzi CARTEA PRIN POȘTĂ

CODEX 2000, Str. Toamnei, nr. 24, sectorul 2, 020712 București, România

Tel./fax: (021) 210 80 51

E-mail: romania@cartier.md

Taxele poștale sunt suportate de editură. Plata se face prin ramburs, la primirea coletului.

Colecția *Cartier juridic* este coordonată de Oleg Efrim

Editor: Gheorghe Erizanu

Lector: Dorin Onofrei

Coperta seriei: Vitalie Coroban

Coperta: Vitalie Coroban

Design/tehnoredactare: Marina Darii, Mircea Cojocaru

Prepress: Editura Cartier

Tipărită la Bons Offices

Tudor Osoianu, Mihaela Vidaicu

REȚINEREA PERSOANEI DE CĂTRE POLIȚIE. CONCLUZIILE UNEI CERCETĂRI

Ediția I, octombrie 2015

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Această lucrare este publicată în cadrul Programului de Drept al Fundației Soros-Moldova, care nu subscrie și nu răspunde pentru conținutul acestei publicații.

Descrierea CIP a Camerei Naționale a Cărții

Osoianu, Tudor.

Reținerea persoanei de către poliție: Concluziile unei cercetări = Rights of Suspects in Police Detention: A Research Conclusion/

Tudor Osoianu, Mihaela Vidaicu. – Chișinău: Cartier, 2015

(Tipogr. „Bons Offices”). – 368 p. –

(Colecția „Cartier juridic”/coord. de Oleg Efrim, ISBN 978-9975-79-951-5).

Tit., text paral.: lb. rom., engl. – Carte-valet (inversă). – 500 ex.

ISBN 978-9975-86-033-8.

343.12/.13=135.1=111

O-85

CONTENT

List of abbreviations	8
1. Introduction	9
1.1. Research Methodology	10
1.2. Data Analysis and Referencing the Data	17
2. Apprehension and State Guaranteed Legal Aid	19
2.1. General Aspects Regarding Apprehension	19
2.1.1. Goals	19
2.1.2. Conditions and Grounds	24
2.1.3. Delimitating Apprehension from Pre-trial Detention	29
2.2. Apprehension Procedure	31
2.2.1. Powers of Police Employees in Apprehending a Person	31
2.2.2. Procedural Acts Documenting Apprehension	33
2.2.3. Term of Apprehension	36
2.2.4. Legality Control of Apprehension	41
2.3. State Guaranteed Legal Aid in the Republic of Moldova	45
2.3.1. Organization of State Guaranteed Legal Aid	45
2.3.2. Categories of State Guaranteed Legal Aid	47
2.3.3. Purpose and Criteria for Delivering State Guaranteed Legal Aid to Suspects Apprehended by Police	53
2.3.4. Remuneration for the Delivery of State Guaranteed Legal Aid in Criminal Cases	56
3. The Right to Information	61
3.1. Legal Framework and its Compliance with the ECHR and EU Standards.....	61
3.2. Information on Rights	63
3.2.1. The Process of Informing the Suspect of His/Her Rights	64
3.3. Information on the Grounds for Arrest/Apprehension	68
3.3.1. The Procedure of Informing the Suspects about the Grounds for Arrest/Apprehension... ..	69

3.4. Information on the Suspicion	70
3.4.1. The Procedure of Informing the Suspects, How and When the Information is Provided, the Level of Understanding of the Information by the Suspects	70
3.5. Access to the Materials of the Case	71
3.5.1. The Procedure of Providing Access to the Materials of Case File, When and How This Access Is Provided	72
3.6. Police and Lawyers’ Perspectives on the Efficiency of Providing Information	73
4. Access to Lawyer and State Guaranteed Legal Aid	75
4.1. Domestic Normative Framework and its Compliance with the ECtHR Standards and Jurisprudence	75
4.2. Organization of Delivery of State Guaranteed Legal Aid to Persons in Police Custody	83
4.2.1. Necessary Measures for Delivering Emergency Legal Aid to Apprehended Persons	83
4.2.2. The Decision of the Suspect to Request Legal Aid	87
4.2.3. The Decision of the Apprehended Suspect Regarding the Delivery of Emergency Legal Aid in Practice	90
4.2.4. Police and Lawyers’ Perspective on the Right to Legal Aid	94
4.3. Delivering Legal Aid to Persons in Police Custody	96
4.3.1. Access to the Information in the Case File and Legal Aid – How They Interrelate	96
4.3.2. Client-Lawyer Consultation	101
4.3.3. Lawyers’ Perspectives on their Role	106
4.3.4. Police Perspectives on the Role of the Lawyers	109
5. Hearing the Apprehended Suspect and the Right to Silence	111
5.1. Importance, Evidential Value and Admissibility of Suspect’s Statements	111
5.2. The Purpose, Functioning and Regulation of the Hearing of Suspect and the Right to Silence; Compliance with ECHR Standards	116
5.3. Standards and Legal Requirements on the Role of the Lawyer during the Interrogation of the Apprehended Suspect	119
5.4. Interrogation of the Apprehended Suspect in Practice	123
5.4.1. The Manner of Carrying Out and Duration of Interrogation	123
5.4.2. Recording Interrogations	125
5.5. The Right to Silence during Interrogation	126
5.5.1. Notification of the Right to Silence during Interrogation	126
5.5.2. Explaining and Understanding the Right to Silence	127
5.5.3. The Right to Silence and Police Strategies to Interrogate Apprehended Persons	128

5.6. Lawyers' Performance Before and During Interrogation	130
5.6.1. Counseling the Suspect about His/Her Behavior during the Interrogation and the Opportuneness to Answer Questions	130
5.6.2. Presence of Lawyers in Interrogation of Suspects Apprehended by the Police	132
5.7. The Role of Lawyers in Interrogation in Practice	133
6. Medical Assistance and Vulnerable Suspects	136
6.1. The Right to Medical Assistance	136
6.1.1. Legislative Regulation of the Right to Medical Assistance and Its Compliance with ECHR Standards	136
6.1.2. Identification of Suspects Who Need Medical Assistance	138
6.1.3. Granting of Medical Assistance	139
6.2. Normative Framework Regarding Vulnerable Suspects and Compliance with ECHR Standards	140
6.2.1. Establishing Vulnerability	140
6.2.2. Procedural Safeguards for Vulnerable Suspects	141
7. The Right to Interpreter and Translator	144
7.1. Legal Provisions Regarding the Right to Interpreter and Translator and the Compliance with ECHR Standards	144
7.2. Measures Taken in Practice by the Police for Ensuring Interpretation	146
7.2.1. The Level of Requesting Interpretation	146
7.2.2. Interpretation at the Initial Stages of Apprehension	147
7.2.3. Interpretation During Lawyer - Client Consultations	148
7.2.4. Interpretation During Interrogation	148
7.3. Establishing the Need for Interpretation/Translation	149
7.3.1. Establishing the Need by the Police	149
7.3.2. Establishing the Need by Lawyers	149
7.3.3. Establishing the Appropriate Language	149
7.3.4. Understanding of Conditions Regarding Interpretation by the Police and Lawyers	149
7.4. Quality of Interpretation	150
7.5. Measures Taken for Translation of Documents	151
8. Conclusions and Recommendations	153
Annexes	159

List of abbreviations

SGLA – state guaranteed legal aid
ELA – emergency legal aid
para – paragraph
art. – article
CC – Contraventional Code
CAC – Code on Administrative Contraventions
CFECC – Centre for Fighting Economic Crimes and Corruption
ECHR – European Convention for the Protection of Human Rights
and Fundamental Freedoms
NCSGLA – National Council for State Guaranteed Legal Aid
Constitution – Constitution of the Republic of Moldova
CPC – Criminal Procedure Code of the Republic of Moldova
SCJ – Supreme Court of Justice of the Republic of Moldova
ECtHR – European Court of Human Rights
jud. – judgment
PDI – Preventive Detention Isolator
GPI – General Police Inspectorate
II – investigation inspector
PI – Police Inspectorate
LSGLA – Law on State Guaranteed Legal Aid
LARN – Legal Aid Reformers’ Network
MIA – Ministry of Internal Affairs of the Republic of Moldova
MJ – Ministry of Justice of the Republic of Moldova
CIO – criminal investigation officer
p. – point
SGLAS – state guaranteed legal aid system
UL – Union of Lawyers
EU – European Union

1. Introduction

One of the most problematic measures undertaken by the police in exceptional cases is apprehending the person suspected of having committed a crime. Efforts by the authorities to improve the legal framework on apprehension, adoption of new laws and regulations, amendments and completions, are not sufficient to ensure effective implementation of the rights of suspects in police custody.

The ECtHR jurisprudence on Moldovan cases where violations of the right to liberty and security, right to information, right to defence, as well as lack of appropriate medical assistance have been found, eloquently prove that the rights of the suspect were underestimated.

Previous studies and legal practice on the position of suspects in criminal proceedings demonstrate that the observance and effectiveness of the rights of the suspect depend, to a large extent, not only on the legal framework adjusted to European standards, but also on the procedural and institutional mechanisms which put these rights into practice, the interaction of different subdivisions of the police and their logistical endowment, as well as the legal and professional culture of police and lawyers.

All publications and other credible sources of information focusing on the incipient stage of criminal proceedings prove that there is enough room for improvement.

This research is a regional initiative promoted within the Legal Aid Reformers' Network (LARN)¹ and is simultaneously carried out in Georgia, Ukraine and Moldova, based on the results of the similar initiative successfully implemented in England, Wales, Scotland, France and the Netherlands.

The specifics of the paper that we provide for those concerned is that the most relevant part of our findings and conclusions are based not only on the analysis of

¹ LARN (<http://www.legalaidreform.org>) is an international network of exchange of information established in 2010 and consisting of individuals and organisations that promote the rights to legal aid and effective defence. LARN has been established by a non-formal network of public defenders and state guaranteed legal aid managers (SGLA) supported by Open Society Justice Initiative and Soros Foundations from Bulgaria, Georgia, Lithuania, Moldova and Ukraine.

the normative framework or on other reports and studies, or interviews, but also on the perception and personal notes made during physical presence in the premises of a Police inspectorate in the Chisinau municipality. We had the opportunity to attend as independent observers all the procedures to which persons apprehended by the police were subject from the moment of bringing them to the Police inspectorate. We decided to observe in order to obtain real perspectives on the everyday routine of the police and lawyers. It represented a rich source of reliable information, but also a large amount of qualitative data to analyse.

This approach has facilitated the understanding of the degree of observance of procedural rights of the apprehended person from several perspectives. By using empirical data collection instruments, the research answered the following questions: *What really happens to the apprehended person in the first days and hours of deprivation of liberty? How do the police officers document apprehension and which actions do they undertake? Which is the role of the lawyer at this stage? To what extent can the person deprived of liberty really exercise his/her rights guaranteed by the law?*

Both good practices and constraints faced by the police and lawyers in apprehension procedures have been identified. We noticed which the tactics applied are to allow these rights to be „real and effective”, as well as the impact of practical obstacles and challenges for the efficient implementation of the apprehended persons’ rights.

We must admit that we have witnessed an unprecedented openness of the Ministry of Internal Affairs (MIA), General Police Inspectorate (GPI) and the Police inspectorate selected for monitoring apprehension cases that offered all necessary support, for which we are grateful. Without the availability of these institutions, this paper could not have been edited in the format that you can see.

1.1. **Research Methodology**

The objectives of our study were, first, empirical research of the manner of guaranteeing the norms aimed at protection of suspects’ rights in police custody. Thus, we examined the functioning of the following rights in the everyday practice: the right to information; to silence; to legal assistance; to interpretation and translation; as well as the right to medical assistance.

Secondly, our objective was to develop recommendations on the legislative framework, policy and procedures to ensure effective compliance with

the European Union instruments (EU Directives on procedural rights of apprehended persons).

Our final objective aimed at integrating the rights of apprehended persons in the tactics of police officers.

An additional component of our project was to use our empirical results to identify training needs for police officers and lawyers, in order to promote best practices and prevent abuses and practical difficulties.

In order to carry out this research we adopted a rigorous methodology of social science research in order to provide reliable and empirically tested data on how the procedural rights of the suspects are observed in practice. The actual start of the observations was preceded by a preparatory period (April, May and mid-June of 2014).

The undertaken research is based on studying theoretical and doctrinal, legislative and normative material and, of course, published sources of national practice and ECtHR jurisprudence. The obtained results develop, complete and specify the findings made in earlier studies on apprehension by the police of a person suspected of having committed crimes.

Then followed meetings with decision-makers from MIA, GPI and representatives of the leadership of the Police inspectorate where the field research was to take place. An order signed by the head of the GPI was issued which allowed the researchers appointed by the Soros Foundation-Moldova to enter the premises of the Police inspectorate for two and a half months and indicated the necessary measures to ensure the possibility to be present in all procedures of apprehension by the police.² The Police inspectorate in the Chisinau municipality was randomly chosen, yet taking into account the fact that it holds the second place in the city regarding the number of persons apprehended in 2013.

We were guided in our field activity by the provisions of the Guidelines for Field Observations where the key problems to be observed, documented and analysed were set.³ It detailed the basic rights of suspects, according to the relevant articles of the ECHR, together with the principles derived from the ECtHR jurisprudence, as well as any other relevant EU Directives.

² The researchers agreed not to disclose information from the criminal investigation case files they had access to, as well as to keep confidential data of personal character.

³ This guide was developed and used within the LARN Research project on the internal evaluation of police custody. The results of the project are available at: <http://intersentia.com/en/inside-police-custody.html>

Field observations lasted 29 days⁴. We had the opportunity to as independent researchers (observers) all the procedures that the apprehended persons were subject to from the moment when they were brought in the Inspectorate (identification of suspects, discussions with the police including the undocumented ones), ensuring first medical assistance, hearing the suspect, drafting the apprehension minutes, legal assistance and hearing the suspect. The results of the observations were recorded in every observed case of apprehension⁵.

The permission obtained from the leadership of MIA and GPI enabled us to avoid, in most cases, the need to explain or justify our presence in the premises of the Police inspectorate. Most of the officers were open to discussions regarding individual cases and their activity in general and have often provided additional information that they considered to be useful for the research.

However, information about apprehension of a person has never come from the police⁶. During the first days, while waiting to be notified by the police about apprehension, no apprehension was documented, because they were not communicated to us⁷. Monitoring of a certain number of apprehensions of suspects was possible due to an active search and careful observation strategy

⁴ See **Annex no. 1**.

⁵ See **Annex no. 2** where there are presented the researcher's records in the Registry for field records in an apprehension case on the 3rd day of observations (**2Pn**) and in the 23rd day (**23P**).

⁶ Thus, the police did not precisely know in advance if an apprehension would be monitored or not. Such certainty only existed when the researcher attended an apprehension, and, meanwhile there were also other persons apprehended and, obviously, the researcher could not physically attend two and more apprehensions at the same time. An exception was day 5, when a police officer brought into an office four apprehended persons suspected of having committed contraventions and simultaneously worked on all the four different cases (contraventions).

⁷ At the same time, we did not attend planned apprehensions, because we were not informed about any case of such kind. Our intention was to participate in, at least, one case immediately from the moment of the *de facto* apprehension of the person, for example, in a public place. When we were reminding the decision-makers about this request, they were saying that *there were not so many or that they would organize attendance to apprehensions like in the movies*.

of everything that was happening in the Police inspectorate⁸. To the extent possible, we adopted a case-centred observation strategy, following the suspect from the beginning of the apprehension process. By doing so, the maximum amount of contextual information relevant to the decision-making process in a given case was gathered.

The days and hours for observations in the Inspectorate were randomly selected at our discretion in the period from 16 June to 8 September 2014. We were present in the Inspectorate between 10 a.m. and 2 a.m., for various periods of time. The shortest uninterrupted (continuous) monitoring during a day lasted for 2 hours, and the longest one – for 11 hours. On some days, after several hours of attendance and observation before noon, we would leave the premises of the Inspectorate and return in the evening for 4-5 hours. The police did not know in advance when we would return to the Inspectorate. Quantitative indicators and the chronology of observations in the Police inspectorate are presented in the Table of **Annex no. 1**.

As shown in the Table of **Annex no. 1**, we were present in the Inspectorate for 200 astronomical hours during 29 days. During this period, we monitored 28 apprehensions, out of which 16 criminal, 7 contraventional and 5 apprehensions which were not documented by police as deprivation of liberty. Observations were made in 18 hearings of the suspect, out of which 12 hearings were not attended by a lawyer⁹. We have attended 4 lawyer–client consultations. In two other cases, lawyers were against the presence of third parties when counselling their clients.

⁸ In this regard, the office offered for research by the leadership of the Inspectorate had a strategic location, close to the Guard Unit and Post no. 1 where there is always an officer on duty, who registers in a registry, civilians who enter or who are brought to the Inspectorate. A considerable amount of time when there were no apprehended persons documented in the Inspectorate, at least the ones that would be known to the observer, the latter was located close to the Guard Unit. Being located between the Guard Unit and Post no. 1, the researcher managed to monitor from the very beginning the majority of the observed apprehensions. The monitoring of other apprehension cases was possible due to the researcher's periodic visits to all the floors of the Inspectorate. In particular, the researcher most frequently would visit the floor where the offices of the investigation officers were located, the special office for conducting criminal investigation actions and a room where the apprehended persons were kept in an „iron cage“, located close to the Guard Unit while awaiting to be transferred in the Preventive Detention Isolator of the Municipal Police Division or to be involved in procedural activities. The researcher had free access to the room where the iron cage was located and to the office for criminal investigation actions.

⁹ 7 cases of this category were contraventional.

For all these apprehensions records were made in the field registries,¹⁰ even when attending the procedure of apprehension and other related actions, where most of the data obtained in the Inspectorate was recorded. These included: actions carried out in the Inspectorate involving the apprehended persons starting from the moment of entering this institution until the arrival of the lawyer; counselling the client; the procedure of bringing to the knowledge of the person the apprehension minutes and informing about the rights; the procedure of hearing the suspect; undocumented hearings; conversations with lawyers and the police, as well as observations regarding other procedures undergone by the suspects registered at the police station as apprehended persons.

Moreover, in addition to the qualitative data collected, we wanted to have some quantitative data to be able to extract basic information, such as the number of suspects observed or the number of suspects who required an interpreter/translator. In this respect, we used a Case Template (registry) which captures biographical information about the suspect (age, sex, vulnerabilities), as well as details about the observance of rights during detention period. There were two templates - one for cases observed while the researcher accompanied a lawyer and one for cases observed while the researcher followed the police actions¹¹. This yielded useful information, but the usefulness of that data was limited by difficulties met in always following cases from their very beginning to the end. In some instances, we followed a case from the start to the end, but in others, we were unable to observe the whole detention period of the suspect, or to clarify the outcome of the apprehension and the evolution of the case.

We filled in case registries for each case observed, providing quantitative data that focused on key rights and how they were administered. Based on observations on apprehensions, special registries were filled in, which reflected answers to 49 questions regarding police performance and 53 questions about the performance of lawyers (19 registries on police activity and 7 registries on lawyers' activity).

¹⁰ The actions observed in every case of apprehension were chronologically and descriptively recorded. Please, see in **Annex no. 2** the observation notes on two cases of apprehension that took place on different days.

¹¹ For example, see **Annexes no. 3** and **no. 4** which represent templates of special registries filled in based on monitoring the actions carried out by the police, and, respectively, lawyers in relation to the apprehension of a person.

In our project, we did not have the opportunity to carry out a detailed analysis of the case file of the detained person during these periods of observations¹². At the end of the monitoring period, we obtained permission from the representatives of the Inspectorate to read 10 copies of apprehension minutes, which reflected other apprehensions which took place during the period of observations (July-August 2014) which were not subject to our monitoring in the Inspectorate,¹³. A copy of the apprehension minutes was kindly offered by a lawyer who had provided legal assistance to a person detained in the same Inspectorate. Examination of these copies of apprehension minutes allowed for verification in the concrete cases of how the procedure of apprehension and detainee's rights, especially, the right to information, are recorded.

In order to have a complex understanding of the dynamics of activities, behaviour and decision-making during apprehension and detention of persons in police custody, actors in the criminal justice field were interviewed in order to clarify certain aspects observed. Different templates were used for police officers and lawyers¹⁴. Some questions were the same for respondents among police officers and lawyers¹⁵, but others were formulated differently to reflect their different roles¹⁶. The questions were sufficiently open to allow for more detailed discussion followed by questions, if time allowed it.

20 interviews with police officers (10 criminal investigation officers and 10 investigation officers) and 10 interviews with lawyers were conducted. The

¹² As a rule, during field observations, the researchers were not allowed access to the materials of the case files administered by the police in connection with the apprehension of suspects, except for some isolated cases, when criminal investigation officers would read the content of certain procedural documents (order for initiating the criminal investigation and the apprehension minutes) or such documents were presented upon researchers' request.

¹³ See the copy of apprehension minutes in **Annex no. 7**.

¹⁴ As examples, please, see **Annexes no. 5** and **no. 6** which represent templates filled in based on interviews with a police officer and, respectively, a lawyer.

¹⁵ For example, question 2: *'Do you think that suspects generally know what their rights are? How do they get to know about them?'* or question 5: *'What do you think about the current arrangements for providing interpretation at the police station?'*

¹⁶ For example, the police was asked (question 3): *'Do you ever provide the suspect or his/her lawyer with information from the case file (evidential material obtained by the police)? How do you decide what information to give and when to give it?'* Lawyers were asked (question 3): *'From your experience, do the police generally provide sufficient information to you (a) about the reason(s) for your client's arrest, and (b) about the evidential material that they have?'*

interviews gave us valuable information not only on some moments that could not have been noticed in practice, but also on how the police and lawyers perceive and understand the rights of detained persons. Each interview was conducted anonymously; just the work experience of every interviewee was recorded. Most interviewed officers are from the Police inspectorate monitored by the researchers.

Out of the ten interviewed lawyers, none was included in the list of lawyers providing emergency legal aid for the Inspectorate where we were located.

The arrangements for accompanying lawyers and monitoring their performance were less organized. When possible, a researcher accompanied some lawyers from the moment of entering the Police inspectorate and, in fact, some of these lawyers were the ones who first informed us about the apprehension.

Thus, the meetings with lawyers were brief and limited to the premises of the Police inspectorate. For various reasons, none of the lawyers who were involved in providing state guaranteed legal aid announced the researcher about apprehensions at the very moment when they were informed or appointed¹⁷. This would have allowed us to observe and monitor many more cases of what happens to the person detained in the Inspectorate, until the lawyer comes.

Defenders who were accompanied by researchers in the procedures of providing legal assistance to apprehended persons, due to the fact that they were met in the Inspectorate, said they knew about the mission of the researchers and, to a large extent, accepted to be accompanied even during confidential meetings with their clients. On the one hand, despite promises, these lawyers did not report any other cases of apprehension where they participated,. On the other hand, other lawyers were interested and enthusiastic about the research and were willing to offer more time for discussions with the researchers of the project.

Alike observations on the performance of the police, case data records were collected in the case templates - file registers for lawyers, and observations

¹⁷ On the website of the National Council for State Guaranteed Legal Aid (NCSGLA) (<http://www.cnajgs.md/ro/news/in-atentia-avocator-de-serviciu>) the announcement for lawyers was posted with the request to cooperate with the researchers of the project, by announcing them on the phone about cases of apprehended persons within the Inspectorate C. in the Chisinau municipality. At the same time, the lawyers were asked to cooperate while being assisted by researchers on any legal procedures of apprehension, as well as on the availability to be interviewed.

were recorded in diaries (field diaries). We managed to observe conversations between lawyers and suspects during private consultations, police interrogations and conversations between lawyers and police officers. We noted what information was disclosed, how lawyers approached confidential information related to the case, as well as the nature of the relationship between lawyers and the police, lawyers and apprehended clients, police's attitude towards persons detained prior to the arrival of the lawyer and the level of lawyers' interest towards unofficial interrogations and undocumented or partially documented apprehensions. We also recorded information about lawyers - their work experience and self-assessment of their activities.

In some cases, we had informal discussions with the apprehended persons who were sitting in the room with iron bars waiting to be transported to the Preventive Detention Isolator or to participate in various criminal investigation activities.

1.2. Data Analysis and Referencing the Data

The notes from the field diary are referenced by number and indicate the chronology of observations, as well as the category of apprehension. Thus, an example regarding coding an apprehension monitored during fieldwork would be: **2Pn**, which means that the apprehension was the second in the line of all monitored apprehensions, it was a criminal one (P) and undocumented (n). The table in **Annex no. 1** shows that this apprehension took place in our third observation day¹⁸. Another example: **3C** shall be read as follows: the apprehension was the third in the line of all monitored apprehensions and it was a contraventional one (C). The table in **Annex no. 1** shows us that this apprehension was monitored in the fifth day of observations.

The registers filled in based on the monitoring of apprehensions received the following abbreviation: e.g. **RP2**¹⁹, which shall be read as follows: registry filled in based on observations of the police actions in a case of criminal apprehension, which is the second in line of all apprehensions, based on which a registry template was filled in. The table in **Annex no. 1** and the registry we

¹⁸ Information recorded in the field diary regarding observations on this apprehension is presented in **Annex no. 2**.

¹⁹ See a filled in copy of the registry **RP2** in **Annex no. 3**.

are attaching for exemplification show that it took place in the third day of observations. **RA1** is a registry filled in based on the lawyer's performance in case of the first apprehension on which the registry template was filled in²⁰.

Taking into account the fact that it was either impossible to monitor some apprehensions from the beginning or the observations were interrupted due to reasons that did not depend on the researcher, it was not possible to fill in a number of registries that would be equal²¹ to the number of apprehensions recorded in field diaries (notebooks), whose number was larger²². For completing and analysing the field information, in the majority of cases the information on the same apprehension was verified and confronted with sources, field diary and the respective registry, which provided additional information.

The interviews have also received a codification. E.g.: **IPI**- interview of the first police officer²³, and **IA7** – interview of the lawyer who was the seventh in the line of all interviews with lawyers.

The apprehension minutes are conventionally marked with letters **PV**, whereto the order of their analysis, year and month of drafting are added, e.g.: **PV10.08.14**²⁴.

²⁰ See a filled in copy of the registry **RA1** in **Annex no. 4**.

²¹ Due to lack of sufficient information to fill in the registries and to avoid situations where the predominant answer to the majority of questions would be: NA – not available, these having no quantitative importance or qualitative impact on the research.

²² The total number of apprehensions reflected in the notes is 28 (see table in **Annex no. 1**), while the number of case registries which reflect police performance is 19, and the number of registry files which reflect the performance of lawyers is 7. The sequence numbers of the registries is not the sequence number of the apprehensions which were monitored and reflected in field diaries. In order to identify and conclude that a certain apprehension monitored by the researcher is the same in the notes and in the registry, for instance, in order to compare the obtained information, the date of the monitored apprehension and the initials of the apprehended person were checked and compared in both sources.

²³ See a filled in template of the interview with the police officer and another one with the lawyer, in **Annexes no. 5** and **no. 6**, respectively.

²⁴ See a copy of the apprehension minutes no. 10 of August 2014 in **Annex no. 7**.

2. Apprehension and State Guaranteed Legal Aid

2.1. General Aspects Regarding Apprehension

2.1.1. Goals

One may differentiate between two categories of apprehension depending on the nature of the proceedings: either criminal or contraventional. In both cases, these are coercive measures which consist of a temporary deprivation of a person's freedom, in exceptional situations, for purposes of ensuring due course of proceedings.

The diversity of categories of apprehension measures delimits particular tasks that are to be achieved in each concrete case. Analysis of criminal procedural legislation²⁵ allows ascertaining that apprehension of a person suspected of having committed a criminally punishable act ensures the accomplishment of the following procedural goals:

- preventing absconding of the suspect from criminal investigation;
- preventing the risk of the suspect's hampering an efficient investigation within criminal proceedings;
- ceasing criminal behavior and preventing continuation thereof (apprehension in the act);
- establishing the identity of the person suspected of having committed an offence;
- ensuring the presence of the suspect before the prosecutor for purposes of pressing charges, if the former's whereabouts are unknown;

²⁵ Art. 165-171, art. 513, para. 2, CPC.

- ensuring the presence of the accused according to the summons of the criminal investigation body, if he/she ignores such summons;
- ensuring the enforcement of the protection order in case of domestic violence, if such order is not observed;
- ensuring the enforcement of a conviction sentence in case of the annulment of acquittal or conviction with a conditional suspension of the enforcement of punishment or early conditional release, as well as in situations when the convicts abscond from the enforcement of their sentences;
- for purposes of extradition.

Apprehension of a person for purposes of extradition may take place on the basis of an arrest order or a conviction sentence delivered by a competent court of law of a foreign state, prior to the person's arrest for the purposes of extradition or in case of a simplified extradition procedure²⁶. Because the CPC does not expressly regulate this type of apprehension, we agree with the *lege ferenda* proposal recommending the inclusion into the CPC of an apprehension procedure applicable prior to the acknowledgment of a foreign arrest order and prior to the accepting of the request for extradition²⁷. Without an arrest warrant issued by a judge for purposes of one's extradition, in the absence of legal provisions regarding apprehension, a person cannot be effectively apprehended in order to be brought before a judge who reviews the motion for extradition and the arrest warrant²⁸.

According to the legislation²⁹, contraventional apprehension may be applied for the purpose of:

- ceasing a contravention;
- establishing one's identity;

²⁶ Art. 545 and 547, CPC.

²⁷ Compatibility Study: Arrest and Preventive and Custodial Measures, Compatibility with the Provisions of Art. 5 of the ECHR and Relevant Case-Law of the ECtHR; drawn up by the Working Group for identification of deficiencies and gaps in the criminal procedural legislation of the Republic of Moldova, incompatible with the standards set by ECHR and the ECtHR's case-law, established on the basis of the Order of the Minister of Justice No. 70 of 22 February 2013; available at http://www.justice.gov.md/public/files/file/studii/studii_srsj/Studiu_de_compatibilitate_cu_prevederile_art._5_din_CEDO-MJ-2014.pdf, p. 35.

²⁸ Ibidem.

²⁹ Art. 433-435, CC.

- drawing up minutes of contravention;
- ensuring timely and correct examination of contravention cases;
- ensuring enforcement of decisions on contravention cases.

One can notice that criminal and contraventional apprehension have certain goals that are rather similar, yet when it comes to regulatory framework, the apprehension procedure in criminal proceedings substantially differs from the contraventional apprehension, these two being regulated in different codes.

At the same time, the ECtHR's jurisprudence in relation to Moldova shows that the standards provided for in Art. 5 of the ECHR are to be fulfilled in both criminal and contraventional cases. In the cases of *Leva, Hyde Park and others* (No. 4), *Lipencov, Ganea, Petru Roșca, Boicenco, Brega, Guțu, Mătășaru and Savițchi*, the ECtHR has convicted RM for violation of the right to liberty in connection with the failure to observe the procedural rights and safeguards of the apprehended person³⁰. Judgements in the cases of *Hyde Park and others* (No. 4), *Brega, Petru Roșca, Gutu, Feraru, Mătășaru and Savițchi* derive from contraventional apprehensions, while the rest of them stem from apprehensions of persons suspected of having committed criminally punishable acts.

Based on police practice, we found out that there were certain connections between criminal and contraventional apprehensions. Although the subject of our research only focuses on the rights of suspects in criminal cases, nevertheless, the fact that „contraventional” apprehension³¹ may be used as a pretext for obtaining information on a crime under investigation or to avoid observance of rights which are to be guaranteed only in cases of criminal apprehensions etc., therefore we will briefly touch upon this category of apprehension.

³⁰ Vladislav Gribincea, *Enforcement of the ECtHR judgments by the Republic of Moldova, 1997-2012*, LRCM, Ch., 2012, p. 140-142; available at <http://crjm.org/app/webroot/uploaded/Executarea%20hotararilor%20CtEDO%20de%20catre%20RM%201997%20-%202012.pdf>

³¹ According to the norms of the Code on Administrative Contraventions, which was abrogated on 31 May 2009, it used to be called „administrative”; see provisions of art. 481, art. 482 of the CC, No. 218 of 24.10.2008 (Published: 16.01.2009 in the Official Monitor No. 3-6, No. 15, date of entry into force, available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=330333>)

During the period of contraventional apprehension or arrest applied as a sanction for the commission of a contravention, the criminal investigative bodies, especially investigative police inspectors, enjoy unlimited access to communication with the persons held in police custody (including beyond working hours, when such persons do not have the right to meet with their lawyers, after 17:00, or on Saturdays and Sundays), because the detention facilities for the apprehended persons are subordinated to MIA. However, these discussions are not official. During non-documented interrogations psychological pressure is applied, sometimes accompanied by violence to determine persons to admit their guilt in having committed a criminal offence, give up on their chosen defenders or disclose accomplices³². At a later stage, after the expiry of the contraventional detention and contraventional arrest, the person is apprehended as a suspect of the crime³³.

³² A relevant case in this regard is of A.I., who according to the Buiucani Court judgment of 25 March 2009 was found guilty of having committed the administrative contraventions provided for by art. 44, para. 1 – (Illegal acquiring or keeping narcotics or psychotropic substances in small quantities or consuming narcotics or psychotropic substances without medical prescription), art. 164, para. 1 - (Not very serious hooliganism), art. 174/5, para. 1 - (Opposing the police or judicial bailiff), art. 174/6, para. 1 - (Insulting police or judicial bailiff) of the Code on Administrative Contraventions of 29.03.1985, abrogated on 31 May 2009 [hereinafter CAC] and according to art. 35 CAC he was sanctioned to administrative arrest for a period of 10 days. The detention period should have been calculated starting with 24.03.2009, 11 p.m. During the entire period of the administrative arrest, A.I. was subject to informal interrogations by the operative officers, who exerted pressure on him to determine him to acknowledge complicity in murdering a taxi driver in the capital, without complying with the procedural guarantees of the person suspected of having committed a crime (in the absence of a defender, without informing about the rights he has and ensuring these rights etc.). On 03.04.2009, at 11.01 p.m., without being released from the Preventive Police Isolator of the General Police Inspectorate of Chisinau, A.I. was apprehended by the police, suspected of having committed the murder of a taxi driver in Chisinau on the 13 March 2009, at approximately 3.30 a.m. There is no indication in the minutes about the place of apprehension of the applicant. A.I. was later acquitted by the court. This case has determined A.I. to lodge an application with the ECtHR (application no. 65324/09). In the Decision of the Supreme Court of Justice of 28 March 2012, (case file no. 1ra-397/12) it was stated that A.I. was acquitted for the charge of murder of a taxi driver in the capital city; available at: <http://www.csj.md/admin/public/uploads/Dosarul%20nr.%201%20ra%20397%2012%20Zaharciuc,%20inadm,%20neint%20recp.%20pr-condam.pdf>

³³ Ibidem.

The ECtHR judgment *Grădinar v. Moldova*, (no. 7170/02, 08.04.2008, §§18-22, 111)³⁴ mentions the practices of applying contraventional apprehensions and arrests for the purpose of obtaining evidence (self-incriminating statements) for criminal case files, providing in §20 that a national court has found that administrative detention applied to the suspect in a criminal case for interrogation purposes was illegal.

However, we cannot state that in all cases of apprehension of the suspect of a contravention, followed by the apprehension of that person as a suspect in a criminal case, there is a violation of rights. Referring to the case *Grădinar v. Moldova*, in the judgement *Feraru v. Moldova*, (no. 55792/08, jud. 24.01.2012)³⁵, the ECtHR noted: „... *The Court considers that using administrative arrest as a means of detaining and questioning a suspect in a criminal case is contrary to Article 5 of the Convention. It is also contrary to Moldovan law (§51). However, it cannot be excluded that a person who is arrested for an administrative offence is identified, during such administrative detention, as the suspect of a crime, and that both the administrative detention and the subsequent detention within the framework of the criminal investigation be bona fidae (§1). In the present*

³⁴ §18. On 17 September 1995, D.C. was taken to the local police inspectorate and questioned as witness of the events that had taken place on the night of 15 to 16 and 18 September 1995.

§19. They were not informed of their rights and were not assisted by lawyers. During the interrogation, they were handcuffed. After the interrogation, an administrative case was initiated based on allegedly insulting D. in the bar, and the judge ordered their arrest for a period of 10 days as an administrative sanction. During the administrative arrest, further interrogations took place and other procedural measures were carried out, which resulted in collection of evidence, used later in the criminal case initiated against them. In particular, during this period further interrogations took place and other procedural measures were undertaken (18-22 September 1995), which resulted in G. and D.C. acknowledging that they had murdered D.

§20. The court found that the minutes which served as grounds for administrative arrest were drafted in violation of corresponding procedures. There were no grounds for administrative arrest, because those two men were suspects in a criminal case and detention should have been applied based on these grounds.

§21. On 19 September 1995, G. and D.C. were taken to a preventive detention isolator in Chişinău, interrogated until 21 September 1995 as witnesses and without any legal aid. During the interrogation, they made statements and acknowledged their guilt.

§22. On 21 September 1995, they were interrogated for the first time as suspects (and not witnesses), but neither this time were they explained their rights and had access to a lawyer; judgment available at: http://justice.md/file/CEDO_judgments/Moldova/GRADINAR%20%28ro%29.pdf:

³⁵ <http://www.lhr.md/news/299.html>

case, the applicant did not expressly argue that he had been subjected to an administrative arrest with the real purpose of investigating the criminal case against him. (...) In such circumstances, the Court does not have any reason to find that his administrative detention was in any manner related to the criminal proceedings against him or that it was „unlawful” within the meaning of Article 5 of the Convention (§53).

In the case of *Guțu v. Moldova* (application no. 20289/02, jud. 07.06.2007)³⁶ it has been found that the applicant was apprehended for disobeying the lawful orders of a police officer, provided for by Article 174, §1 of the Code on administrative contraventions (CAC) (§§5-12). She was not questioned, informed about the reasons for her detention or provided with a lawyer. (§13). The refusal of the applicant to accompany the police officers to the police station was based on the ground that she had not been properly summonsed. The Court noted that no investigative measures at all could be taken in respect of the offence allegedly committed by the applicant’s son unless criminal proceedings were formally instituted (§61).

2.1.2. Conditions and Grounds

Neither the criminal investigation authority, nor the prosecutor can apprehend any person who committed a criminal act, yet when adopting such a decision it is necessary to strictly and mandatorily follow the requirements set by the criminal procedural legislation³⁷.

In the case of *Leva v. Moldova* (application no. 12444/05, 15.12.2009, §51)³⁸ the ECtHR has reiterated the fact that when it comes to deprivation of liberty, it is particularly important that the *general principle of legal certainty* be observed. It is therefore essential that the conditions for deprivation of liberty, prescribed by the national law are clearly defined and that the law itself is predictable when applied, so that it corresponds to the „legality” standard set by the Convention. This standard requires that the respective law is sufficiently precise to enable a person, if necessary, with appropriate advice, to foresee, in a reasonable manner, taking into account the circumstances, the consequences which a given action may entail (see *Boicenco v. Moldova*, §149,

³⁶ http://justice.md/file/CEDO_judgments/Moldova/GUTU%20%28ro%29.pdf

³⁷ See art. 1, para. 3, art. 11, para. 2, CPC.

³⁸ Judgment available at: http://justice.md/file/CEDO_judgments/Moldova/LEVA%20%28ro%29.pdf

judgment of 27 September 2011, as well as *Steel and others v. United Kingdom*, judgment of 23 September 1998, Reports 1998-VII, §54).

The conditions and grounds that allow for apprehension are provided for by art. 66, CPC:

- there should be a *reasonable suspicion about the commission of a crime*;
- the law provides for the respective crime a punishment of *imprisonment exceeding for a term one year*;
- at least *one of the following four requirements which are connected to the commission of the crime* is met:
 - the person was captured *in flagrante delicto*;
 - an eye witness, including the victim, directly indicates that this person committed the crime;
 - obvious evidence of the crime is discovered on the body or clothes of the person, in his/her domicile or means of transport;
 - evidence left by this person are discovered at the crime place.
- at least *one of the following requirements which are connected to the behavior of the person after committing the crime* is met:
 - if he/she tried to abscond or his/her identity could not be established³⁹;
 - if there are reasonable grounds to suppose that he/she will abscond from the criminal investigation, prevent the finding of the truth or commit other crimes.

As a rule, apprehension, as a procedural constraint measure may be applied only after the initiation of the criminal investigation⁴⁰. In exceptional cases, the law allows for apprehending persons who have reached 18 years of age, also before registering the crime as provided by law⁴¹.

³⁹ It should be noted that even if the person does not have any identification document, he/she should not be apprehended as long as personal data is accessible or he/she may be identified by other persons who know him/her. Apprehension may be applied if despite all available measures, the identity of the suspect could not be established and he/she does not want to communicate his/her name upon legitimate request of the police. In this context, it is worth mentioning the good practice of Norway which, although provides for the right of the person not to make statements which could be used against him/herself, however, also imposes the obligation of the apprehended to provide certain data about him/herself, in particular, the name, surname, age or domicile address. Thus, he/she cannot oppose establishing his/her identity.

⁴⁰ Art. 279, para. 1, CPC.

⁴¹ Art. 166, para. 4, CPC.

Apprehension of a person who has reached the age of 18 can take place before recording the crime as provided by law. The crime shall be registered immediately, no later than three hours from the moment the detained person is brought to the criminal investigation body, and in case the deed for which the person was apprehended is not duly register, he/she shall be immediately released⁴².

According to ECtHR jurisprudence, the need to initiate criminal investigation against a person suspected of having committed a crime can serve as an initial justification for the deprivation of liberty (for example, in case of apprehending *in flagrante delicto*). This means that the person may be apprehended also before the initiation of the criminal investigation⁴³.

Reasonable suspicion is the first condition provided for by law needed for the apprehension to be applied. The criminal investigation body has the right to apprehend the person if there is a reasonable suspicion of a criminal offence⁴⁴. Although „reasonable suspicion” is not explained in the law, the CPC gives the definition of the suspect. *A suspect is a natural person regarding whom there is certain available evidence that indicates the commission of a crime before charges are pressed*⁴⁵.

The ECtHR reiterates in the case of *Leva v. Moldova* (application no. 12444/05, jud. 15.12.2009, §50) that „*the ‘reasonableness’ of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention which is laid down in Article 5, §1 (c) of the Convention. Having a ‘reasonable suspicion’ presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as ‘reasonable’ will however depend upon all the circumstances*”. *While special circumstances may affect the extent to which the authorities can disclose information, even „the exigencies of dealing with terrorist crime cannot justify stretching the notion of ‘reasonableness’ to the point where the essence of the safeguard secured by Article 5, §1 is impaired*” (see Fox, Campbell and Hartley

⁴² Art. 166, para. 4, CPC.

⁴³ P. 3 of the Decision of the Plenum of the SCJ no. 1 of 15.04.2013 on the application by courts of certain provisions of the criminal procedural legislation regarding pre-trial arrest and house arrest, available at: http://jurisprudenta.csj.md/search_hot_expl.php?id=48

⁴⁴ Art. 166, para. 1, 2, CPC.

⁴⁵ Art. 63, para. 1, art. 65, 280, para. 1 and art. 281, para. 1, CPC.

v. the United Kingdom, 30 August 1990, §32, Series A no. 182, and *Stepuleac v. Moldova*, no. 8207/06, §68, 6 November 2007)⁴⁶.

The ECtHR has found the existence of a reasonable suspicion of commission of a crime when operative information corroborated with the victim's complaint indicated to the apprehended person (*jud. Ignatenco v. Moldova*, application no. 36988/07 *jud. 08.02. 2011*, §59)⁴⁷.

However, in the majority of the applications lodged by the applicants from the Republic of Moldova, the ECtHR has found a violation of art. 5.1 ECHR, given the fact that they had been apprehended in the absence of a reasonable suspicion regarding the commission of a crime:

- *Stepuleac v. Moldova* (application no. 8207/06, *jud. 06.11.2007*, §§75-81): the victim did not indicate in the complaint the name of the applicant, although it served as ground for apprehension. For the second apprehension and arrest, the ground was a made-up complaint and one which was lodged following the direct influence of the CIO, who was the same person who had registered the first complaint against the applicant⁴⁸;
- *Muşuc v. Moldova* (application no. 42440/06, *jud. 06.11.2007*, §32): apprehension based on an accusation of having reduced the price of a bought real estate took place without any evidence that would confirm the diminishing of the price or that the buyer was in collusion with the seller⁴⁹;
- *Cebotari v. Moldova* (application no. 35615/06, *jud. 13.11.2007*, §48): the Court underlines in this respect that, in absence of a reasonable suspicion, apprehension or arrest of a person must never be applied aiming at determining him/her to admit his/her guilt or to give statements against other persons or to obtain facts or information which could represent grounds for a reasonable suspicion against him/her⁵⁰.

⁴⁶ Judgment available at:http://justice.md/file/CEDO_judgments/Moldova/LEVA%20%28ro%29.pdf

⁴⁷ Judgment available at:<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-124098>

⁴⁸ Judgment available at:<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-127974>

⁴⁹ Judgment available at:http://justice.md/file/CEDO_judgments/Moldova/MUSUC%20%28ro%29.pdf

⁵⁰ Judgment available at:<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112794>

- Leva v. Moldova (application no. 12444/05, jud. 15.12.2009, §52-55): the applicant was apprehended on the grounds that a witness pointed to him, although there were no such statements in the case file⁵¹.

In cases Hyde Park and others (no. 4) and Brega, the applicants were deprived of liberty by the police on the basis of accusations that they had committed contraventions⁵². Similar actions were carried out in the case of Mătăsaru and Savițchi v. Moldova. Actually, the applicants were apprehended in order to impede them to protest. It seems that the police did not take spontaneous decisions, but acted upon the indication of their superiors, because in the Brega case, national judges found that the applicant had not insulted the police, and in the Hyde Park and others case (no. 4) applicants had a court decision which gave them the right to protest⁵³.

In the mentioned cases, ECtHR found that there was no „reasonable suspicion”, neither in the moment of apprehension, nor in the moment of examining the opportunity to arrest the applicants. In a study carried out some years ago, it was found that in 22.6% of the arrest motions and in 24.5% of the prolongation motions, the prosecutor only indicated that there is a reasonable suspicion, without, however, explaining the facts and evidence in supporting this position⁵⁴. In 17 cases (2.2% of the examined motions), the prosecutor did not even refer in his motion to reasonable suspicion, which represents an especially serious omission⁵⁵.

In case the „reasonable suspicion” regarding the commission of the crime is not substantiated or invoked during arrest procedures we can affirm that there is a great probability that the „reasonable suspicion”, which is a ground for deprivation of liberty under art. 5.1. of the ECHR, was also lacking at

⁵¹ Judgment available at: http://justice.md/file/CEDO_judgments/Moldova/LEVA%20%28ro%29.pdf

⁵² Vladislav Gribincea, Enforcement of the ECtHR judgments by the Republic of Moldova, 1997-2012, LRCM, Ch., 2012, p. 142; available at: <http://crjm.org/app/webroot/uploaded/Executarea%20hotararilor%20CtEDO%20de%20catre%20RM%201997%20-%202012.pdf>

⁵³ Ibidem

⁵⁴ 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 urmării penale în Republica Moldova, Fundația Soros-Moldova), Ch., 2013, p. 28, available at: http://soros.md/files/publications/documents/Raport_Respectarea_Dreptului_print.pdf

⁵⁵ Ibidem.

the moment of apprehension of the person suspected of having committed an offence, as it was established in the following cases against Moldova tried by the ECtHR: *Leva*, *Cebotari*, *Stepuleac*, *Muşuc*. Due to these reasons, we can state that statistical data and the findings mentioned in the *Soros Foundation-Moldova Report on Observing the Right to Liberty during Criminal Investigation in the Republic of Moldova (Raportul Fundației Soros-Moldova privind respectarea dreptului la libertate la faza urmării penale în Republica Moldova)* may be valid in this regard also for apprehension procedures.

The existence of a „reasonable suspicion” is not sufficient for apprehension. The national legislation⁵⁶ and the ECHR⁵⁷ provide that for deprivation of liberty several risks which justify apprehension should be met: if there are reasonable grounds to suppose that the person will abscond from criminal investigation, hinder the finding of truth or commit other crimes. The same reasons are indicated for preventive measures in art. 176, para. 1, CPC, including for pre-trial detention. We shall not focus on analyzing these grounds, because they are analyzed in detail in the SCJ Plenum Decision no. 1 of 15.04.2013⁵⁸ in the light of the ECtHR case law.

2.1.3. Delimitating Apprehension from Pre-trial Detention

The analysis of the institution of apprehension vis-à-vis pre-trial detention indicates that these procedural constraint measures have multiple similarities, as follows:

- both are classified by the legislator as procedural constraint measures;
- the ECtHR considers apprehension and pre-trial detention as deprivation of liberty and provides for the same guarantees for both measures;
- both contribute to ensuring efficiency and due progress of the criminal investigation and court hearing;
- both are applied to the same subjects (suspect, accused, convicted);
- in choosing these measures the competent bodies are obliged to comply with the same grounds (existence of reasonable grounds to

⁵⁶ Art. 166, para. 1-3, CPC.

⁵⁷ Art. 5, para. 1.

⁵⁸ About the application by courts of certain provisions of the criminal procedure legislation on pre-trial detention and house arrest. See p. 6-10, available at: http://jurisprudenta.csj.md/search_hot_expl.php?id=48

suppose that the person will abscond from criminal investigation, hamper the finding of the truth or commit other crimes). However, if these grounds are valid or appear later during the criminal investigation and if deprivation of liberty for a longer period is justified, apprehension can no longer be applied, but only arrest⁵⁹;

- both are sometimes enforced by the same specialized institutions.

At the same time, apprehension is a procedural constraint measure which differs from pre-trial detention due to the following peculiarities:

- apprehension is attributed by the legislator to procedural constraint measures, while pre-trial detention is a constraint measure, but attributed to preventive measures;
- apprehension is a procedural constraint measure with diminished severity vis-à-vis the preventive measure of pre-trial detention;
- apprehension may be applied in case of a crime for which the law provides for imprisonment for a term exceeding one year, while pre-trial detention may only be applied to the person suspected of having committed a serious, especially serious and exceptionally serious offence;
- apprehension may be applied by the prosecutor, criminal investigation officer, ascertaining body or court (in case of crimes committed in court), while arrest is applied only according to a court ruling;
- apprehension is a deprivation of liberty for a short period of time, but not longer than 72 hours, while pre-trial detention consists of detaining the suspect or the accused in arrest for a period exceeding the apprehension period – up to 30 days;
- the apprehension period cannot be prolonged, while pre-trial detention may be prolonged (e.g. for a period of up to 12 months within criminal investigation).

Although from a procedural point of view, apprehension differs from pre-trial detention, according to the ECtHR jurisprudence, both criminal apprehension (see jud. *Străisteanu and Others v. Moldova*, 7 April 2009, §§85-88, or *Lazoroski v. Macedonia*, 8 October 2009, §44), pre-trial detention and house arrest (see jud. *Mancini v. Italy*, no. 44955/98, §17; or *Nikolova v.*

⁵⁹ Not to be confused with situations where, although the criminal investigation is at an advanced stage, the perpetrator is identified later on. In such cases, provided that the conditions set forth in art. 165-166, CPP are met, the person may be apprehended prior to obtaining of an arrest warrant.

Bulgaria (no. 2), no. 40896/98, §§60 and 74, 30 September 2004)⁶⁰ represent deprivation of liberty. Thus, the guarantees against an illegal deprivation of liberty shall be equally attributed to both procedural constraint measures.

2.2. Apprehension Procedure

2.2.1. Powers of Police Employees in Apprehending a Person

The legislation empowers the prosecutor⁶¹, criminal investigation body (criminal investigation officer)⁶², including the ones from MIA⁶³, and the ascertaining body (investigation officers), including the ones from the police⁶⁴, with the right to apprehend the suspect of a crime.

Powers of the ascertaining body regarding apprehension

In case of discovering crimes, the police officer, regardless of his position, location during or outside his working hours has the obligation to communicate about the commission of the crime to the closest police subdivision, consequently undertaking all possible measures for preventing and stopping the crime, providing first aid to persons in danger, apprehending and identifying the perpetrators, identifying eye witnesses and securing the place where the event took place⁶⁵.

Moreover, the ascertaining bodies are entitled to carry out the *de facto* apprehension of the suspect of a crime⁶⁶ having the obligation to immediately

⁶⁰ P. 1 of the Decision of the Plenum of the SCJ of 15.04.2013, no. 1, on the application by courts of certain provisions of the criminal procedure legislation on pre-trial detention and house arrest; available at: http://jurisprudenta.csj.md/search_hot_expl.php?id=48

⁶¹ See art. 52, para. 1, p. 15, CPC.

⁶² See art. 57, para. 2, p. 11, art. 166, para. 1, CPC.

⁶³ See art. 266/ CPC.

⁶⁴ See art. 273, CPC, art. 20, let. f), art. 24, p. 4, art. 25, p. 10, Law no. 320 of 27.12.2012 on the activity and status of the police (published on 01.03.2013 in Official Monitor no. 42-47, art. 145; in force as of 05.03.2013).

⁶⁵ See art. 24, p. 4 of the Law on the Activity and Status of the Police.

⁶⁶ See art. 273, para. 2, 4, CPC; p. 162 of the Instruction on the Organisation of Criminal Investigation Activity within the General Police Inspectorate of MIA, approved by the order of GPI of MIA no. 138 of 11.11.2013.

hand him/her over to the criminal investigation body or the competent prosecutor together with the ascertaining documents and evidence, but no later than 3 hours from the moment of the *de facto* apprehension. Employees of the ascertaining police bodies have the obligation to carry out the *de facto* apprehension of the person, including based on the written order of the criminal investigation officer⁶⁷.

The police, in its capacity of ascertaining body are also empowered to carry out other types of apprehension, such as:

- apprehending the person based on the order of the criminal investigation body for being presented charges⁶⁸;
- apprehending the accused based on the order of the criminal investigation body prior to arrest, in case the accused violates the conditions provided by the preventive measures applied to him/her or the written commitment to appear at the summoning of the criminal investigation body or court and communicate the new place of residence⁶⁹;
- apprehending the convicted regarding whom either the conviction with conditional suspension of enforcing the punishment or conditional release before the term was annulled, in order to be escorted to the detention place⁷⁰;
- apprehending of the accused or defendant for purposes of enforcing an arrest warrant⁷¹.

The ascertaining bodies, including the police, are not entitled to carry out *de jure* apprehension of the person suspected of a crime, because, according to the law⁷², this procedural constraint measure is applied exclusively by the criminal investigation body.

Powers of the criminal investigation body regarding apprehension

The criminal investigation body has the right to apprehend a person, under the conditions provided by law, if there is a reasonable suspicion about

⁶⁷ According to the provisions of art. 57, para. 2, p. 11, CPC.

⁶⁸ Art. 169, CPC.

⁶⁹ Art. 170, CPC.

⁷⁰ Art. 165, para. 3, p. 3, CPC, 120, Enforcement Code.

⁷¹ Art. 166, para. 1, CPC.

⁷² Art. 166, para. 1, CPC.

the commission of a crime for which the law provides for imprisonment for a term exceeding one year⁷³.

Unlike the ascertaining body which performs only *de facto* apprehension of the person caught red handed, the criminal investigation body apprehends the person *de jure*, for a period of 72 hours. Moreover, the criminal investigation body is obliged to carry out *de facto* apprehension of the person based on the criminal investigation body or the prosecutor's motion for bringing charges⁷⁴.

A criminal investigation officer may *de facto* apprehend the following categories of persons:

- the accused based on the criminal investigation body's motion before arrest⁷⁵;
- the accused or defendant for purposes of enforcing the arrest warrant;
- the convicted regarding whom either the conviction with conditional suspension of enforcing the punishment or conditional release before the term was annulled, in order to be escorted to the detention place⁷⁶, only if the respective criminal investigation officer personally carried out the *de facto* apprehension.

2.2.2. Procedural Acts Documenting Apprehension

Apprehension of a person may take place based on:

1) minutes, in case of direct plausible reasons to believe that the person has committed a crime;

2) order of the criminal investigation body;

3) a court decision on apprehending a convicted person before deciding on the issue of annulling the conviction with conditional suspension of enforcing the punishment or conditional release before the term or, as appropriate, a decision on apprehending a person for committing a crime in court⁷⁷.

On every case of apprehension of a person suspected of having committed a crime, the criminal investigation body, within 3 hours from the moment of deprivation of liberty shall draw up an apprehension minutes⁷⁸.

⁷³ Art. 169, para. 1, CPC.

⁷⁴ Art. 169, CPC.

⁷⁵ Art. 170, CPC.

⁷⁶ Art. 72, Enforcement Code.

⁷⁷ Art. 165, para. 3, CPC.

⁷⁸ Art. 167, para. 1, CPC.

Illegal deprivation of liberty, obvious disregard of the procedure of apprehension and the apprehended suspect's rights are acknowledged in final and irrevocable decisions of national courts, due to the fact that apprehension minutes contain distorted information⁷⁹.

Drawing up apprehension minutes, the order or decision on application of preventive non-custodial measure and the motion for recognizing a person as suspect has a special procedural importance, because on the basis of the respective acts, the person obtains (in case of the apprehension minutes) the procedural status of suspect which provides for certain rights and obligations and represents the procedural reflection of both the decision on apprehension and apprehension procedure.

Duly drawn up minutes on apprehension of the suspect/accused is an important procedural document which represents not only a legal ground for apprehending the person and keeping him/her in the preventive detention isolator, but also as evidential material in the case⁸⁰. We agree with this finding, because in the apprehension minutes more factual circumstances which are important for solving the criminal case are indicated, e.g. the place and time of apprehension, description of clothes, results of body search of the

⁷⁹ See the Decision of the Criminal Board of the SCJ of 25.06.2014, Case file no. 1ra-1092/14, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=2660 D. G., who was suspected of having committed a crime provided for in art. 186, para. (2), let. c) and d), Criminal Code, was apprehended between 2.00 – 3.00 a.m. by the operative officer I.Ch. in Crișcăuți village, Dondușeni rayon, and later escorted to the Dondușeni Inspectorate and handed over at 3.30 a.m. to the criminal investigation officer V. P., who was actually, conducting criminal investigation on the same person's case. Contrary to the established criminal procedure, he did not draw up apprehension minutes within three hours from the moment of apprehending D. G., in which the following should have been indicated: grounds, reasons, place, month, day and hour of the apprehension, the deed committed by the respective person, results of the body search of the apprehended, date and hour of drawing up the minutes, and drew up such a document only at 10.00 a.m. of the same day, which means that on 23.10.2010 D. G. was illegally deprived of liberty for a period of 8 hours, namely, from 2.00 until 10.00 a.m. The court stated that the guilt of the accused is integrally proven, including by the following evidence administered in the case. In the apprehension minutes regarding G. D. dated 23.10.2010, drawn up by the criminal investigation officer V.P., it is specified that it was drawn up on 23.10.2010 at 10.30 a.m., and the *de facto* apprehension of G. D. had taken place on 23.10.2010 at 10.00 a.m.

⁸⁰ Valeriu Batir, Apprehension of the suspect, accused // Informative bulletin of the General Prosecutor's Office of the Republic of Moldova, n. 9, p. 9; available at: <http://www.procuratura.md/file/BULETIN9.pdf>

apprehended etc.⁸¹ What is more, the apprehension minutes may represent a proof that the apprehended person has been informed about his/her rights and the safeguards thereof⁸².

Contrary to the provisions of art. 167, para. 1, CPC, criminal investigation officers do not indicate in the apprehension minutes the *de facto* place of apprehension, indicating offices of the police inspectorates or just the locality⁸³. In the case **14P**⁸⁴ the lawyer intervened to specify the place of apprehension. After going through the apprehension minutes, the lawyer asked where precisely his client had been apprehended. The answer of the criminal investigation officer was: *Chişinău municipality*. The lawyer insisted to have the place, street, address specified. The reply of the officer was: „*I will never ask you again to come to apprehensions, because you always make trouble*”. However, the criminal investigation officer destroyed the apprehension minutes and drew up another one, indicating the *de facto* place of apprehension, based on the lawyer’s request.

In some apprehension minutes, the grounds for apprehending suspects of crimes are not completely described⁸⁵. So far, the criminal investigation officers did not overcome formalism in reasoning and presenting grounds for the needs of apprehending the person. Some still indicate in the procedural documents only the provisions of the articles of the CPC, without necessarily confirming by factual proven data that the person might abscond from the criminal investigation body or court, obstruct the establishment of the truth in criminal proceedings or reoffend⁸⁶.

In the case of Cristina Boicenco v. Moldova (Application no. 25688/09, jud. 27 September 2011, §43) the ECtHR reiterated that illegal detention of a

⁸¹ Art. 167, para. 1, CPC.

⁸² Art. 167, para. 1, CPC.

⁸³ Study on the legislation and practice of applying preventive measures and other procedural constraint measures, with emphasis on pre-trial detention, house arrest and bail, available at: http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei_pilon6/Studiu_al_legislatiei_in_vederea_aplicarii_masurilor_preventive_arestul_preventiv_arestul_la_domiciu_si_eliberarea_pe_cautiune-_PG-_2012.pdf, p. 13.

⁸⁴ See **Annex no. 1**.

⁸⁵ Expressly provided in art. 166, para. 1, 2, CPC.

⁸⁶ A relevant example in this respect represents the copy of the apprehension minutes in **Annex no. 7-PV10.08.2014**.

person represents a total denial of fundamental guarantees provided for by article 5 of the Convention and an extremely serious violation of this provision. „*Failure to record certain data, such as the day and hour of the arrest, place of detention, name of the apprehended person and grounds for detention, as well as the identity of the officially responsible person represents a violation of the requirements on the legality of detention and of the very purpose of article 5 of the Convention (Kurt v. Turkey, jud. of 25 May 1998, §125, and Çakıcı v. Turkey, jud. no. 23657/94, §§104 and 105, CEDH 1999-IV).*

2.2.3. Term of Apprehension

The term of apprehension of a person cannot exceed 72 hours⁸⁷. Derogations in respect of exceeding this term are not admitted. In this case, the legislator means that the apprehension term is calculated from the moment of the *de facto* deprivation of liberty⁸⁸.

The maximum term of apprehension of minors is 24 hours⁸⁹, and if apprehension is carried out to establish the identity of the person, the apprehension period cannot exceed 6 hours⁹⁰. Prolongation of apprehension is not admitted, but if a person was apprehended, and the prosecutor establishes that the person shall be subjected to arrest or house arrest, the prosecutor must, without delay, submit to the investigative judge a request on application of the preventive measure. at least 3 hours before the expiry of the term of apprehension⁹¹.

If the prosecutor filed the request on arrest having exceeded 69 hours from the moment of apprehension in case of adults and 21 hours in case of minors, the court, according to art. 230, CPC, in corroboration with art. 166,

⁸⁷ Art. 25, para. 3 of the Constitution of the Republic of Moldova, art. 11, 166, para. 5, CPC.

⁸⁸ According to the criminal procedure legislation, there are two types of apprehension – *de facto* apprehension (physical) and *de jure* apprehension of the person regarding whom there is a reasonable suspicion of having committed a crime. *De facto* apprehension represents the physical apprehension of the suspect before drawing up the apprehension minutes by the competent criminal investigation body. *De jure* apprehension takes place at the moment of drawing up the apprehension minutes by the competent criminal investigation body.

⁸⁹ Art. 166, para. 6, CPC.

⁹⁰ Art. 166, para. 5¹, CPC.

⁹¹ Art. 166, para. 7, CPC.

para. 7, CPC, shall adopt a decision rejecting the request for arrest and the person will be released⁹².

According to the Report on Observing the Right to Liberty during Criminal Investigation in the Republic of Moldova⁹³, the investigative judge does not always „react” when the request for arresting the suspect or apprehended accused is registered in the chancellery of the court after the expiry of the term provided for by law, and, sometimes, it is also the case when it comes to requests for apprehension of these persons.

As shown in **Table no. 3** of the said report, only in 61,5% of the examined cases the fact that arrest motions have been submitted within three hours was confirmed, in 9% of the cases the time limit was not met, and in 21,8% of the cases the observance of this time limit could not be established, because neither the motion, nor the registry of arrest motions indicated the hour of registering the motion in court⁹⁴. Thus, in the Drochia Court in case file no. 14-6 there was observed the situation where the motion for application of arrest was registered in the court’s chancellery 50 minutes before the expiry of the apprehension term, but the court accepted the prosecutor’s motion, applying pre-trial detention for a period of 30 days⁹⁵.

On the other hand, judges did not uphold arrest motions if such motions were submitted after the expiry of the apprehension term. In case file no. 14-45, the Hâncești Court dismissed the arrest motion, because it had been submitted 55 minutes after the expiry of the apprehension term. In case file no. 14-49, the arrest motion was dismissed by the same court, because it had been submitted after the expiry of the apprehension term. In both cases, the Hâncești Court has not ruled on the grounds for arrest invoked in the prosecutor’s motion, but reasoned the ruling only on the ground of the expiry of the apprehension term prior to the registration of the arrest motion. The

⁹² P. 16, Decision of the Plenum of the SCJ no. 1 of 15.04.2013 on the application by courts of certain provisions of the criminal procedure legislation on pre-trial detention and house arrest, available at: http://jurisprudenta.csj.md/search_hot_expl.php?id=48

⁹³ 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, p. 21, available at: http://soros.md/files/publications/documents/Raport_Respectarea_Dreptului_print.pdf

⁹⁴ Ibidem.

⁹⁵ Ibidem.

judge referred to the provisions of p. 16 of the Decision of the Plenum of the SCJ no. 4 of 28 March 2005 *on the application by courts of certain provisions of the criminal procedure legislation on pre-trial detention and house arrest*⁹⁶.

In the practice of criminal investigation bodies there are often situations when there is no indication in the apprehension minutes of the correct time of the *de facto* apprehension and the detention of the suspect in police custody exceeds the three hours term for drawing up the apprehension minutes provided by law⁹⁷. In some cases, this term did not include the period of time when the apprehended person had a limited possibility to move freely, in connection with the interdiction to leave the scene of crime when the criminal investigation body started the site investigation immediately after apprehension. Sometimes, the person is apprehended during house search and is not allowed to leave the house before the completion of this procedure⁹⁸. Afterwards, after carrying out the site investigation or search, the person is escorted to the police, where the apprehension minutes are drawn up. Most often, the apprehension minutes do not indicate the period of time during which the apprehended was forced to attend these evidence-collecting procedures.

The person conducting criminal investigation has the right to prohibit persons in the room or at the place where the search is being carried out, as well as persons who entered this room or came to this place, to leave or communicate between themselves or with other persons before the end of the search⁹⁹. If necessary, the room or place where the search is being carried out

⁹⁶ Ibidem.

⁹⁷ Based on the ruling of 26.10.2010 of the investigative judge of the Donduşeni Court, it was found that D. G. had been illegally deprived of liberty on 23.10.2010, from 3.00 a.m. until 10.00 a.m. Moreover, the court rejected the prosecutor's motion on applying the preventive measure of arrest to D. G., releasing him from the court room. See the Decision of the Criminal Board of the Supreme Court of Justice of 25.06.2014, Case file no. 1ra-1092/14; available at: http://jurisprudenta.csj.md/search_col_penal.php?id=2660

⁹⁸ In the case of Berber v. Moldova (Application 32528/10, decision of 31 January 2014), the lawyer, one of the authors of the present Report, invoked also the fact that the period for drawing up the apprehension minutes had been exceeded, because the criminal investigation officer who had documented the apprehension had not taken into account the time spent for carrying out the house search that the apprehended had been obliged to attend; decision available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-141233>

⁹⁹ Art. 128, para. 10, CPC.

may be placed under guard. In the case of *Malancea v. Republic of Moldova*¹⁰⁰ the applicant complained of violation of art. 5, §1 ECHR and that he had been deprived of liberty for more than three hours, without registering his detention, contrary to the provisions of the national legislation¹⁰¹.

According to the ECtHR jurisprudence, apprehension as a form of deprivation of liberty actually begins when the person is ordered to give up his freedom of movement and is not limited to the classic notion of arrest or detention. Thus, the scope of the protection provided by Article 5 ECHR, goes beyond the mere deprivation of liberty in the classic sense of the term and does not exclusively cover the physical deprivation of liberty through detention (*Creangă v. Romania*, application no. 29226/03, jud. 15.06.2010, §92; *Engel and others v. the Netherlands*, application no. 5370/72, jud. 8 June 1976; §58).

When there is an indication of an element of deprivation of liberty which falls into the scope of Article 5, §1, although of a short duration, it does not exclude the applicability of the said article (*Rantsev v. Cyprus and Russia*, Application no. 25965/04, jud. 07.01.2010, §317; *Iskandarov v. Russia*, 17185/05, jud. 23.09.2010, §140). Even in situations when there is a coercive element of exercise of public power to search and stop for control purposes there is an indication of its applicability (*Gillan and Quinton v. United Kingdom*, Application no. 4158/05, jud. 12.01.2010, §57; *Shimovolos v. Russia*, Application 30194/09, jud. 21.06.2011, §50; *Brega and others v. Moldova*¹⁰². Application no. 61485/08, jud. 24.01.2012, §43).

¹⁰⁰ Application no. 46372/10, communicated by the ECtHR to the Government on 17.01.2013, <http://www.lhr.md/news/360.htm>

¹⁰¹ On 12 February 2010, the investigative judge of the Buiucani Court ordered application of pre-trial detention to the suspect for 20 days, invoking the existence of a reasonable suspicion that he had committed a crime. Moreover, he could abscond or interfere in the criminal investigation procedure. As a reply to the applicant's complaint that he had been deprived of liberty at 15.30 on 9 February 2010 and not at 18.20 as indicated in the apprehension minutes, the judge mentioned that the body search and other similar actions lasted from 15.30 until 18.17. According to the prosecutor's explanations, only after the results of the search the decision to apprehend the suspect had been taken at 18.20. The judge held that until 18.20, the applicant had not been deprived of liberty, and the criminal investigation officer had the right to prevent a potential „escape” or communication with other persons during search. The Court invited the parties to answer the following questions: Was there a violation of art. 5, §1 ECHR? In particular, was the applicant's apprehension on 9 February 2010 between 15.30 and 18.20 „legal” according to this provision?; information available at: <http://www.lhr.md/news/360.html>; <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116631>

¹⁰² Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108787>

In the case of Creangă v. Romania (application no. 29226/03, jud. 15.06. 2010), the ECtHR found that the summoned person's preliminary waiting before being officially apprehended had not been included in the apprehension term¹⁰³. Any procedural measure which requires time, such as, for example, hearing or site investigation of crimes *in flagrante delicto*, must be included in the 72 hours term. A more recent case shows that in this field things have not changed in the practice of the criminal investigation bodies¹⁰⁴.

Violation of the term of apprehension is a common practice in the activity of the police of the Republic of Moldova. The term of apprehension must include the time of carrying out procedural measures immediately preceding the drawing up of the apprehension document, where the person's freedom of movement is effectively constrained during such measures, which in fact represents deprivation of liberty *lato sensu*.

Based on the above, we support some authors'¹⁰⁵ initiative of *lege ferenda* to supplement art. 166, para. 5, CPC by including in the apprehension term the time spent for all actions preceding the drawing up of the apprehension minutes involving the apprehended person.

¹⁰³ §54. No apprehension warrant had been issued in respect of the applicant in this case. By order of 16 July 2003, the prosecutor had instructed that the applicant was to be placed in pre-trial detention for three days. However, the period specifically indicated in that order, namely from 10 p.m. on 16 July 2003 to 10 p.m. on 18 July 2003, corresponded in reality to only two days of pre-trial detention. §55. The Chamber noted in that regard that, having been issued on the basis of a prosecutor's order in accordance with domestic law, the warrant for pre-trial detention could cover only the same period as that specified in the order. §56. Consequently, the Court considers that the applicant's deprivation of liberty from 10 a.m. to 10 p.m. on 16 July 2003 had had no legal basis in domestic law. Jud. available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122815>

¹⁰⁴ Some arguments presented by the lawyer I. V. in the appeal regarding the apprehension minutes: According to video recordings, it is found that U. V. was apprehended red handed at the intersection of Vasile Alecsandri street with București street on 20.06.2014, at 11.30 a.m., afterwards he was escorted to MIA premises where he was subject to body search. The drawing up of apprehension minutes began at 14.45, which constitutes a serious violation of art. 167, para. (1), CPC, which provides for drawing up the minutes within up to three hours. In the apprehension minutes of the suspect U. V. it is indicated the apprehension hour (*de facto*) 14.40, which is not accurate. Thus, it is found that the suspect was apprehended without having his apprehension minutes drawn up for more than three hours. Information available at: <http://deschide.md/ro/news/investigatii/2551/Vadim-Ungureanu-ar-putea-fi-ELIBERAT--Re%C8%9Binerea-a-fost-ILEGAL%C4%82.htm>

¹⁰⁵ Arrest and preventive and privative of liberty measures, compatibility with the provisions of Art. 5 ECHR and ECtHR relevant jurisprudence; available at: http://www.justice.gov.md/public/files/file/studii/studii_srsj/Studiu_de_compatibilitate_cu_prevederile_art._5_din_CEDO-MJ-2014.pdf, p. 33.

2.2.4. Legality Control of Apprehension

The law provides for several possibilities of verifying the apprehension procedure in the criminal proceedings. First, according to the law¹⁰⁶, the apprehended person shall be released when:

- the plausible reasons for suspecting that the apprehended person has committed the crime are not confirmed;
- the grounds to further deprive the person of liberty are absent;
- the criminal investigation body found an essential violation of the law committed upon the apprehension of the person.

The law provides for another self-control measure is required by the law in respect of police officers who apply apprehension and do not properly register it within the maximal term of three hours from the moment of bringing the apprehended person to the criminal investigation body¹⁰⁷. In this case, the lawyer may ask for release and the prosecutor may order it.

The prosecutor has the possibility to carry out, in an operative manner, the control of the legality of apprehension¹⁰⁸, because within three hours after apprehension, the person who drew up the minutes shall present to the prosecutor a written report regarding the apprehension¹⁰⁹. If the prosecutor considers that the apprehension is either unjustified, or was applied with a breach of procedural rules, he has to order the immediate release of the apprehended person.

The apprehended person shall be released if the court did not authorize the application of pre-trial detention requested by the prosecutor¹¹⁰.

In practice, the refusal to uphold arrest motion may be also due to the violation of criminal procedural norms which regulate the apprehension procedure and the observance of the rights of the apprehended person. The investigative judge may request to have the legality of apprehension checked, although, in practice, the investigative judge does not always react to the issue of legality of apprehension, as requested by the detained person.

¹⁰⁶ Art. 174, para. 1, p. 1-3 and 5, CPC.

¹⁰⁷ Art. 166, para. 4, CPC.

¹⁰⁸ Art. 52, para. 1, p. 13, CPC.

¹⁰⁹ Art. 167, para. 1, CPC.

¹¹⁰ Art. 174, para. 1, para. 5, CPC.

According to the Report on Observing the Right to Liberty during Criminal Investigation in the Republic of Moldova¹¹¹, the investigative judge does not always „react” when the motion for arresting the suspect or accused is registered in the court’s chancellery upon the expiry of the term provided for in the law or sometimes even after the expiry of the term of apprehension of these persons and the task of the investigative judge is limited to verifying only whether the preventive measure of arrest is justified or not, leaving out the question of legality of the apprehension. Usually, this element is linked to the merits of reasoning arrest and the judge does not expressly rule on this aspect, focusing his attention rather on the arrest procedure than on apprehension¹¹².

The most efficient control of the prejudicial procedure is its judicial control, but when it comes to verifying the legality of apprehension by the investigative judge, there are certain difficulties in the judicial practice, which render this control method ineffective.

The actions of the criminal investigation body which are subject to appeal include: procedural documents, namely, documents which record any procedural action provided for by the CPC, as well as actions, whereby functionaries exceed their duties¹¹³.

The participants in the hearings who challenge the legality of apprehension separately, outside the procedure of examining the arrest motion¹¹⁴, have interpreted that apprehension of a person suspected of a crime refers to „other actions which affect constitutional rights and liberties of the person”, given the fact that the law does not expressly allow for judicial control of the apprehension procedure.

The judicial practice in this respect is not stable or coherent; such requests are either admitted for examination or dismissed due to lack of competence of

¹¹¹ Vladislav Gribincea, Raisa Botezatu, Tudor Osoianu, the Report on Observing the Right to Liberty during Criminal Investigation in the Republic of Moldova (Raport privind respectarea dreptului la libertate la faza urmării penale în Republica Moldova), Soros Foundation-Moldova, Ch., 2013, p. 21, available at: http://soros.md/files/publications/documents/Raport_Respectarea_Dreptului_print.pdf

¹¹² Compatibility Study: Arrest and Preventive and Custodial Measures, Compatibility with the Provisions of Art. 5 ECHR and Relevant ECtHR Jurisprudence; study available at: http://www.justice.gov.md/public/files/file/studii/studii_srsj/Studiu_de_compatibilitate_cu_prevederile_art._5_din_CEDO-MJ-2014.pdf, p. 8, 9.

¹¹³ P. 5.1 Decision of the Plenum of the SCJ no. 7 of 04.07.2005 on the practice of ensuring judicial control by the investigative judge during criminal investigation, available at: http://jurisprudenta.csj.md/search_hot_expl.php?id=9

¹¹⁴ Art. 313, para. 2, p. 3, CPC.

the investigative judge. Another difficulty in this procedure is the obligation to anticipate the notification of the investigative judge¹¹⁵ by submitting a similar complaint to the prosecutor. In this case the defender or the accused are entitled to notify the investigative judge, if the prosecutor does not answer within the established period (15 days), or rejects the complaint or request. The respective procedure might take up to one month¹¹⁶.

The judicial practice also varies when it comes to the control of the apprehension procedure at the moment of examining the arrest motion¹¹⁷. The examination by the investigative judge of the appeal against the apprehension minutes together with the examination of the arrest motion might seem more efficient, because in case of finding illegalities in respect of the apprehended person, the judge could react promptly, basically, before the expiry of the apprehension period. The problem consists in the fact that such a verification of apprehension is not expressly provided for under the powers of the investigative judge during the arrest procedure¹¹⁸. In case of verifying the apprehension period and the registration of the arrest motion in court, the respective violations might be invoked *ex officio* by the court which examines the case¹¹⁹.

¹¹⁵ According to art. 313, CPC.

¹¹⁶ §1. On 12 August 2012, based on the apprehension minutes, citizen J. V. was apprehended by the police in the criminal case no. 2012481152 initiated according to art. 287, para(1) Criminal Code. §2. Disagreeing with the apprehension minutes, J. V., according to art. 313, CPC, filed a complaint with the Ciocana Court, Chişinău Municipality, asking for its annulment, holding that he had been illegally apprehended, and the procedural document had been drawn up in violation of criminal procedural norms. §3. By the ruling of the Ciocana Court, Chişinău Municipality of 7 September 2012, the complaint filed by J.V. was admitted and the apprehension minutes of 12 August 2012 was declared null; See the Decision of the SCJ 16 April 2014, Case file no. 1re-115/14: http://jurisprudenta.csj.md/search_col_penal.php?id=2032

¹¹⁷ Compatibility Study: Arrest and Preventive and Custodial Measures, Compatibility with the Provisions of Art. 5 ECHR and Relevant ECtHR Jurisprudence; study available at: http://www.justice.gov.md/public/files/file/studii/studii_srsj/Studiu_de_compatibilitate_cu_prevederile_art._5_din_CEDO-MJ-2014.pdf, p. 8, 9.

¹¹⁸ Art. 307, 308, CPC.

¹¹⁹ If the prosecutor filed the arrest motion exceeding 69 hours from the moment of apprehension in case of adults and 21 hours in case of minors, the court, according to art. 230, CPC, in corroboration with art. 166, para. 7, CPC, shall adopt a decision rejecting the arrest motion and the person must be released. See p. 16 of the Decision of the Plenum of the SCJ no. 1 of 15.04.2013 on the application by courts of certain provisions of the criminal procedure legislation on pre-trial detention and house arrest, available at: http://jurisprudenta.csj.md/search_hot_expl.php?id=48

According to the information posted on the website of the Association „Lawyers for Human Rights”, in the case of Veh v. Moldova (application no. 69564/10, communicated by the ECtHR to the Government in November 2012), the applicant had invoked violation of art. 6 and 13 ECHR, because the legal provisions regarding his apprehension and arrest had not been observed and there was no effective domestic remedy for challenging this measure. In this case, on 31 October 2010, the lawyer of the applicant requested that the nullity of the apprehension minutes and the release of the applicant be examined together with the prosecutor’s request on placing the applicant in pre-trial detention, but the investigative judge failed to comment on the legality of apprehension¹²⁰.

In another case, the lawyer filed a complaint with the General Prosecutor¹²¹, which was attached to the apprehension minutes, enumerating all the procedural violations committed by the prosecutor, requesting to declare the apprehension minutes null. The lawyer lodged a similar complaint with the investigative judge, who was to examine the arrest motion regarding his client, requiring to declare the apprehension minutes null and to order immediate release of the suspect. By the time the complaint was lodged with the court, the defence had not received any answer to this complaint¹²².

¹²⁰ On 31 October 2010, the investigative judge accepted the prosecutor’s motion and ordered the applicant’s placement in pre-trial detention for 30 days beginning with 28 October 2010, 21.30. The investigative judge reasoned his solution by the need of effectively carrying out criminal investigation. He did not answer the requests of the applicant regarding the legality of apprehension. According to a Decision of 10 November 2010, the Chişinău Court of Appeal dismissed the appeal as unfounded, stating that there were reasonable grounds to believe that the applicant had committed a crime, and as to the arguments of the lawyers, those were declared unfounded, without providing any details. The applicant was kept in detention until 14 April 2011. On 12 August 2011, the Buiucani Court acquitted the applicant. This judgment was final. The Court invited the parties to answer the following questions: Was the applicant deprived of liberty contrary to art. 5, §1 ECHR? In particular, was his deprivation of liberty during 28-31 October 2010 according to the law? Had the applicant had an effective procedure, according to art. 5, §4 ECHR, to challenge the legality of his detention during 28-31 October 2010?; information available at: <http://www.lhr.md/news/350.html> On 07.10.2014, the ECtHR delivered a decision on inadmissibility for non-exhaustion of domestic remedies in this case. See the Annual report of the Governmental Agent of the Republic of Moldova for 2014, p. 37; available at: http://crjm.org/wp-content/uploads/2015/03/AG_RAPORT_ANUAL_2014.pdf

¹²¹ According to the provisions of art. 299 and 299/1, CPC.

¹²² <http://deschide.md/ro/news/investigatii/2551/Vadim-Ungureanu-ar-putea-fi-ELIBERAT-Re%C8%9Bnirea-a-fost-ILEGAL%C4%82.htm>

In this case, the lawyer used two methods of challenging the legality of apprehension at the same time. If his demands are not accepted during the hearing for examining the arrest motion, the lawyer has one more opportunity - to address the investigative judge¹²³.

2.3. State Guaranteed Legal Aid in the Republic of Moldova

2.3.1. Organization of State Guaranteed Legal Aid

The state guaranteed legal aid system (hereinafter SGLAS) started its activity in the Republic of Moldova on 1 July 2008, upon the entry into force of the Law no. 198¹²⁴, because, actually, before its adoption, a system for providing state guaranteed legal aid, had not existed, except for some of its dispersed elements.

The most important aspects of the new system of delivering State Guaranteed Legal Aid (hereinafter SGLA), are the following:

- a new organization model of the service delivering state guaranteed legal aid, and, namely, creating the National Council for State Guaranteed Legal Aid (hereinafter - NCSGLA) and its Territorial offices (hereinafter - TO).
- a broader spectrum of services included in legal aid covered by state funding, and namely, primary legal aid and qualified legal aid, including in civil, contraventional cases and cases of administrative jurisdiction, and legal aid during apprehension or arrest within a criminal or contraventional procedure;
- a mixed system of granting state guaranteed legal aid services, constituted of paralegals and non-governmental organizations for primary legal aid, public defenders and lawyers who deliver legal aid upon request for qualified legal aid.

¹²³ As provided by art. 313, CPC; the lawyer on the case told the researchers that he had given up the second way of challenging apprehension, because prosecutors had dropped the arrest motion and released the apprehended suspect.

¹²⁴ Law of 26 July 2007 on state guaranteed legal aid (hereinafter LSGLA). From the very beginning of its implementation, this law has been periodically subject to legislative amendments in order to render it more efficient: LP196 din 12.07.13, MO167-172/02.08.13 art. 556; LP112 din 18.05.12, MO149-154/20.07.12 art. 488; LP306-XVI din 25.12.08, MO30-33/13.02.09 art. 77.

The administration of the system of delivering state guaranteed legal aid is carried out by the Ministry of Justice; the Union of Lawyers¹²⁵; the National Council for State Guaranteed Legal Aid and its territorial offices.

The Ministry of Justice (MJ) is the institution which drafts policies in the field, monitors the implementation process of the norms on state guaranteed legal aid and the process of evaluation of the quality of this assistance¹²⁶; and the NCSGLA contributes to adoption of relevant politics, administering the process of providing state guaranteed legal aid and presents the annual activity report to the Government¹²⁷. The NCSGLA has a coordination relationship with the Union of Lawyers (UL)¹²⁸ in respect of certain powers that it exercises, e.g. in establishing evaluation criteria for the quality of this assistance and criteria for selecting lawyers for providing qualified legal aid¹²⁹.

NCSGLA is a collegial body with status of a legal person of public law, consisting of 7 members, of which: 2 – are delegated by the MJ, 2 – by the UL. Therefore, NCSGLA is a semi-independent body and its creation allowed the MJ and the UL to distance themselves from improper functions, in order not to affect the impartial image of the legal aid system in the society¹³⁰.

Due to the fact that NCSGLA is a collegial body, the LSGLA provides for an administrative apparatus which would allow its functioning, ensuring secretariat activity of the National Council¹³¹. The administrative apparatus consists of the Executive Director and other employees.

For carrying out its tasks, the Law on SGLA also provides for instituting TOs of NCSGLA, which are legal persons of public law and operate in the

¹²⁵ We consider it correctly to use the wording „Union of Lawyers”, because, according to art. 35 of the Law on Legal Profession, it is the Union and not the Bar which is the self-administration body of lawyers.

¹²⁶ See art. 9 of the Law on SGLA regarding the powers of the Ministry of Justice.

¹²⁷ See art. 11 of the Law on SGLA.

¹²⁸ NCSGLA is a semi-independent body, and its creation allowed the MJ and the UL to distance themselves from improper functions, in order not to affect the impartial image of the legal aid system in the society.

¹²⁹ See art. 10 and 11, LSGLA.

¹³⁰ Martin Gramaticov, Nadejda Hriptievschi, Impact Assessment of the Moldovan Legal Aid Law, Chişinău, 2012, p. 14. Available at: http://www.soros.md/files/publications/documents/LAA%20Assessment_ro.pdf; http://cnaigs.md/fileadmin/fisiere/documente/Informatie_utilita/Evaluare_asupra_impactului_Legii_cu_privire_la_asisten.pdf

¹³¹ See art. 13, para. 4 of the Law on SGLA.

cities (municipalities) where the courts of appeal are located. Thus, TOs ensure direct connection with the potential beneficiaries/petitioners of SGLA and the respective service providers, as well as cooperation with criminal investigation bodies, prosecution and courts, needed for effectively ensuring the right to guaranteed legal aid to persons who meet the legal conditions¹³².

2.3.2. Categories of State Guaranteed Legal Aid

The Law on SGLA provides for two categories of state guaranteed legal aid, depending on the matter of the assistance and subject empowered to provide it, namely: primary legal aid and qualified legal aid.

Primary legal aid – means the provision of information regarding the legal system of the Republic of Moldova, the normative acts in force, the rights and obligations of subjects of law, the method of enforcing and exercising the persons' rights both in the judicial and extrajudicial proceedings; delivering counseling on legal issues; delivering assistance in drafting juridical acts; delivering other forms of legal aid that do not constitute qualified legal aid; and is delivered by paralegals or specialized non-governmental organizations¹³³. Primary legal aid envisages providing certain services of juridical information, explanations or help in drafting certain acts, but which does not require further representation of the beneficiary in courts or before public authorities.

Paralegals are a new term for the legal system of the Republic of Moldova; they still are to be trained and, *de facto*, represent a new specialization or profession. The essence of paralegals is their location as close to the community as possible, in order to deliver to the members of the community legal aid which is as accessible and early-stage as possible. Paralegals are not meant to substitute lawyers. They cannot substitute them, because paralegals do not possess knowledge and qualification for representing persons in court, they only have limited legal education to the extent that would cover simple legal questions of the population, deliver elementary trainings on human rights and refer the person to a qualified lawyer in case of a complex legal issue.

Specialized non-governmental organizations were included as service providers of primary legal aid, given the rich experience and the large number of non-governmental organizations which provide information and

¹³² See art. 14, LSGLA.

¹³³ See art. 2, 15-17 of the Law on SGLA.

consultancy services, especially valuable in the regions where there are not enough lawyers¹³⁴.

Qualified legal aid – represents the delivery of legal services of counseling, representation and/or defence before criminal investigation bodies, courts in criminal cases, administrative offence cases, civil cases or cases of administrative jurisdiction, and representation before public administration authorities¹³⁵. This category of state guaranteed legal aid requires the existence of a conflict which has to be solved by means of legal bodies or public authorities, before which the beneficiary may be assisted, consulted, defended and represented by a lawyer.

The legal profession may be exercised by a person who holds the citizenship of the Republic of Moldova, has full legal capacity, and is licensed in law or its equivalent, enjoys irreproachable reputation and has been admitted to the legal profession¹³⁶.

The right to exercise the legal profession is conferred only to the person who has passed the qualification examination, registered an office under one of the available forms of exercising the profession and took the oath¹³⁷. The legal profession is free and independent with autonomous organization, functioning and leadership, set under the Law on the Legal Profession. According to the law, lawyers are obliged to be members of the Union of Lawyers, which is the self-administration body of the profession¹³⁸. Qualified legal aid is delivered by

¹³⁴ See art. 17, LSGLA.

¹³⁵ See art. 2 and 29 of the Law on the SGLA.

¹³⁶ Art. 10, para. 1, Law No. 1260 of 19.07.2002 on the Legal Profession (published 04.09.2010 in the Official Monitor No. 159, art. Nr. 582). According to para. 2 of art. 10, are exempted from professional internship and qualification examination the persons that hold the title of doctor of law, as well as those who have at least 10 years of work experience as judge or prosecutor if, within 6 months after resignation from the respective positions, they requested a licence for exercising the legal profession to be issued. The same rights and conditions are enjoyed persons who, upon resignation from the position of judge or prosecutor continued to work in the legal field; available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335889>

¹³⁷ See art. 14, para. 1 of the Statute of the legal profession no. 302 of 08.04.2011 (published: 08.04.2011 in the Official Monitor No. 54-57, art. Nr. 220; adopted by the Congress of the Union of Lawyers on 29 January 2011), available at: <http://lex.justice.md/md/338035/>

¹³⁸ According to art. 35 of the Law on the Legal Profession no. 1260-XV of 19.07.2002 (republished in the Official Monitor of the Republic of Moldova no. 159/582 of 04.09.2010).

public defenders and lawyers who provide legal aid upon request¹³⁹. To ensure the delivery of qualified legal aid the territorial offices shall conclude contracts with public defenders or with lawyers who shall deliver such services upon request, following the models approved by the NCSGLA.

Public defenders' offices are created in the localities where territorial offices are located. The National Council may decide to create public defenders' offices in other localities.

The development of state guaranteed legal aid in Moldova has been significantly supported by instituting the pilot-project of the Public Defenders' Office in Chişinău, with the financial support of the Justice Program of the Soros Foundation-Moldova. Among the main activities of the public defenders we want to highlight the following¹⁴⁰:

- it constitutes a common office of defenders providing legal aid in criminal cases;
- the office has common principles of defence, based on the Law on the Legal Profession and Lawyers' Code of Ethics, as well as a series of specific principles, such as representation of the client's interests until the final resolution of the case;
- the manager of the office, a lawyer with a minimum of 5 years of experience as a lawyer is responsible for ensuring the quality of the office's services;
- public defenders confidentially discuss with every client before his/her first hearing, including with apprehended clients;
- every lawyer keeps a case file for every represented client, which includes written evidence of all actions carried out by the lawyer in the respective case and the registry of delivered services, according to the model established by NCSGLA and other recommendations;
- lawyers of the office work in teams, sharing data about represented clients and discussing the most complicated cases in order to ensure the best defence for the client;
- the office collects necessary data (except private data related to the client and other confidential data according to the lawyer's standards),

¹³⁹ See art. 29, para. 1, LSGLA.

¹⁴⁰ Roger Smith, international consultant, and Olga Rabei, national consultant, The Functioning and the Role of Public Defenders' Office in Moldova, December 2013. Available at: <http://www.cnajgs.md/ro/publicatii-rapoarte-si-cercetari>

analyses them and provides them to the Ministry of Justice in the process of the reform of the state guaranteed legal aid¹⁴¹.

Public defenders shall promptly deliver services of legal aid, taking on the case in the shortest possible period of time from the moment of the request, but no later than two hours after the application for the delivery of emergency aid is submitted¹⁴². Public defenders shall receive a fixed monthly remuneration according to the norms established by the NCSGLA. The amount and method of remuneration shall be established in the contract concluded between the competent territorial office and the public defender or the office of public defenders, which shall also provide for the method of its quarterly reporting¹⁴³. Public defenders deliver qualified and emergency legal aid according to a schedule of on-duty lawyers adopted by the corresponding territorial office and internal working regime, provided for in the By-Laws of the Office¹⁴⁴.

The clients' feedback regarding the services of the public defenders are either positive or very positive. The office has applied practices in order to ensure an effective defence of their clients. For example, the public defenders consistently insist on a private meeting with the client before the first police interrogation. They insist on the need of having sufficient time for preparing the defence and demand that the law enforcement agencies and courts comply with the terms provided for in the law. The Public Defenders' Office treats all clients with respect and tries to represent the client holistically, also addressing other needs that brought the client to the system rather than only the criminal case aspects¹⁴⁵.

Lawyer who delivers legal aid upon request is the person who, in accordance with the Law on the Legal Profession, has obtained the right to practice law and who can be asked to deliver qualified legal aid out of the financial means

¹⁴¹ Ibidem.

¹⁴² See art. 9 of the NCSGLA Decision on the Approval of the Regulation on the Activity of Public Defenders no. 18 of 06.10.2008 (Official Monitor no. 47-48/173 of 03.03.2009).

¹⁴³ See art. 22 of the NCSGLA Decision on the Approval of the Regulation on the Activity of Public Defenders.

¹⁴⁴ See art. 22 of the NCSGLA Decision on the Approval of the Regulation on the Activity of Public Defenders.

¹⁴⁵ Martin Gramaticov, Nadejda Hriptievshi, Impact Assessment of the Moldovan Law on State Guaranteed Legal Aid, Chişinău, 2012, p. 33.

intended for the delivery of state guaranteed legal aid. Lawyers who wish to deliver such services submit a request to the NCSGLA and conclude contracts of providing such services with the corresponding Territorial Office¹⁴⁶. According to statistical data, lawyers upon request deliver the largest volume of qualified state legal aid¹⁴⁷.

If in the territorial constituency of a court there are no lawyers in the list of lawyers who deliver legal aid upon request or those on the list cannot satisfy the request, the territorial office shall *ex officio* appoint a lawyer from those who are not in the list of lawyers who deliver legal aid upon request, whose office is located in the jurisdiction area of the respective territorial office. The appointed lawyer is obliged to deliver qualified legal aid in the requested volume, but which cannot exceed 120 hours per year, benefiting from remuneration under the same conditions as the lawyers who provide legal aid upon request¹⁴⁸.

Depending on the procedure and stage of its delivery, state guaranteed legal aid may be classified in two categories, namely: *emergency legal aid*¹⁴⁹ and *ordinary legal aid*¹⁵⁰.

Actually, there are no substantial distinctions among these two categories; the essential difference is the manner of its delivering and the procedural stage. Thus, emergency legal aid is delivered to all apprehended persons in criminal or contraventional proceedings. Emergency legal aid is delivered until the status of the person is clarified: whether he/she is released or detained for being subject to investigation activities. Afterwards, the person is represented according to the rules applicable to ordinary legal aid. The purpose of emergency legal aid is to guarantee the fundamental right of the apprehended – prompt access to a lawyer, as soon as possible after apprehension. Hence, emergency legal assistance is delivered, at the latest, within three hours

¹⁴⁶ See art. 31 of the Law on SGLA.

¹⁴⁷ Veronica Mihailov-Moraru, Natalia Moloșag, Mihai Lupu, Victor Zaharia, Study on the New Methods of Delivering State Guaranteed Legal Aid, Chișinău, 2013, p. 26. Available at: http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/pilon3/studiu_cu_privire_la_noi_metode_de_acordare_a.pdf

¹⁴⁸ See art. 31¹ of the Law on the Legal Profession.

¹⁴⁹ See art. 28 of the Law on SGLA.

¹⁵⁰ The law does not use the term of „ordinary assistance”, but we use it in this study to better distinguish between the two categories of assistance.

from the moment the person was apprehended: the body which carried out apprehension shall immediately, but not later than within an hour from the moment of apprehension, announce the territorial office of the NCSGLA¹⁵¹. The lawyer shall meet for delivering emergency legal aid within one hour and a half from the moment of receiving the request from the Territorial Office¹⁵².

Prompt access to a lawyer at this procedural stage is especially important, due to the vulnerability of the person in the first moments of apprehension and the predisposition of the body to determine the person to give testimony. Prompt access to a lawyer is also important for ensuring a good administration of justice, for avoiding torture and ill-treatment of apprehended persons or for insisting on an efficient investigation of these illegalities, namely, by lodging a request for termination of illegally initiated procedures or early appeals on the constraint measures and other procedural actions, as well as illegally obtained testimonies. Consequently, cases which should not have been initiated may be ceased.

Ordinary legal aid is delivered within three working days from the moment of receipt of the request from the persons, relatives, criminal investigation body or court, by appointment of a lawyer by the territorial office of the NCSGLA¹⁵³.

As already mentioned, the Law on SGLA provides for a mixed system of SGLA service providers, namely: public defenders, private lawyers who deliver legal aid upon request, authorized non-governmental organizations and paralegals.

As we can see, both models of delivering SGLA have advantages and disadvantages. The experience of other states, for example, the United Kingdom and the Netherlands, has shown that the existence of a mixed system, that is, the involvement of public and private defenders who deliver SGLA upon request, is more appropriate than a single model / type of service provider, because:

¹⁵¹ See art. 167, para. 1^o, CC.

¹⁵² Art. 11 of the Regulation on the Procedure of Requesting and Appointing of Lawyers for Delivering Emergency Legal Aid, *Approved by the Decision of the National Council for State Guaranteed Legal Aid No. 8 of 19 May 2009, published in the „Monitorul Oficial” No. 114-116/410 of 06.07.2010.*

¹⁵³ See art. 26 and 27 of the Law on SGLA.

- coexistence of several models, for example, of private and public defenders creates a sort of competition among them, which, on the one hand, keeps the costs for remunerations for SGLA at a reasonable level, on the other hand, prevents the possibility to monopolize the market by a provider, and its possibility to dictate prices, respectively;
- public defenders cannot cover all the needs, due to both the costs, and, especially, the fact that an associate office cannot represent the interests of two or more accused in the same case, where the lawyers who deliver assistance upon request are invited;
- coexistence of different models contributes to improving the quality of the provided services through exchange of experience and cooperation¹⁵⁴.

The reasons for choosing a mixed model were mainly to increase the quality and accessibility of the legal aid system, as well as to ensure that legal aid services are provided on a cost-efficient basis¹⁵⁵. It is believed that the competition between different types of providers will contribute to the reduction of costs and to improving the quality of the legal aid¹⁵⁶.

2.3.3. Purpose and Criteria for Delivering State Guaranteed Legal Aid to Suspects Apprehended by Police

A special purpose of delivering legal aid to apprehended persons is not stipulated in the LSGLA, but the objectives of the state guaranteed legal aid are included in its preamble: the need to protect the right to a fair trial guaranteed by art. 6 of the ECHR; the need to ensure free and equal access to legal aid by organizing and delivering state guaranteed legal aid and by diminishing the economic and financial impediments in realizing access to justice.

Although provided for a relatively short period (up to 72 hours from the moment of apprehension), emergency legal aid has a major impact on the

¹⁵⁴ Ed Cape, Zaza Namoradze, *Effective Criminal Defence in Eastern Europe*, Chişinău, 2013 (chapter on the Republic of Moldova written by Nadejda Hriptievtschi).

¹⁵⁵ Martin Gramaticov, Nadejda Hriptievtschi, *Impact Assessment of the Moldovan Legal Aid Law*, Chişinău, 2012, p. 16. Available at: http://www.soros.md/files/publications/documents/LAA%20Assessment_ro.pdf; http://cnaajgs.md/fileadmin/fisiere/documente/Informatie_utilita/Evaluare_asupra_impactului_Legii_cu_privire_la_asisten.pdf

¹⁵⁶ Ibidem.

further development of the case, being intended to assist the person in the first moments of interaction with the criminal/contraventional justice system¹⁵⁷.

Physical (being in a detention facility) and psychic (anxiety generated by apprehension, lack of certainty on the reasons of apprehension) constraints which the persons is confronted with in such situations generate increased vulnerability which needs to be reduced by a lawyer's assistance¹⁵⁸. The absence of a lawyer in the first moments of the person's interaction with the criminal justice system affects the understanding, exercising and complying with other rights of the person, the right to legal assistance is perceived as a fundamental right for the other rights of the defence¹⁵⁹.

The purpose of the emergency legal aid is to guarantee the fundamental right of the apprehended person to promptly access a lawyer as soon as possible after being apprehended. The task of the lawyer in such situations is to help to ensure respect of the right of an accused not to self-incriminate. This right implies that the prosecution in a criminal case seeks to prove its case against the accused without resorting to evidence obtained through methods of coercion in defiance of the will of the accused. Early access to a lawyer is a part of the procedural safeguards to which particular regard should be paid when examining whether a procedure has extinguished the very essence of the privilege against self-incrimination. At the same time, an apprehended person's access to a lawyer is a fundamental safeguard against ill-treatment¹⁶⁰.

According to art. 1 of the Regulation on the Procedure of Requesting and Appointing of Lawyers for Delivering Emergency Legal Aid (hereinafter – the Regulation), the said document was drafted in order to enforce the provisions

¹⁵⁷ Alexandru Cocîrță, *The System of the Moldovan State Guaranteed Legal Aid: Short Analysis and Perspectives for Legal Aid in Non-Criminal Cases*, Chișinău, 2011, p. 38. Available at: http://www.cnajgs.md/uploads/asset/file/ro/244/Sistemul_de_ajgs_din_Moldova_scurta_analiza_si_perspective_pentru_ajgs_in_cauze_non-penale.pdf

¹⁵⁸ *Ibidem*.

¹⁵⁹ Green Paper from the Commission on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union, COM(2003), 75 final of 19 February 2003, p. 14: referred to in the paper of Alexandru Cocîrță, *The System of the Moldovan State Guaranteed Legal Aid: Short Analysis and Perspectives for Legal Aid in Non-Criminal Cases*, Chișinău, 2011, p. 38.

¹⁶⁰ *Salduz v. Turkey*, ECHR judgment (Grand Chamber) of 27 November 2008, para. 54, available at: <http://www.echr.coe.int/echr/en/hudoc/>; also, *Pishchalnikov v. Russia*, ECHR judgment of 24 September 2009, para. 69-71.

of the Constitution of the Republic of Moldova, Criminal Procedure Code, Law on the Legal Profession, the Law on State Guaranteed Legal Aid and other national and international legal documents to which the Republic of Moldova is a party.

The Law provides that to qualified legal aid are entitled persons who need emergency legal aid in case of apprehension during criminal proceedings or contraventional proceedings¹⁶¹. The CPC of the Republic of Moldova also provides for the compulsory participation of the suspect and accused from the moment he/she was notified about the decision of the criminal investigation body on apprehension¹⁶².

The definition of emergency legal aid is specified not in the LSGLA, but in the Regulation. According to art. 2 of this Regulation „*emergency legal aid is state guaranteed legal aid delivered to any person apprehended during criminal or contraventional proceedings throughout the entire period of apprehension, including upon examining a motion on applying pre-trial detention*”¹⁶³. The Regulation, actually, also expands the area of delivering emergency legal aid to the persons regarding whom there is a registered arrest motion in criminal proceedings. The second sentence of this article also refers to the provisions of art. 19 and 20 of the LSGLA, stating that emergency legal aid is delivered not in all contraventional apprehension cases, but only „*in cases when the body (functionary) who has carried out the apprehension requests the court to apply contraventional arrest as contraventional sanction*”.

In case of apprehension of a person suspected of having committed a crime, legal aid is mandatory, therefore, the apprehended suspect qualifies for state guaranteed legal aid, regardless of his/her level of income. Therefore, any apprehended person in a criminal or contraventional proceeding is entitled to emergency legal aid¹⁶⁴, delivered free of charge to all apprehended persons in these proceedings, regardless of their financial status, that is their possibilities to pay for the legal aid. Emergency legal aid shall be delivered from the financial

¹⁶¹ See art. 19, para. 1, let. (b) of LSGLA.

¹⁶² See art. 69, para. 2, let. a) of the CPC; in this respect are also relevant the provisions of art. 64, para. 2, p. 1) and 4); art. 167, para. 1¹, 2 and 2¹, CPC.

¹⁶³ Decision of the NCSGLA on the approval of the Regulation on the Contest for the Selection of Lawyers for the Delivery of Emergency State Guaranteed Legal Aid no. 8 of 19.05.2009 (Official Monitor no. 114-116/410 of 06.07.2010).

¹⁶⁴ See art. 20, para. 1, lit. a), LSGLA.

means allocated to state legal aid. Upon delivering emergency legal aid, the income level of beneficiaries is neither taken into account, nor verified¹⁶⁵.

2.3.4. Remuneration for the Delivery of State Guaranteed Legal Aid in Criminal Cases

In order to fulfill the principle of free access to legal aid, the state ensures the organization and functioning of the institutions responsible for delivering state guaranteed legal aid and for the allocation of budgetary funds necessary for remunerating the legal services delivered in accordance with the present law¹⁶⁶.

Qualified legal aid, delivered according to the Law on State Guaranteed Legal Aid, shall be fully paid from the funds of the state budget as well as from other sources that are not prohibited by law, intended for the remuneration of lawyers who deliver qualified legal aid. Private lawyers who deliver state guaranteed legal aid on request shall receive payment per case, calculated in conventional units equal to 20 lei, for those procedural actions where the lawyer participated¹⁶⁷.

A lawyer included in the on-duty schedule, monthly approved by the coordinator of the Territorial office of the NCSGLA shall be remunerated with 2 conventional units per one worked day in a weekend or on an official holiday, regardless of the fact whether he/she was or not requested to deliver emergency legal aid. Exceptions are cases when a lawyer on duty rejects a request, unless such refusal is due to the fact that the lawyer is already engaged in delivering emergency legal aid in another case according to the on-duty schedule of work.

In addition to that amount, for services delivered during the entire apprehension period, the lawyer on duty who delivers emergency legal aid shall be remunerated according to art. 3-6, 8-12 of the Regulation on the Amount and Manner of Remuneration of Lawyers for the Delivery of State Guaranteed

¹⁶⁵ Art. 3 of the Decision of the NCSGLA on the approval of the Regulation on the Contest for the Selection of Lawyers for the Delivery of Emergency State Guaranteed Legal Aid.

¹⁶⁶ Art. 5, LSGLA.

¹⁶⁷ See art. 3, Regulation on the Amount and Manner of Remuneration of Lawyers for the Delivery of State Guaranteed Qualified Legal Aid, approved by the Decision of the NCSGLA no. 22 of 19.12. 2008, published: 23.01.2009 in Official Monitor no. 10-11, art. no. 29.

Qualified Legal Aid¹⁶⁸. Moreover, the remuneration of the lawyer delivering emergency legal aid shall be increased by 25%, if the state guaranteed legal aid is delivered on weekends or on other days equated to these, or on the days of official holidays.

According to the NCSGLA, the average time per case worked by private lawyers providing legal aid on request is 41 hours, with a remuneration of 70 MDL or approximately 4.2 Euro per hour¹⁶⁹. Consequently, the average price per case is 2870 MDL or 175 Euro¹⁷⁰.

Some interviewed lawyers¹⁷¹ mentioned that for delivering legal aid to an apprehended person, the remuneration is, in average, 260 MDL per case (3 conventional units for the first meeting of the beneficiary of qualified legal aid or his/her relatives, before carrying out procedural measures, 5 conventional units for participation in drawing up apprehension minutes, 5 conventional units for participation in hearing the suspect). Obviously, this amount may be increased by supplements provided for in the Regulation: for

¹⁶⁸ Alike lawyers who deliver ordinary legal aid, lawyers who deliver emergency state aid are additionally remunerated:

- 5 conventional units for the participation in each court hearing (in first instance, appeal or cassation courts, extraordinary ways of appeal) or for every procedural action;
- 3 conventional units for the realization of each of the following actions: a) first meeting with the beneficiary of the qualified legal aid or with his/her relatives, before carrying out procedural actions or court hearing; b) meeting with the beneficiary of the qualified legal aid, who is located in detention facilities (penitentiary institutions, preventive detention isolators of police commissariats and the National Anticorruption Centre), but not exceeding five meetings in a criminal or contraventional case throughout the proceedings, c) familiarisation with the materials of the case during the preparation for the implementation of a procedural action or for a court hearing;
- 3 conventional units for drawing up and submitting applications in the name of the lawyer, related to carrying out procedural actions;
- 10 conventional units for drawing up and submitting an appeal against minutes of a contravention;
- the lawyer who delivers legal aid upon request in a case of especially serious or exceptionally serious crimes, as well as if the beneficiary of the legal aid is a minor shall be additionally remunerated with one conventional unit for every carried out action.

¹⁶⁹ Ed Cape, Zaza Namoradze, *Effective Criminal Defence in Eastern Europe*, Chişinău, 2013 (chapter on the Republic of Moldova written by Nadejda Hriptievshi), p. 183, available in English: <http://www.opensocietyfoundations.org/sites/default/files/criminal-defence-20120604.pdf> Calculated at the exchange rate of 16.3995 MDL for one Euro.

¹⁷⁰ Ed Cape, Zaza Namoradze, *Effective Criminal Defence in Eastern Europe*, Chişinău, 2013 (chapter on the Republic of Moldova written by Nadejda Hriptievshi), p. 183.

¹⁷¹ Informally interviewed in 2014.

minors, participation on cases of especially serious crimes etc. This amount is close to the average amount paid for emergency aid. For example, according to statistical data on delivering emergency state guaranteed legal aid by Territorial offices of NCSGLA for 2013¹⁷², in the Territorial Office of Comrat the average amount allocated for ELA was of 281.28 MDL/case.

According to an older Recommendation of the Council of the Bar¹⁷³, which was abrogated in 2012, for criminal cases it was recommended a minimum fee of 5.000 MDL for taking on the case (twice as much as the average amount paid for legal aid cases), plus a fee payable for each court hearing¹⁷⁴. Compared to this recommendation, legal aid remuneration is very low. However, in interviews, lawyers providing legal aid services pointed to the fact that the private market varies, and only a small number of lawyers are charging fees close to the recommendations¹⁷⁵.

According to the Recommendation in force of the Union of Lawyers, the suggested reasonable and recommendable range of per hour fees for lawyers in the Republic of Moldova is between 50 and 150 Euro/hour, although lawyers are free to set per hour fees outside the mentioned range. Setting per hour fees higher than 150 Euro/hour or lower than 50 Euro/hour shall exclusively depend on the parties' agreement¹⁷⁶. For example, in case of fixed fees the following is recommended: 1000 MDL – fixed fee for participation in each court hearing in courts of all levels or in carrying out every procedural action; 2750 MDL – fixed fee for carrying out any of the following actions: first meeting with the beneficiary of the qualified legal aid or his/her relatives; meeting with the beneficiary of qualified legal aid located in detention, but not

¹⁷² Available at: <http://www.cnajgs.md/ro/date-statistic?page=2>

¹⁷³ Recommendations of the Council of the Bar on the Amount of Fees for Different Categories of Cases, adopted by the Council of the Bar on 29 December 2005, published in „Avocatul Poporului”, No. 1 of 2006.

¹⁷⁴ Ed Cape, Zaza Namoradze, *Effective Criminal Defence in Eastern Europe*, Chişinău, 2013 (chapter on the Republic of Moldova written by Nadejda Hriptievshi), p. 183.

¹⁷⁵ *Ibidem*.

¹⁷⁶ P. 5 of the Recommendations on the Quantum of Lawyers' Fees and Compensation by Courts of Legal Aid Expenses, approved by the Council of Union of Lawyers of the Republic of Moldova, Decision no. 2 of 30.03.2012, published in „Avocatul Poporului”, No. 3-4, 2012 of 2006. Available at: <http://www.avocatul.md/files/documents/Recomandarii%20onorarii%202012.pdf>

more than five meetings in a case; studying the materials of the case during preparatory stage for carrying out procedural actions, etc.¹⁷⁷.

Some interviewed lawyers¹⁷⁸ stated that, on average, they receive 4-5 thousand MDL per month for delivering state guaranteed legal aid for apprehended persons, including emergency legal aid. According to them, these amounts, in principle, would almost be attractive if they were compensated their expenses, at least the cost of transportation. Although the Regulation provides for it, very few lawyers report their expenses, because the procedure is a very difficult and bureaucratic one.

Starting with January 2012, the NCSGLA approved the remuneration of a public defender in the amount of 6785 MDL/month¹⁷⁹. This is the gross amount, subject to further taxes and deductions required by law. The office space and costs are also covered from legal aid budget.

In 2013, out of the total number of 1754 lawyers, 490 lawyers who provide legal aid upon request and 12 public defenders were involved in delivering state guaranteed legal aid¹⁸⁰. For comparison purposes, in 2010, there had been 331 lawyers included in the NCSGLA lists¹⁸¹, therefore, in three years the number of lawyers included in SGLAS increased with 22.5%.

Although delivering legal aid on a contractual basis is more profitable and only 44% of the lawyers responding to the questionnaire mentioned that the offered remuneration motivated them to work in the state guaranteed legal aid system, 39% affirmed that the remuneration partially motivated them, and 17 % of the respondents indicated that the remuneration did not represent an incentive to work in the state guaranteed legal aid system¹⁸².

¹⁷⁷ See **Annex no. 2** to the Recommendations of the UL of 30.03.2012.

¹⁷⁸ Informally interviewed in 2014.

¹⁷⁹ Decision of the NCSGLA no. 12 of 3 November 2011 on the Quantum of Remuneration of Public Defenders.

¹⁸⁰ NCSGLA Activity report for 2013. Available at: http://www.cnajgs.md/uploads/asset/file/ro/203/Raportul_de_activitate_al_CNAJGS_2013.pdf

¹⁸¹ Ibidem.

¹⁸² Igor Ciobanu, Victor Zaharia, The current Mechanism of Monitoring the Quality of State Guaranteed Legal Aid, Chişinău, 2013, p. 33-34, Available at: http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/pilon3/Raport_MECHANISMUL_ACTUAL_DE_MONITORIZARE_A_CALITII_ASISTENEI_JURIDICE_GARANTATE_DE_STAT.Pdf

Among other incentives for delivering state guaranteed legal aid, lawyers indicate a not very high workload; desire to accumulate experience (especially, the inexperienced ones); training and methodical support offered by the state guaranteed legal aid system.

Inevitably, a low remuneration affects the motivation to provide a high quality legal aid¹⁸³. At the same time, according to some persons the researchers talked to, money represented a limited stimulus for some of the lawyers of the state guaranteed legal aid system¹⁸⁴.

According to some, the motivation to work on public funded cases is a good opportunity for young lawyers to accumulate experience and create a client's base. A more cynical perspective is that a small part of the *ex officio* lawyers use the system to charge both the state guaranteed legal aid system, but also the client¹⁸⁵.

¹⁸³ Martin Gramaticov, Nadejda Hriptievschi, Impact Assessment of the Moldovan Legal Aid Law, Chişinău, 2012, p. 36. Available at: http://www.soros.md/files/publications/documents/LAA%20Assessment_ro.pdf

¹⁸⁴ Ibidem.

¹⁸⁵ Ibidem.

3. The Right to Information

3.1. Legal Framework and its Compliance with the ECHR and EU Standards

The Constitution of the RM, the Criminal Procedure Code (CPC), the Contraventional Code (CC), as well as other special laws provide for the right of the apprehended person to be informed about his/her rights, grounds for apprehension, content of the suspicion and legal framing of the criminal deed he/she is being suspected of. These provisions, to be analyzed below, are largely in accordance with the guarantees meant to reduce arbitrary and ensure fair criminal proceedings, provided by art. 5 (2) of ECHR¹⁸⁶ and art. 6 (3) (a) ECHR¹⁸⁷.

The ECtHR jurisprudence has highlighted the fact that the authorities have to ensure that the suspect receive information and know his/her rights¹⁸⁸, the fact that the apprehended person knows the length and grounds for apprehension, his/her rights and obligations in case of apprehension, as well as the fact that the person deprived of liberty has to be informed by the state authority, in simple, non-juridical terms that he/she can understand, about the factual and legal elements which determined the application of the measure¹⁸⁹. Moreover, the person must have the possibility to challenge the

¹⁸⁶ Any person must be informed, in the shortest time and in a language that he/she understands about the grounds of his/her arrest and any accusation brought against him/her.

¹⁸⁷ Any accused has the right to be informed, in the shortest time, in a language that he/she understands and in details about the nature and reason for accusations against him/her.

¹⁸⁸ ECtHR, *Panovits v. Cyprus*, 11 December 2008, p. 72-73, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90244#{"itemid":\["001-90244"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90244#{)

¹⁸⁹ ECtHR, *Van der Leer v. the Netherlands*, 21.02.1990, para. 28, available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57620#{"itemid":\["001-57620"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57620#{)

custodial measure, and, for this purpose, access to the materials of the case file and evidence must be ensured¹⁹⁰.

Therewith, the EU Directive on the Right to Information in Criminal Proceedings¹⁹¹ sets the following minimum standards regarding the right to information:

1. suspected/accused persons shall be promptly provided with information concerning, at least, the following procedural rights: the right to be assisted by a lawyer, right to free legal aid and the conditions for obtaining such aid, the right to be informed of the accusation, the right to interpretation and translation, the right to remain silent.
2. the information shall be provided orally or in writing, in a simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.
3. a Letter of Rights drafted in a simple and accessible language, must be promptly provided to the suspects/accused or arrested persons for them to read and keep it in their possession throughout the entire period of their deprivation of liberty.
4. the Letter of Rights shall also contain, in addition to the above-mentioned rights, the right of access to the materials of the case, the right to have consular authorities and one person informed, right of access to urgent medical assistance, the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority, information about any possibility of challenging the lawfulness of the arrest, obtaining a review of the detention or making a request for provisional release.
5. suspects or accused persons shall receive the Letter of Rights written in a language that they understand. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons shall be informed of their rights orally in a language that they understand. A Letter of Rights in a language that they understand shall be then given to them without undue delay.

¹⁹⁰ ECtHR, *Țurcan and Țurcan v. Moldova*, 23.10.2007, para. 56-64, available at: [http://hudoc.echr.coe.int/eng#{"fulltext":\["Țurcan v. Moldova"\],"documentcollectionid2":\["CASELAW"\],"itemid":\["001-112787"\]}](http://hudoc.echr.coe.int/eng#{)

¹⁹¹ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the Right to Information in Criminal Proceedings, Official Journal of the European Union, part I, L 142 of 01.06.2012, available at <http://eur-lex.europa.eu>

6. suspects/accused persons shall be promptly provided with information about the criminal act they are suspected/accused of having committed, reasons for arrest or apprehension, detailed information on the accusation (including the nature and legal qualification of the criminal offence, as well as the nature of participation by the accused person).
7. suspects/accused or their lawyers shall have access to documents related to the specific case in the possession of the competent authorities which are essential to effectively challenging, the lawfulness of the arrest or detention¹⁹².
8. access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an on-going investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted. A decision to refuse access to certain materials in accordance with this paragraph is taken by a judicial authority or is, at least subject, to judicial review.
9. keeping record of all the information at the disposal of the suspects/accused. Suspects or accused or their lawyers must have the possibility to challenge the possible failure or refusal of the competent authorities to provide information.

3.2. Information on Rights

The Criminal Procedure Code¹⁹³ provides for the right of the suspect/accused to immediately receive information about the rights he/she has, in a language that he/she understands¹⁹⁴. Similar provisions are included in art. 384 (2) (e) CC and art. 25 (5) (10) of the Law on the Activity and Status of the Police no. 320 of 27.12.2012.

¹⁹² The competent authorities must provide suspects/accused or their lawyers access to at least all material evidence, whether in favour of or against the suspect/accused, in due time in order to allow for effective exercise of the right to defence and at latest upon presenting the merits of the case in court.

¹⁹³ In art. 11 (5), art. 64 (2) (2), art. 66 (2) (2) and art. 167 (1).

¹⁹⁴ Art. 25, para. (5) of the Constitution of the Republic of Moldova, art. 11, para. (5), CPC, art. 376, para. (4), CC.

Although this right is stipulated by the national legislation, in compliance with the guarantees provided by the ECHR, the content of the information regarding rights is only partially regulated. Thus, the Criminal Procedure Code indicates that this information must comprise all the rights that an apprehended person has according to art. 64 of the CPC, including the right to remain silent and the prohibition against self-incrimination, to give statements that are to be recorded in the minutes, to benefit from a defender and to give testimony in his/her presence¹⁹⁵. The legislation of the Republic of Moldova does not, however, expressly provide for the manner in which this information is to be drafted and the language used for these purposes. A concept which would be similar to the „Letter of Rights of the apprehended person” is lacking, although art. 64 and 66 of the CPC include all the rights that have to be indicated in a Letter of Rights, formulated in a normative language.

Neither is this condition duly fulfilled in practice, limiting the possibility of the apprehended person to understand the content of his/her rights. The majority of the interviewed lawyers and police officers mentioned that the „*Written information of the rights included the list of rights indicated in art. 64, CPC, as an annex to the apprehension minutes, drawn up in Romanian or in Russian*”. The same was found during field observations in 2014.

Thus, although the information comprises all procedural rights of an apprehended person, it is not drafted in a simple and accessible language, limiting the full understanding of the content of the rights guaranteed by law.

3.2.1. The Process of Informing the Suspect of His/Her Rights

The Moldovan legislation contains norms both on providing oral and written information about the rights. According to the Law on the Activity and Status of the Police, the *police officer* has the duty to *explain* to the apprehended person his/her rights¹⁹⁶, and to familiarize the person with his/her rights and obligations in case of applying measures that restrict individual rights and liberties¹⁹⁷.

In 2011, an internal disposition of MIA was issued ordering the employees of the internal affairs bodies, when depriving a person of his/her liberty in any

¹⁹⁵ Art. 167, para. (1), CPC.

¹⁹⁶ Art. 25, para. (5), p. (10) of the Law on the Activity and Status of the Police.

¹⁹⁷ Art. 26, let. (n) of the Law on the Activity and Status of the Police.

form, *to verbally communicate* at least the right to remain silent, the right to a defender and the right to demand explanations on his/her rights. Moreover, the employees of the internal affairs bodies were prohibited to discuss with the person who was *de facto* deprived of liberty, *before the verbal communication* of his/her rights, being required to explicitly ask the apprehended person if the communicated rights are *clear*, the fact which was to be reflected in a report (to be attached to the criminal/contraventional case) drawn up after bringing the person deprived of liberty at the police commissariat¹⁹⁸.

This Disposition was abrogated in 2014 upon the issuing of a new Disposition on Ensuring the Observance of Fundamental Rights and Liberties of Apprehended Persons in Criminal Proceedings, in which such instructions are not included¹⁹⁹. However, the 2014 Disposition provides for the obligation of the police officer „to communicate” to the apprehended person his/her rights. Nevertheless, these provisions are meant for MIA’s staff and are not published. It seems that these provisions attempted to ensure at institutional level the communication of information at the beginning of deprivation of liberty.

However, the practice of the CIO shows a deficient implementation of legal procedures. Some police officers mentioned during interviews that in the moment of *de facto* apprehension they communicate to the apprehended person data about the identity of the one carrying out apprehension, the institution where the person is to be transported, the right to be assisted by a lawyer, to communicate about whereabouts, as well as the prohibition against self-incrimination. Others, however, considered that providing such information is inadmissible because it may affect the criminal investigation.

Moreover, the suspect/accused is entitled to receive *written* information about his/her rights, as well as *explanations* of these rights *immediately after having been apprehended* or after having been made aware of the order on recognizing him/her as suspect/accused or the decision on the application of preventive measure or indictment²⁰⁰. The *written* information about the rights

¹⁹⁸ Disposition no. 11 of 26.10.2011 on the Manner of Explaining the Rights to Apprehended Persons or to Persons Subjected to Other Forms of Deprivation of Liberty by the Police, adopted by the order of MIA no. 203 of 20.07.2011.

¹⁹⁹ Disposition of the National Patrol Inspectorate no. 34 of 27.02.2014 on Ensuring the Observance of Fundamental Rights and Liberties of Apprehended Persons in Criminal Proceedings.

²⁰⁰ Art. 64, para. (2), p. (2); art. 66, para. (2), p. (2) and art. 167, para. (1), CPC.

shall be handed to the apprehended person together with the apprehension minutes²⁰¹. The fact that the person was presented the information about his/her rights is recorded in the *apprehension minutes*, which is signed by the person who draws up the respective minutes and the apprehended person²⁰². Within the contraventional proceedings, the apprehended person is *immediately* notified, upon signature, about his/her rights provided by art. 384 of the CC, this fact being recorded in the apprehension minutes.

The signature of the person on the apprehension minutes confirms the receipt by the apprehended person of the information about the rights, ensuring the authorities that the information reached the apprehended person. Nevertheless, the CPC does not contain express provisions regarding verifying the degree of understanding of the rights by the suspect/accused, although provides for his/her right to request explanations about his/her rights. The Code also provides for the general obligation of the CIO to ensure protection of human rights and liberties under the criminal procedure law²⁰³ and the right of the lawyer to explain the person that he/she defends his/her rights²⁰⁴.

Thus, from the legislative and institutional point of view, compliance with the ECHR and EU standards is ensured by providing prompt information about several fundamental rights at the moment of the *de facto* apprehension, handing some written information about the procedural rights, ensuring the fact that this information reached the apprehended person and the right to ask for explanations about these rights.

However, handing the written information about the rights of the apprehended person is mostly purely formal, and, in practice, actually, no explanations about the rights of the apprehended person are provided. If the person is a suspect in several cases, the CIO does not always inform him/her regarding all the cases. Therefore, in the case of *Leva v. Moldova*, the ECtHR held that in view of the delay with which the applicants had been informed of two additional investigations concerning them and of the fact that the investigators and prosecutors had expressly relied on those additional materials in requesting the applicants' detention pending trial, the Court concluded that

²⁰¹ The apprehension minutes is drawn up within three hours from the moment of deprivation of liberty.

²⁰² Art. 167, para. (2), CPC.

²⁰³ Art. 57, para. (5), CPC.

²⁰⁴ Art. 68, para. (1), p. (3), CPC.

the authorities had not complied with their obligations under Article 5, §2 of the Convention. There had, accordingly, been a violation of that provision²⁰⁵.

During some observations, it has been found that the rights of the apprehended person were not presented or explained by the CIO. For example, in case of an apprehended Roma person, his rights were neither presented nor explained by the CIO, because he was not considered apprehended by the CIO, and the apprehension minutes was to be drawn up only after the person had to arrive in one of the rayons of the North of the country where the alleged crime had been committed²⁰⁶. Thus, the CIO conditioned the explanation of rights upon the status of the apprehended person.

In another case, both the police officer and the lawyer refused to read and explain the rights to the apprehended person, even when the person could not read by himself. In the particular case, the person suspected of having committed the crime provided by art. 188, para. 2, CC was not explained the rights before being heard. After hearing the person as suspect, he was asked to sign the apprehension minutes, which he signed only after listening to the lawyer's explanations. Only after that, the CIO communicated to him the right to inform his relatives about the apprehension. Although the suspect affirmed that he could not read Latin script, the officer informed him only about the right to defence, and the lawyer recommended him to read the rest, without helping him to understand the content of those rights²⁰⁷.

The majority of the interviewed police officers mentioned that the information about the rights was handed to the apprehended person upon drawing up the apprehension minutes, as an attachment to it and, if necessary, explanations were provided either by the CIO or by the lawyer. Nevertheless, some lawyers mentioned that apprehended persons were misled by the CIO regarding procedural rights before the lawyer comes, but admitted that, although in the majority of cases the apprehended persons are asked to read and sign on information about rights, the CIO explains only the right to access a lawyer and to remain silent. However, a lawyer has mentioned that, usually, *suspects are informed about procedural rights only if the lawyer insists*. In the practice of this lawyer, *no suspect was read or explained his/her rights, before being requested by the lawyer*²⁰⁸.

²⁰⁵ ECtHR, *Leva v. Moldova*, 15.03.2010, para. 63 [http://hudoc.echr.coe.int/eng#{"fulltext":\["Leva v. moldovei"\],"documentcollectionid2":\["CASELAW"\],"itemid":\["001-144486"\]}](http://hudoc.echr.coe.int/eng#{)

²⁰⁶ Case 2Pn.

²⁰⁷ Case 13P.

²⁰⁸ Interview IA_4.

In many cases, CIOs and lawyers just hand out the information about rights, without making sure that the person has read and understood the purpose of this information and its content. In the observations carried out during 2014, it was found that most times, both the CIO and the lawyers did not undertake any measure to clarify if the apprehended person understood the content of the information, provided that he acknowledged that he could not read or was in an advance state of intoxication.

Similar conclusions were reached in a study carried out in 2012. The lawyers interviewed for that study confirmed that the presentation of the information of procedural rights was, usually, a formal procedure, performed in a rush by the criminal investigation body. The information was written in small letters, in a language exactly like the one contained in the CPC. Very rarely did the criminal investigation bodies explain the person exactly what the written rights meant. In case the suspect is not apprehended, the evidence of receipt of the excerpt from the CPC (text of art. 64), is the signature on a similar excerpt which is attached to the materials of the criminal case file. The evidence of handing out the written information about the rights and obligations of the accused shall represent the signature of the accused and his lawyer's in the respective section of the order for bringing charges against the suspect (art. 282 para. 3, CPC)²⁰⁹.

Therefore, the situation in this field has not improved in the past years, handing out the information about rights remains a formality both for the CIO and for lawyers.

3.3. Information on the Grounds for Arrest/Apprehension

The Moldovan legislation does not contain provisions on the content of the grounds for apprehension, although it provides for the obligation of the CIO to inform the apprehended person about these grounds. The Criminal Procedure Code only provides for the grounds for apprehension²¹⁰.

²⁰⁹ Ed Cape, Zaza Namoradze, *Effective Criminal Defence in Eastern Europe*, Chişinău: Cartier 2013, p. 186.

²¹⁰ The criminal investigation body has the right to apprehend a person if there is a reasonable suspicion about a crime for which the law provides imprisonment for longer than one year, only in cases when: (1) the person was captured *in flagrante delicto*; (2) an eye witness, including the victim, directly indicates that this person has committed the crime; (3) obvious evidence of the crime is discovered on the body or clothes of the person, in his/her domicile or means of transport; (4) evidence left by this person is discovered at the scene of crime.

3.3.1. The Procedure of Informing the Suspects about the Grounds for Arrest/ Apprehension, Including How and When the Information is Provided, the Degree of Understanding the Information by the Suspects

According to the national legislation, a detainee shall be immediately informed about the grounds for his/her detention only in the presence of a selected defence counsel or one who delivers emergency legal aid²¹¹. At the same time, the grounds and reasons for apprehension are indicated *in the apprehension minutes*, drawn up within three hours from the moment of deprivation of liberty, signed by the apprehended person, who is *immediately handed a copy of it*²¹². Within the contraventional proceedings the fact of prompt information about the grounds for apprehension is recorded in the apprehension minutes²¹³. Although there are requirements about signing the minutes where the grounds for detention are indicated, thus, certifying that the person has been informed, there is no legal provision that would establish how to determine the level of understanding of the information by the suspect.

Although these legal provisions comply with both guarantees provided by art. 5 ECHR concerning the elimination of arbitrariness and European rules, their implementation in practice is deficient. During observations, it was found that the apprehended persons are rarely and inadequately informed by the CIO about the grounds for their apprehension. In one of the cases observed, the apprehended person was not made aware of the grounds for apprehension. Furthermore, the CIO has conditioned the presentation of the information about the grounds for apprehension with the acknowledgment of having committed the attempted theft²¹⁴.

However, one of the interviewed lawyers has mentioned that, generally, the police do not provide sufficient data on the grounds for apprehension, limiting themselves only to the information that the person is apprehended so that, subsequently, pre-trial detention is requested (method used by CIO for influencing the suspect, scaring him/her and determining him/her to acknowledge the suspicion, testify and reveal the identity of all the participants who have committed the offense)²¹⁵.

²¹¹ Art. 25, para. (5) of the Constitution of the RM and art. 167, para. (2), CPC.

²¹² Art. 167, para. (2), CPC.

²¹³ Art. 433, para. (3), p. (4), CC.

²¹⁴ Case 25P.

²¹⁵ Interview IA_1.

3.4. Information on the Suspicion

The suspect/accused has the right *to know what he/she is suspected/accused of* and, in relation to this, to be informed in the presence of a defender, in a language that he/she understands, *about the content of the suspicion* and about legal framing of the criminal deed he/she is suspected of²¹⁶.

3.4.1. The Procedure of Informing the Suspects, How and When the Information is Provided, the Level of Understanding of the Information by the Suspects

The national legislation stipulates that the apprehended person shall be notified *immediately after apprehension* about the content of the suspicion and legal framing of the deed the commission of which he/she is suspected of or after being notified about the decision on applying a preventive measure or recognizing him/her as a suspect²¹⁷. The suspect/accused has the right to be informed about what he/she is accused of and upon being charged or immediately after apprehension or after being notified about the motion for applying a preventive measure, to obtain from the criminal investigation body a copy of the charges²¹⁸.

At the same time, the nature and grounds for suspicion/accusation are described in the *apprehension minutes, motion for charging, arrest motion, decision on arrest or indictment*. The person receives a copy of these documents under signature²¹⁹. Also, in this case, the signature has the purpose of proving the fact that the apprehended person has received the information regarding the suspicion.

Although there is such an obligation at legislative level, the practice of the CIO is different. The interviewed lawyers mentioned that most often, the essence of the suspicion/accusation is not clear (there is no indication of data, place of committing the crime, concrete circumstances), and their grounds are „copied” from the CPC, without being explained or adapted to the concrete case²²⁰. Therefore, most often, in practice, this procedure also has more of a formal character, the CIO having a superficial attitude towards the manner of informing about the suspicion. What is more, there is, practically, no explanation regarding the charge.

²¹⁶ According to art. 64, para. (2), p. (1), CPC and art. 66, para. (2), p. (1), CPC.

²¹⁷ Art. 64, para. (2), p. (1), CPC.

²¹⁸ Art. 66, para. (2), p. (1), CPC.

²¹⁹ Art. 167, para. (1), CPC.

²²⁰ Interview IA_7.

3.5. Access to the Materials of the Case

The CIO does not have the obligation to provide access to the materials of the criminal case file to the defence during criminal investigation. The materials of the criminal investigation shall not be disclosed unless the disclosure is authorized by the person conducting the criminal investigation and to the extent that he/she considers it possible, during which the presumption of innocence shall be observed and the interests of other persons and of the criminal investigation shall not be affected²²¹.

Nevertheless, the apprehended person and his/her lawyer may familiarize themselves with: (1) *the minutes of procedural actions carried out with his/her participation* and challenge the accuracy of the minutes, as well as demand completing them with circumstances which, in his/her opinion should be mentioned; (2) *materials sent to court for confirming his/her arrest*; and (3) *motion for ordering forensic expertise* before carrying it out and conduct observations regarding questions which the expert should answer and request their amendment or completion²²².

Also, the ECtHR, in its jurisprudence against Moldova²²³, held that the Court acknowledges the need for criminal investigations to be conducted efficiently, which may imply that part of the information collected during them is to be kept secret in order to prevent suspects from tampering with evidence and undermining the course of justice. However, this legitimate goal cannot be pursued at the expense of substantial restrictions on the rights of the defence. Therefore, information which is essential for the assessment of the lawfulness of a detention should be made available in an appropriate manner to the suspect's lawyer.

²²¹ Art. 212, para. (1), CPC. Moreover, should it be necessary to respect confidentiality, the person conducting the criminal investigation shall warn the witnesses, the injured party, the civil party, the civil liable party or their representatives; the defence counsel; the experts; the specialists; the interpreters; the translators and persons attending the criminal investigation actions about the prohibitions of disclosing information about criminal investigation. These persons shall make written statements confirming that they have been warned about liability provided for in art. 315 of the Criminal Code.

²²² Art. 64, para. (2), p. (17); art. 66, para. (2), p. (20)-(22) and art. 68, para. (1), p. (9)-(10), CP.

²²³ ECtHR, *Țurcan and Țurcan v. Moldova*, 23.10.2007, para. 60.

3.5.1. The Procedure of Providing Access to the Materials of Case File, When and How This Access Is Provided

The procedure of providing access to the materials of the case file is regulated depending on the stages of the criminal proceedings. Thus, during criminal investigation the apprehended person or his/her lawyer may require copies of the case file of the *decisions* adopted by the criminal investigation body *referring to his/her rights and interests*. The national legislation does not provide for the obligation of the CIO to provide the defence with all the materials of the case file, due to the principle of confidentiality of the criminal investigation stipulated by the domestic legislation. Based on this principle, the materials of the criminal investigation may not be disclosed, unless there is an authorization of the person conducting the criminal investigation and to the extent that he/she considers possible²²⁴.

However, upon termination of criminal investigation and after the prosecutor verifies the materials of the case file, the prosecutor shall notify the accused, his/her legal representative and defender about the place and term available for familiarizing themselves with the materials of the criminal investigation. Upon the parties' request, *corpus delicti* may also be presented, and audio and video recordings shall be played, with some exceptions²²⁵.

Moreover, the term for familiarizing with the criminal investigation materials shall not be limited, however, if the person who is reviewing the materials abuses his/her situation, the prosecutor shall set the manner and the term for this action, taking into consideration the volume of the case file²²⁶.

However, in practice, the most often invoked reason for limiting access to these materials is the possibility to hinder the criminal investigation, which was

²²⁴ By observing the presumption of innocence and not affecting the interests of other persons and of carrying out criminal investigation.

²²⁵ Art. 293, CPC. In order to familiarize oneself with the materials of criminal investigation, they are presented sewn in a case file which is numbered and listed in the inventory. If the criminal case file consists of several volumes, they are to be presented at the same time, so that the person reviewing them can revert to any of these volumes whenever necessary. In order to allow for a review of voluminous case files, the prosecutor may, by an order, draw up a schedule coordinated with the defence counsel setting the date and the number of the volumes to be reviewed. In order to ensure the confidentiality of state, commercial or any other secrets protected by law and to secure the protection of the life, corporal integrity and freedom of a witness and other persons, the investigative judge, based on a motion by the prosecutor, may limit the right to review the materials or data about their identity. The motion shall be examined in a confidential manner in line with art. 305.

²²⁶ Art. 293, CPC.

also confirmed during interviews. All interviewed police officers mentioned that *they did not provide access to the materials of the case file to the apprehended person or to the lawyer because the domestic legislation provides for the secrecy of criminal investigation*. Nevertheless, some police officers handed the suspect a copy of the order on initiating criminal investigation, a copy of the complaint, a copy of the forensic report and copies of some decisions which affect his/her rights. The majority of them mentioned that access to the case file is provided by the prosecutor upon the termination of the criminal investigation.

What is more, there is no obligation to inform the accused about the materials which are to be excluded or not presented to the court. However, any materials which are to be excluded by the prosecutor from the criminal case file shall be mentioned in the prosecutor's motion²²⁷. Hence, theoretically, the lawyer can see what was excluded and can ask to see these materials. The interviewed lawyers could not recall any case where evidence that was of interest to the defence was excluded by the prosecutor from the case file. They could not also recall any orders on excluding certain materials. This might explain why the lawyers do not recall problems with excluded materials – it might be due to the simple fact that they do not know that there was anything relevant for the defence and, hence, cannot challenge any exclusion²²⁸.

As to the access to the materials which confirm the grounds for applying pre-trial detention, the domestic legislation provides for the obligation that the motion and materials which confirm the grounds for applying pre-trial detention or house arrest be submitted to the lawyer at the moment of filing the motion on applying pre-trial detention or house arrest, and, also, to the investigative judge²²⁹.

3.6. **Police and Lawyers' Perspectives on the Efficiency of Providing Information**

During the past five years the police and lawyers' perspectives on providing information about the rights of the apprehended person have

²²⁷ Art. 290, CPC provides for the right of the prosecutor to exclude from case files the evidence collected with violations either of the CPC, or of the rights of the accused.

²²⁸ Ed Cape, Zaza Namoradze, *Effective Criminal Defence in Eastern Europe*, Chişinău: Cartier 2013, p. 188-189.

²²⁹ Art. 307, para. (1), CPC.

not changed significantly. Both, the police and lawyers mentioned that the majority of apprehended persons, except for those previously convicted, do not know their rights and must be adequately informed.

While in 2011²³⁰, some interviewed police officers considered that explaining the rights of apprehended persons represents an obligation of the lawyer and not of the police officer, all officers interviewed for this study mentioned that *both the CIO and the lawyer inform the apprehended person about his/her rights*. Thus, currently, police officers know and understand that they have such an obligation, although they do not execute it accordingly.

Moreover, it appears that police officers have a skeptical attitude towards the rights of an apprehended person. Although police officers have emphasized that it is important for apprehended persons to know their rights, the majority stated that the suspect/accused enjoys too many rights that have to be reviewed because they are sometimes used abusively and in detriment of the CIO. The reserved attitude of the police was also confirmed by lawyers who stated that although CIO hands out information about the rights, they do not explain the content of that information.

A police officer mentioned that *„in general, suspects know their rights from mass-media and from previous experiences. Not lastly, from the legal representatives and from the initial information put forward by MIA employees, who are required to make these rights known”*²³¹. Another officer stated: *„few suspects know their rights. In the moment of apprehension copies of the rights of suspects are provided in the presence of the lawyer”*.

Although both police officers and lawyers noted the importance of providing information and explanations about the rights of apprehended persons, during observations it has been found that they have an indifferent attitude towards this process and rarely provide explanations or check whether the apprehended person understood his/her rights. Moreover, discussions on the rights of the apprehended persons end with the signing of the apprehension minutes and handing over the information that the suspect/accused can keep throughout procedural actions.

²³⁰ O. Gribincea, N. Hriptievshi, V. Rotaru, M. Vidaicu, V. Zaharia, Research on the apprehension in the Republic of Moldova, Chişinău, 2011, pag. 15.

²³¹ Interview IP13.

4. Access to Lawyer and State Guaranteed Legal Aid

4.1. Domestic Normative Framework and its Compliance with the ECtHR Standards and Jurisprudence

Legal aid is one of the most important components of the parties' right to defence, along with their possibility to personally exercise their right to defence through all means and methods allowed by the law²³² and the obligation of the legal bodies to take into account, *ex officio*, all aspects which are in favor of parties and its regulation in the Constitution and the Criminal Procedure Code represents a guarantee of exercising this fundamental right.

The ECHR stipulates in art. 6, §3 let. c) *the right of the accused to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.*

The Constitution proclaims the right of parties to legal aid by a defender chosen or appointed *ex officio* throughout the proceedings²³³. The CPC specifies that the criminal investigation body and the court are obliged to ensure the participation of a lawyer to defend the suspect, accused²³⁴.

There are several definitions of legal aid in the doctrine, which as a whole, highlight the correlation between participation of a qualified and legally

²³² Art. 64, para. 1, CPC.

²³³ Art. 26, para. 3, Constitution.

²³⁴ Art. 17, para. 3 and 5, CPC. It shall be noted that in case of apprehension, the compulsory participation of the defender in the criminal proceedings is ensured by the coordinator of the Territorial office of NCSGLA, upon the request of the criminal investigation body or the court (art. 69, para. 3, CPC).

trained professional in the hearing and the activity of protecting the legitimate rights and interests of the person in contact with criminal justice²³⁵.

According to the provisions of the Law on State Guaranteed Legal Aid no. 198-XVI of 26.07.2007²³⁶, „*qualified legal aid is the delivery of legal services of counseling, representation and/or defence before the criminal investigation bodies, courts of law in criminal cases, administrative offences cases, civil cases or cases of administrative jurisdiction, as well as representation before the public administration authorities*”.

The Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013²³⁷ comprises important provisions for ensuring the right to defence in criminal proceedings, including of apprehended persons.

The provisions of the CPC and LSGLA on delivering qualified legal aid services, including in case of apprehension of a person are sufficiently clear for implementing them in practice. If the suspect of a crime is apprehended, the right to be assisted by a lawyer appears from the moment of drawing up the apprehension minutes and handing it out to the suspect²³⁸.

In case the apprehended person does not have the possibility to contact a chosen lawyer, the criminal investigation body shall, within one hour, contact

²³⁵ „„Legal aid” means the support provided by the defender to the suspect/accused within criminal proceedings through his/her explanations, advice and interventions as specialist in the legal field.” (Dongoroz Vintilă and others. Theoretical explanations of the Romanian Criminal Procedure Code. General part. Vol. I. Bucureşti: Ed. Academiei R.S.R., 1976, p. 14.; Dolea I., others, Criminal Procedure Code, Commentary, Cartier, Chişinău, 2005, p. 124); Another definition: „a legal relationship between a natural or legal person and a specially trained person (lawyer), where the first benefits from advice, recommendations and opinions of the lawyer and/or is represented by him/her in a qualified manner during or outside proceedings for exercising and defending rights and legitimate interests”. (Gheorghe Avornic, Intensifying legal activism of citizens through legal profession – condition for a rule of law state, Habilitation thesis in law, Chişinău, 2005, p. 110).

²³⁶ Art. 2 of the Law on State Guaranteed Legal Aid no. 198- XVI of 26.07.2007 (published in the Official Monitor of the Republic of Moldova no. 157-160/614 of 05.10.2007, in force as of 1 July 2008).

²³⁷ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, published in the Official Journal of the European Union, part I, L 294 of 06.11.2013, available at <http://eur-lex.europa.eu>.

²³⁸ Art. 64, para. 2, p. 5; art. 69, para. 2, p. 2, let. a); art. 167, para. 2, CPC; also see art. 25, para. 5 of the Constitution.

the National Council for State Guaranteed Legal Aid to appoint a lawyer *ex officio*²³⁹.

Before hearing the suspect, he/she has the right to confidential consultation with his/her defender²⁴⁰. The conditions for confidential lawyer-client consultation are ensured by the criminal investigation body²⁴¹. The suspect has the right to be assisted by a lawyer during any criminal investigation action starting with his/her hearing²⁴².

The CPC requires for releasing the apprehended person if an essential violation of the law took place during apprehension²⁴³.

If during apprehension and hearing procedures the participation of a lawyer has not been ensured, the law allows for declaring these procedures void.²⁴⁴ Moreover, the criminal procedural law prohibits the sentence and other judgments to be based on evidence obtained by violating the right to defence²⁴⁵. If violations of the defendant's right to defence were found, the court is entitled to reduce the punishment²⁴⁶.

The problem of observing the right to defence and legal aid was invoked in the ECtHR case law, including several Moldovan cases.

In the case of *Levința v. Moldova* (application no. 17332/03, jud.

²³⁹ Art. 167, para. 1¹, CPC.

²⁴⁰ Art. 64, para. 2, p. 4) and 6), CPC.

²⁴¹ Art. 167, para. 2¹, CPC.

²⁴² Art. 69, para. 2, p. 7) and 11); art. 68, CPC.

²⁴³ Art. 177, para. 1, p. 3; According to art. 94, para. 2, CPC – the absence of legal aid also represents an essential violation.

²⁴⁴ Art. 251, CPC.

²⁴⁵ Art. 94, para. 1, p. 2, CPC.

²⁴⁶ Art. 385, para. 4, CPC.

16.12.2008)²⁴⁷ the applicants complained under Article 6 of the Convention that their conviction had been based on evidence obtained as a result of ill-treatment and in absence of any real evidence of their guilt. They added that they had not been allowed to see a lawyer for 24 hours following their placement in detention in Moldova, and had been *de facto* prevented from having such meetings in the period of 4-8 November 2000 and thereafter; and that they had not been allowed to meet in private with their lawyers (§95) .

In the case of *Leva v. Moldova* (application no. 12444/05, jud. 15.03.2010)²⁴⁸, the first applicant complained that, initially, upon his apprehension by the CFECC, he had not been allowed to be represented by a lawyer chosen by him. Moreover, in the *Leva* case, the problem of confidentiality of meetings with the lawyer in the office of the criminal investigation officer and in the preventive detention isolator of the CFECC has been addressed. The Court found that the impossibility of the first applicant to directly discuss with his lawyers the relevant questions for his defence and for challenging their pre-trial detention, without being separated by a glass wall, affected his right to

²⁴⁷ On 30 November 2000, prosecutor V. Pitel asked the commissar of the Chişinău General Police Commissariat to allow the lawyers' access to the applicants. On 15 December 2000, he informed one of the lawyers that „certain complaints” had been found to be partially well-founded and had formed the grounds for making submissions to the Chişinău General Police Commissariat, the Ministry of the Interior and the Ministry of Justice. (§23). In view of the applicants' ill-treatment of 4 November 2000, evidence of which was available to the authorities, and the state of fear to which the authorities subjected the applicants by leaving them at the mercy of the same persons to whom ill-treatment can be attributed, it is particularly striking that a number of serious complaints made by lawyers were dismissed in formalistic answers by the various authorities with reference to a failure by the applicants themselves to complain. (§73), Jud. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90304>

²⁴⁸ Since he did not have his diary, S.L. could not call his lawyer. Despite his insistence on being assisted by the lawyer of his choice, his request was rejected and he was offered the services of a lawyer appointed by the investigator. (§11). Finally, as concerns S.L.'s complaint that he was initially not allowed to be represented by a lawyer of his own choice, the Court notes that he was in fact assisted by a State-appointed lawyer in view of his inability to recall his lawyer's phone number. Moreover, he did not notify the investigator at the relevant time of any reason not to trust the State-appointed lawyer, nor did he ask for an opportunity to have someone else find his lawyer, as his son had done (see paragraph 15 above). More importantly, S.L. did not submit that his statements made in the presence of that lawyer had been obtained under some form of duress or that they had negatively affected the course of the proceedings against him (see, *mutatis mutandis* and a contrario, *Salduz v. Turkey* [GC], no. 36391/02, §§50-62, 27 November 2008). In such circumstances, the Court finds that there has been no violation of S.L.'s right to be represented by a lawyer under this head. (§71). Jud. Available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90304>:

defence, dismissing the other complaints on violation of the right to legal aid²⁴⁹.

Both national courts and the authorities responsible for detaining applicants, did not promptly react to the complaints on the lack of confidentiality in the room of CFECG where client-lawyer meetings took place in the cases of Modărcă (application no. 14437/05, jud. 10.05.2007, §18-23, 80-99)²⁵⁰ and Șarban v. Moldova, (application no. 3456/05, jud. 04.10.2005, §48-50, 126-131)²⁵¹.

There were cases when national courts intervened upon the lawyers' request for ensuring confidentiality of their consultation with clients in police custody. Such a situation was found in the case of Popovici v. Moldova (application no. 12444/05, hot. 15.03.2010, §21, 22)²⁵². In this case, the Court also found that *„it appears that the applicant was not assisted by a lawyer during the administrative proceedings, taking into consideration also the period of contraventional apprehension of the applicant”*.

The ECtHR judgment of 19 December 2006 in the case OFERTA PLUS SRL v. Moldova (application no. 14385/04) determined the responsible author-

²⁴⁹ In so far as S.L.'s complaint under Article 5, §4 concerning the glass partition in the CFECG detention centre is concerned, the Court reiterates that it has already found violations in respect of similar complaints in such cases as *Castravet v. Moldova* no. 23393/05, §61, 13 March 2007; *Istratii and Others v. Moldova* nos. 8721/05, 8705/05 and 8742/05, §101, 27 March 2007; *Modarca v. Moldova* no. 14437/05, §99, 10 May 2007; and *Musuc v. Moldova* no. 42440/06, §57, 6 November 2007. In such circumstances and in view of the similarity of the complaint in the present case with those in the above cases, the Court does not consider it possible to depart from its reasoning and its findings in those cases. Accordingly, there has been a violation of Article 5, §4 of the Convention in this respect in the case of S.L. (§68). Jud. available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-90304>

²⁵⁰ Jud. available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-80535>

²⁵¹ Jud. available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70371>

²⁵² On 17 November 2003, contrary to the submissions of the applicant and his lawyer, a meeting between them took place in the presence of an investigator. (§21). On 18 November 2003 the applicant's lawyer complained about this to a judge and asked him to find a violation of the relevant domestic law and of Article 8 of the Convention. He also asked the court to issue an order to the investigating authority to the effect that the meetings with his client be held in conditions of confidentiality. (§22). On 24 November 2003 a judge from the Buiucani District Court upheld the lawyer's complaint by finding a violation of the domestic legislation governing the conduct of criminal investigations and guaranteeing the confidentiality of lawyer-client meetings. The court ordered the investigating authority to ensure conditions of confidentiality for the applicant and his lawyers (§23). Jud. available at: http://justice.md/file/CEDO_judgments/Moldova/POPOVICI%20%28ro%29.pdf

ities to ensure confidential meetings between the apprehended person and the defender, without suspicions of audio or video surveillance, as well as the possibility of locating both of them in the same room for exchange of documents. „*The Court considers that the impossibility for C.T. to discuss with the lawyer issues concerning the present application before the Court without being separated by a glass partition affected the applicant company’s right of petition. Accordingly, there has been a violation of Article 34 of the Convention in this respect also* (§156)²⁵³. *Indeed, the Court now considers that the glass partition might affect the exercise by other individuals of their defence rights* (§153)”²⁵⁴.

In the case of *Buzilov v. Moldova* (application no. 28653/05, jud. 23.06.2009)²⁵⁵, the applicant finally complained that his lawyer did not have adequate facilities to meet with him. In the Court’s opinion, this complaint refers, in substance, to the applicant’s right of petition guaranteed by Article 34 of the Convention. However, since the applicant failed to substantiate it by providing any evidence, the complaint must be declared inadmissible as manifestly ill founded in accordance with Article 35, §§3 and 4 of the Convention (§21).

In the case of *Petru Roșca* (application no. 2638/05, jud. 06.10.2009)²⁵⁶, the applicant alleged, in particular, that the police had made excessive use of force during his arrest and detention, and that he had been convicted of an administrative offence without having had sufficient time and facilities to prepare his defence or to use the assistance of a lawyer (§3). The Court concluded that there had been a violation of Article 6, §1 in conjunction with Article 6, §3 (c) and (d) of the Convention (§58)”.

²⁵³ Jud. available at: <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-78585>

²⁵⁴ Jud. available at: http://www.justice.gov.md/public/files/cedo/judgments/OFERTA_PLUS_SRL_ro.pdf

²⁵⁵ Jud. available at: http://justice.md/file/CEDO_judgments/Moldova/BUZILOV%20%28ro%29.pdf

²⁵⁶ The Court found that the applicant requested legal aid and sufficient time to prepare his defence. Moreover, even in the absence of such a request, the domestic court must have realised that after a night in detention and having seen only the record of his arrest, the applicant could not have prepared for the hearing, for instance, by identifying witnesses on his behalf or undergoing a medical examination. The only circumstance where such procedural safeguards could be dispensed with was where the applicant acknowledged his guilt and accepted a summary procedure, which was not the case here. Therefore, under the circumstances, regardless of any request to offer the applicant time and facilities to prepare his case, such an opportunity should have been given to him by the court ex officio, the more so since he risked fifteen days’ administrative detention as punishment. (§56) Jud. available at: http://justice.md/file/CEDO_judgments/Moldova/PETRU%20ROSCA%20%28ro%29.pdf:

In the ECtHR judgment of Grădinar v. Moldova, (application no. 7170/02, jud. 08.04.2008), the Court noted that G. and D.C. had not been assisted by a lawyer during their contraventional apprehension and administrative arrest and when they were questioned about some criminal deeds that were later incriminated within a criminal file (§§18-22)²⁵⁷.

In the judgment of Cristina Boicenco v. Moldova (application no. 25688/09, jud. 27.09.2011) it is mentioned that by acquitting the applicant of a criminal offence, the domestic court, additionally found that the criminal investigation officers had not issued an apprehension minutes, that the detention of the applicant who had not been assisted by a lawyer took place with violation of the domestic law and all the procedural acts drawn up during the criminal investigation were null (§§13, 14)²⁵⁸.

In the case of Guțu v. Moldova (application no. 20289/02, jud. 07.06.2007)²⁵⁹ it was found that the applicant was apprehended, being suspected of disobeying the lawful orders of a police officer. *Being detained in police custody for more than 20 hours, he was not informed about the grounds of his detention and was not provided a lawyer* (§§6, 12, 13).

In the judgment of Feraru v. Moldova, (application no. 55792/08, jud. 24.01.2012)²⁶⁰, it is mentioned *that the applicant's lawyer appealed, complaining of the applicant's de facto arrest on 29 September 2008 and his*

²⁵⁷ On 17 September 1995 D.C. was taken to the local police station and questioned as a witness about the events of the night of 15 to 16 September 1995. On 18 September 1995 G. was taken to the same police station and also questioned as a witness about the same events. (§18). They were not informed of their rights and were not assisted by lawyers. They were handcuffed while questioned. After the questioning, administrative files were opened on the basis of their alleged insults to D. at the bar and a judge ordered their arrest for ten days as an administrative sanction. During the administrative arrest further questioning took place and other procedural steps were taken, resulting in evidence later used in the criminal case against them. In particular, during this period (18-22 September 1995), G. and D.C. confessed to having murdered D. (§19). On 19 September 1995 G. and D.C. were taken to a remand centre in Chișinău, where they were questioned again until 21 September 1995 as witnesses and without legal assistance. They made statements accepting their guilt during the questioning. (§21). On 21 September 1995 they were, for the first time, interviewed as suspects (as opposed to witnesses), still without having their rights explained and without access to a lawyer. (§22) http://justice.md/file/CEDO_judgments/Moldova/GRADINAR%20%28ro%29.pdf

²⁵⁸ Jud. available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"itemid":\["001-124080"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{)

²⁵⁹ Jud. available at: http://justice.md/file/CEDO_judgments/Moldova/GUTU%20%28ro%29.pdf

²⁶⁰ Jud. available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"appno":\["55792/08"\],"itemid":\["001-124567"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{); See, also the original version at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126978#{"itemid":\["001-126978"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126978#{)

detention thereafter, and of the lack of legal assistance available to the applicant until 6 October 2008 (§14).

In the case of *Colibaba v. Moldova* (application no. 29089/06, jud. 23.10.2007)²⁶¹ it was found that *although the applicant was arrested on 21 April 2006 on charges of assaulting a police officer, only on 27 April 2006 he was allowed for the first time to meet his lawyer, but only in the presence of police. The applicant complained to his lawyer that he had been tortured (§§1, 4, 43).* Finally, the applicant complained, according to Article 34 of the Convention that the Prosecutor General's letter of 26 June 2006 was a form of intimidation in respect of his lawyer, and subsequently, represented a violation of his right to complain to the Court²⁶². *In view of the foregoing, the Court considers that the respondent State has failed to comply with its obligations under Article 34 of the Convention (§59).*

In the judgment of *Gurgurov v. Moldova* (application no. 7045/08, jud. 16.06.2009)²⁶³ it was also found that the accusation had put pressure on the defence. The Court noted that the applicant complained of ill-treatment. *„On 4 November 2005 the applicant's father employed a lawyer, who immediately lodged a complaint with the prosecutor's office alleging ill-treatment. The Court notes in the first place that the independence of the prosecutor's office was open to doubt throughout the investigation conducted by it. It observes that the Prosecutor General's Office expressed a clear opinion on the matter at the beginning of the investigation and attempted to put pressure on the applicant's lawyer along with other lawyers and to dissuade them from pursuing their complaints before international organizations specialized in the protection of human rights (see*

²⁶¹ Jud. available at: http://justice.md/file/CEDO_judgments/Moldova/COLIBABA%20%28ro%29.pdf

²⁶² Having examined the Prosecutor General's letter, the Court tends to agree with the applicant that it does not seem to have been merely a call to lawyers to observe professional ethics as suggested by the Government. The language employed by the Prosecutor General, the fact that he expressly named the applicant's lawyer in the context of this case and the warning that a criminal investigation would be initiated as a result of the latter's allegedly improper complaint to international organisations could, in the Court's view, easily be construed as amounting to pressure on the applicant's lawyer and on all lawyers in general. Indeed, that also appears to have been the perception of Moldovan lawyers and of Amnesty International (§57). Jud. available at: http://justice.md/file/CEDO_judgments/Moldova/COLIBABA%20%28ro%29.pdf

²⁶³ Jud. available at: http://justice.md/file/CEDO_judgments/Moldova/GURGUROV%20%28ro%29.pdf

paragraph 24 above). This led to the finding of a violation of Article 34 of the Convention in Colibaba v. Moldova (no. 29089/06, §67, 23 October 2007) (§65).

Based on the findings above and a short overview of the cases examined by the ECtHR we can make the following conclusions.

- In most of the mentioned cases, there was a violation of the right to defence.
- The ECtHR based its conclusions not only on the physical presence of the lawyer during certain procedural actions with the participation of the apprehended person, but also on the lack of confidentiality of the meetings with clients.
- In some cases, physical and mental abuses of apprehended persons were found.
- We believe that efficient safeguarding of the right to defence could have prevented abuse by the police.
- For the most part, these findings focused on the early stage of the criminal proceedings and detention in police custody.
- In all cases, there was found a violation of the right to defence, due to bad practices in the actions of the ascertaining body and criminal investigation body. The ECtHR has not found any inconsistencies and incongruities of the national legislation with the ECHR.

4.2. **Organization of Delivery of State Guaranteed Legal Aid to Persons in Police Custody**

4.2.1. **Necessary Measures for Delivering Emergency Legal Aid to Apprehended Persons**

Emergency legal aid is granted to any apprehended person in criminal or contraventional proceedings throughout the period of apprehension, including at the examination of the motion on application of pre-trial detention. Emergency legal aid shall also be granted when examining the motion on application of pre-trial detention when the suspect, accused or defendant does not have a defence counsel or the duly notified defence counsel did not meet for the examination of the motion. During the contraventional procedure, emergency legal aid shall be granted only where the body (functionary) who carried out the apprehension requests the court to apply the contraventional sanction in the form of contraventional arrest.

The Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013²⁶⁴ contains important provisions for ensuring the right to defence in criminal proceedings, including of apprehended persons. According to art. 3, para. 2 of the Directive 2013/48/EU, suspects or accused persons shall have access to a lawyer *without undue delay*. In any event, suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest: (a) before they are questioned by the police or by another law enforcement or judicial authority; (b) upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 3²⁶⁵; (c) without undue delay after deprivation of liberty²⁶⁶.

Therefore, the apprehended persons who are suspected of a crime or contravention are entitled to benefit from emergency legal aid (hereinafter ELA). The process of delivering ELA is regulated by the CPC and the Regulation on the Procedure of Requesting and Appointing a Lawyer for Delivering Emergency Legal Aid²⁶⁷.

ELA is guaranteed state legal aid throughout the apprehension period, including during the examination of the motion on applying pre-trial detention. During the contraventional procedure, emergency legal aid is granted only where the body (functionary) who carried out the apprehension

²⁶⁴ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, published in the Official Journal of the European Union, part I, L 294 of 06.11.2013, available at <http://eur-lex.europa.eu>.

²⁶⁵ Member States shall ensure that suspects or accused persons have, as a minimum, the right for their lawyer to attend the following investigative or evidence-gathering acts where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned: (i) identity parades; (ii) confrontations; (iii) reconstructions of the scene of a crime.

²⁶⁶ According to art. 3 para. 5 of the Directive 2013/48/EU, in exceptional circumstances and only at the pre-trial stage, Member States may temporarily derogate from the application of point (c) of paragraph 2 where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

²⁶⁷ Regulation on the Procedure of Requesting and Appointing a Lawyer for Delivering Emergency Legal Aid of 19 May 2009, approved by the Decision of the National Council for State Guaranteed Legal Aid, no. 8 of 19 May 2009.

requests the court to apply the contraventional sanction in the form of contraventional arrest²⁶⁸.

Within one hour from the apprehension of the person, the criminal investigation body requests the Territorial Office of the National Council for State Guaranteed Legal Aid or other persons empowered by it to appoint a lawyer on duty²⁶⁹ for delivering emergency legal aid. The request to appoint a lawyer on duty is presented in writing, including by fax or by telephone²⁷⁰.

The request²⁷¹ issued by the body (functionary) which carried out the apprehension on the appointment of the lawyer on duty shall be sent to the Territorial Office in writing, including by fax or conveyed by telephone, indicating information about the name and age of the apprehended person; date and time of apprehension; grounds for apprehension; name, office and contact data, as the case may be, of the criminal investigation officer, body (functionary) that applied apprehension, the responsible prosecutor or judge; time, place and the planned procedural action for which the presence of the lawyer on duty is requested.

Upon receiving the request on appointing a lawyer on duty, the Territorial Office will contact the first lawyer included in the schedule for that day and communicate to him/her on the phone the data in the request. If the respective lawyer is not available²⁷² to respond to the request, the Territorial Office will contact the next lawyer on duty in the schedule, and, if necessary, will contact lawyers on duty from the following days, until an available one is found.

The lawyer who has confirmed his/her availability to deliver emergency legal aid for the respective case shall meet at the indicated place within

²⁶⁸ Regulation on the procedure of requiring and appointing the lawyer for delivering emergency legal aid.

²⁶⁹ Lawyers on duty are the lawyers who expressed their availability to provide emergency legal aid and were included in the list of lawyers on duty, according to article 33 of the LSGLA. In their working days, they have to be available 24 hours, on standby. Lawyers on duty deliver emergency legal aid according to the work schedule drawn up and monthly approved by the Coordinator of the Territorial office.

²⁷⁰ Art. 167, para. 1¹, CPC.

²⁷¹ The request for appointment of the lawyer on duty may be submitted to the Territorial office also by the relatives or representatives of the apprehended person.

²⁷² It is considered that a lawyer on duty is not available if he/she is not available within half an hour.

one and a half hour from the time of confirmation²⁷³. Emergency legal aid within criminal proceedings shall be provided throughout the entire period of apprehension until the release of the person or adoption of a ruling on application of pre-trial detention²⁷⁴.

The lawyer who delivered emergency legal aid shall continue to deliver qualified legal aid to the person concerned if after the expiry of the apprehension period the criminal proceedings were not completed. In that event, the lawyer shall immediately notify in writing the Territorial Office about the fact that the person requests qualified legal aid. The Territorial Office will verify whether the person meets the conditions required to receive qualified legal aid and confirm by its decision the appointment of the lawyer to deliver qualified legal aid²⁷⁵.

Emergency legal aid in case of contraventional apprehension shall be delivered until the release or application of contraventional arrest by the court²⁷⁶.

The lawyer delivering legal aid to the suspect or the defendant upon his/her apprehension or arrest shall be considered his/her defence counsel for this period of time and, upon the person's consent, may continue acting as a defence counsel until the proceedings in the respective case are completed or until another person is involved in the proceedings²⁷⁷.

The lawyer who delivers state guaranteed legal aid shall obtain the status of defence counsel at the moment when the Coordinator of the Territorial Office of the National Council for Guaranteed State Legal Aid issues a decision on the delivery of qualified legal aid. The decision on the delivery of qualified legal aid, when necessary, shall be communicated to the applicant, the criminal investigative body or the court²⁷⁸.

²⁷³ The lawyer who confirmed his/her availability to provide emergency legal aid in the respective case shall be present at the indicated place within an hour and a half from the moment of confirmation. See art. 11 and 16 of the Regulation on the Procedure of Requesting and Appointing a Lawyer for Delivering Emergency Legal Aid of 19 May 2009, approved by the Decision of the NCSGLA, no. 8 of 19 May 2009.

²⁷⁴ Art. 22 of the Regulation on the Procedure of Requesting and Appointing a Lawyer for Delivering Emergency Legal Aid

²⁷⁵ Art. 23 of the Regulation on the Procedure of Requesting and Appointing a Lawyer for Delivering Emergency Legal Aid

²⁷⁶ Art. 24 of the Regulation on the Procedure of Requesting and Appointing a Lawyer for Delivering Emergency Legal Aid

²⁷⁷ Art. 67, para. 4, CPC.

²⁷⁸ Art. 67, para. 3', CPC.

The criminal investigation body or the court is not entitled to recommend anyone a specific defender²⁷⁹.

4.2.2. The Decision of the Suspect to Request Legal Aid

According to the CPC, the suspect has the right to defend himself/herself in criminal proceedings²⁸⁰. In practice, defendants rarely defend themselves; traditionally they request the presence of a lawyer in all criminal cases. The Explanatory Decision of the Plenum of the SCJ on the Right to Defence²⁸¹ does not refer in particular to the right to self-defence.

Waiving the lawyer means that the suspect/accused/defendant has decided to personally defend himself/herself without any legal aid from a lawyer. The request for a waiver of lawyer shall be attached to the case file²⁸².

In certain cases provided for by the law, to ensure a real defence of individuals who, due to situations where they are not able to defend themselves, the right to defence is no longer optional, but becomes a legal requirement necessary for the purposes of criminal proceedings and legal aid becomes mandatory²⁸³.

Therefore, in such circumstances, the parties may no longer dispose of their right to be assisted by a lawyer, but if they do not choose a lawyer, they are appointed one who delivers state guaranteed legal aid. Legal provisions, which impose mandatory legal aid for the particular cases, represent imperative conditions for the validity of the acts carried out and any deviation from these rules is sanctioned by absolute nullity²⁸⁴.

It is not permitted to waive the lawyer when it is reasoned by the impossibility to pay for legal aid, or if it is dictated by other circumstances.

²⁷⁹ Decision of the Plenum of the SCJ of 24 December 2010 on the Practice of Applying the Legislation for Ensuring the Right to Defence of the Suspect, Accused, Defendant and Convicted in Criminal Proceedings, no. 11, 24 December 2011; art. 70, para. 2, CPC.

²⁸⁰ Art. 64, para. 1, CPC.

²⁸¹ Decision of the Plenum of the SCJ of 24 December 2010 on the Practice of Applying the Legislation for Ensuring the Right to Defence of the Suspect, Accused, Defendant and Convicted in Criminal Proceedings. Available at: http://jurisprudenta.csj.md/search_hot_expl.php?id=98

²⁸² Art. 71, para. 1, CPC.

²⁸³ Art. 69, CPC.

²⁸⁴ Art. 94, 252, para. 2, CPC.

The criminal investigative body or the court has the right not to accept the waiver of the lawyer in cases where his/her participation is mandatory²⁸⁵. The prosecutor through a reasoned decision decides upon the admission or dismissal of the waiver of a lawyer. If the prosecutor or the court dismisses the waiver of the lawyer by the suspect/accused/defendant, the appointed lawyer delivering state guaranteed legal aid may not terminate his/her participation in the case²⁸⁶.

The suspect, accused, defendant who waived the lawyer has the right, at any time during the criminal proceedings, to invite a defender who will be admitted from the moment he/she was invited or requested.

Both the Constitution of the Republic of Moldova and the CPC give preference to the right to choose a lawyer to the persons who have this possibility²⁸⁷ vis-à-vis the right to state guaranteed legal aid.

There is no right to choose an individual lawyer for the beneficiaries of SGLA. The defendant may only choose between lawyers who are included in the register of private lawyers delivering legal services on request (lawyers providing state guaranteed legal aid). Even though the defendant may request the appointment of a specific lawyer, the Territorial Office of the NCSGLA is not bound by that request.

However, when assigning a defender, the Coordinator of the Territorial Office shall take into account the applicant's request to appoint a certain defence lawyer, his or her degree of involvement in the enforcement of other decisions on the delivery of legal aid, as well as other relevant circumstances²⁸⁸.

The right is even more restrictive, and rightly so, for emergency cases of legal aid, when lawyers are appointed according to the work schedule drawn up by Territorial Offices by the end of each month for the following month. If a legal aid lawyer is appointed, but the accused wants instead to be represented by a private lawyer, the lawyer who provides state guaranteed legal aid must be replaced by the private one, who is paid by the client.

²⁸⁵ According to art. 69, para. 1, p. 2-12, CPC.

²⁸⁶ Art. 67, para. 7, CPC.

²⁸⁷ Art. 26 of the Constitution and art. 17, para. 1, CPC.

²⁸⁸ Art. 27, para. 2 of the Law on State Guaranteed Legal Aid. Explanatory Decision of the Plenum of the SCJ on the Right to Defence, 1998, also provides in p. 5, that the suspect/accused has the right to request a certain lawyer only when he/she intends to sign a contract with this lawyer.

The criminal investigation body or the court shall request during criminal proceedings that the lawyers' office or the Territorial Office of the National Council for State Guaranteed Legal Aid replace the chosen or appointed lawyer in the following circumstances:

- if the selected lawyer cannot be present in case the suspect/accused is arrested/apprehended, charged or interrogated;
- if the selected lawyer cannot participate in the proceedings for five days from the moment of his/her notification;
- if the prosecutor or the court establishes that the lawyer providing state guaranteed legal aid is unable to ensure efficient legal aid for the suspect/accused/defendant²⁸⁹.

In the two latter situations, the criminal investigation body or court can suggest to the suspect/defendant that he/she invite another lawyer to represent him/her. This is particularly necessary if the lawyer is not providing an effective defence, as often clients do not understand their rights and their expectations are therefore very low²⁹⁰.

A legal aid lawyer can also be removed from the criminal procedure if the person that he/she defends has real reasons to doubt the competence or good will of the lawyer, and submits a request for his/her removal from the procedure²⁹¹. At the same time, this possibility may also leave space for abuse by the criminal investigation body, particularly if it wishes to replace lawyers who are too active and zealous. Further empirical research is necessary in order to determine if this provision is misused in practice²⁹².

²⁸⁹ Art. 70, para. 4, 5, CPC.

²⁹⁰ Ed Cape, Zaza Namoradze, *Effective Criminal Defence in Eastern Europe*, Chişinău, 2013 (chapter on the Republic of Moldova written by Nadejda Hriptievski), p. 195, available in English: <http://www.opensocietyfoundations.org/sites/default/files/criminal-defence-20120604.pdf>

²⁹¹ Art. 72, para. 2, CPP.

²⁹² Ed Cape, Zaza Namoradze, *Effective Criminal Defence in Eastern Europe*, Chişinău, 2013 (chapter on the Republic of Moldova written by Nadejda Hriptievski), p. 195.

4.2.3. The Decision of the Apprehended Suspect Regarding the Delivery of Emergency Legal Aid in Practice

In the case of *Leva v. Moldova* (application no. 12444/05, jud. 15.03.2010)²⁹³, the first applicant complained that after having been apprehended by CFEC, he was not initially allowed to be represented by a lawyer of his choice. *Since he did not have his diary, S.L. could not call his lawyer. Despite his insistence on being assisted by the lawyer of his choice, his request was rejected and he was offered the services of a lawyer appointed by the investigator. (§11) as concerns S.L.'s complaint that he was initially not allowed to be represented by a lawyer of his own choice, the Court notes that he was in fact assisted by a State-appointed lawyer in view of his inability to recall his lawyer's phone number. Moreover, he did not notify the investigator at the relevant time of any reason not to trust the State-appointed lawyer, nor did he ask for an opportunity to have someone else find his lawyer, as his son had done (see paragraph 15 above). More importantly, S.L. did not submit that his statements made in the presence of that lawyer had been obtained under some form of duress or that they had negatively affected the course of the proceedings against him (see, mutatis mutandis and a contrario, *Salduz v. Turkey [GC]*, no. 36391/02, §§50-62, 27 November 2008). In such circumstances, the Court finds that there has been no violation of S.L.'s right to be represented by a lawyer under this head (§71).*

The available statistical data shows that, during 2014, 2589 persons requested state guaranteed legal aid, and 289 persons were assisted by lawyers of their own choice²⁹⁴. The percentage of chosen lawyers is, approximately, 10,4%.

According to the **Table no. 1**, we can observe that apprehension of minors takes place only in the proportion of 2,25% - 2,98% of the total number of minors who committed crimes, while pre-trial detention is applied in relation to minors in approximately 1,45% - 2,71% of minors who committed crimes.²⁹⁵

²⁹³ Jud. available at: http://justice.md/file/CEDO_judgments/Moldova/LEVA%20%28ro%29.pdf

²⁹⁴ Report of the General Division for Criminal Investigation on actions carried out in trimester IV of the year 2014 according to the provisions of the Human Rights Action Plan of GPI for 2013-2014, approved by the Order of GPI no. 146 of 22.11.2013.

²⁹⁵ Report of the Human Rights Center of Moldova on monitoring the pre-trial arrests applied for juvenile, p. 16, available at: http://ombudsman.md/sites/default/files/rapoarte/raport_monitorizare_2014.pdf

Statistical data on the situation of children in conflict and in contact with the law
for the years 2010 - 2013

Table No. 1

Period	Number of minors who committed crimes	Number of apprehended minors	Number of arrested minors
2010	1586	44/ 2,77%	43/ 2,71%
2011	1714	40/ 2,33%	25/ 1,45%
2012	1975	59/ 2,98%	43/ 2,17%
2013	1551	35/ 2,25%	24/ 1,54%

From the information posted on the webpage of the NCSGLA, statistical data regarding minor children beneficiaries of state guaranteed legal aid²⁹⁶ we can observe the following data in **Table no. 2**.

Table No. 2

2011		Total	2012		Total	2013		Total	2013 Semester I		Total	2014 Semester II		Total
Emergency legal aid	Criminal cases		Emergency legal aid	Criminal cases		Emergency legal aid	Criminal, civil and contraventional cases		Emergency legal aid	Criminal, civil and contraventional cases		Emergency legal aid	Criminal, civil and contraventional cases	
27	1317	1344	16	1997	2013	21	1928	1949	16	1012	1028	19	1253	1272

According to the statistical data on delivering emergency state guaranteed legal aid by Territorial Offices of the NCSGLA, minor children benefited from emergency legal aid as follows: 2011²⁹⁷ - 27 pers.; 2012²⁹⁸ - 16 pers.; 2013²⁹⁹ - 20 pers.; 2014³⁰⁰ - 36 pers.

Analyzing the data on juvenile justice for 2011-2014 in **Tables no. 1** and **no. 2**, we compared the total number of minors who were apprehended during

²⁹⁶ <http://www.cnajgs.md/ro/date-statistic?page=1>; the table is taken from this source

²⁹⁷ Available at: <http://www.cnajgs.md/ro/date-statistic?page=4>

²⁹⁸ Available at: <http://www.cnajgs.md/ro/date-statistic?page=4>

²⁹⁹ Available at: <http://www.cnajgs.md/ro/date-statistic?page=2>

³⁰⁰ Available at: <http://www.cnajgs.md/ro/date-statistic?year=2014>

2011-2013 with the number of minors who benefited from emergency legal aid in these years, and concluded that the percentage of cases where apprehended minors had a lawyer of their choice was 32,5% in 2011; 73% in 2012, and 40% in 2013. It can be noticed that apprehended minors rather preferred a lawyer of their choice than did adults in the same situation. We suppose this is due to the intervention of the parents in contracting a lawyer of their choice.

Practically, in none of the cases observed in the police commissariat during 2014 was there a request from the apprehended person for delivery of legal aid or a request to have a lawyer of his/her choice to conclude a contract with. We did not observe cases of apprehension where the apprehended person would be informed of his/her right to contact a lawyer of his/her choice. There was a single exception. The criminal investigation officer told the suspect to sign a declaration prepared by him regarding the lack of financial resources to conclude a contract with a lawyer in order to be provided with one by the state. The suspect signed the document³⁰¹.

State guaranteed legal aid is provided *ex officio*, upon the initiative of the police, without asking the suspect if he/she wants to contact a lawyer and without informing him/her about his/her right to choose a lawyer. Relevant in this regard is the case study 10P, where it was found that the person apprehended for committing an offence was assisted by an *ex officio* lawyer, although the parents of the apprehended also hired a lawyer on contract basis. This happened because parents knew nothing of their son, who had been summoned to the police at 12 p.m. and did not answer the phone for several hours³⁰².

³⁰¹ Although he was not asked whether his parents could hire a lawyer for him. See **Annex no. 2**, case study 23D recorded in the field diary of 27.07.2014.

³⁰² At 18:00, a lawyer entered the Inspectorate, stressing that he is R.V.'s lawyer and had been summoned to the Inspectorate at noon. The front desk officer asked the officer of the guard unit if R.V.'s apprehension had been registered. The answer was negative. Then the front desk officer checked whether R.V. had entered the Inspectorate that day. In the respective register R.V. was also not found. The lawyer phoned R.V. and was told that R.V. is on the 5th floor of the Inspectorate. When R.V. came down, five minutes after the phone call, I witnessed the conversation between the lawyer and R.V. The latter said that he had been interrogated by several investigation officers for about 4 hours in an office on the fifth floor on the circumstances of an alleged robbery committed a year ago. One of the officers threatened to put him „in jail“. Only at 17:00, an *ex officio* lawyer came and in his presence, he was heard as a suspect. After the public defender came, he received a note of rights. After 20 min., R.V. and the lawyer contracted by his parents wanted to leave. Asked if the copy of the order of recognizing R.V. as a suspect was handed to him, the lawyer said „no“, moreover, he had not received any verbal information even about the deed R.V. was suspected of. Also, R.V. mentioned that he could not communicate to his parents about his apprehension, he was not informed of his right to have a lawyer of his choice and how that right could be brought into effect.

”The right to a chosen lawyer is not sufficiently explained. Usually, a public defender is immediately requested from the NCSGLA, but he/she is often late³⁰³”, declared an interviewed lawyer.

In some cases of *de facto* apprehension, before *de jure* drawing up the minutes, criminal investigation officers informally question the suspect, in absence of a lawyer and without informing him/her about this right³⁰⁴.

Several cases where people had been apprehended or brought by force to the Inspectorate and questioned informally by the investigation officers, without having been informed about their status and without having been assisted by a lawyer were identified and observed³⁰⁵. Even when being officially interrogated as witnesses by criminal investigation officers, the apprehended persons did not request assistance from a lawyer according to art. 92 of the CPC, probably, also due to the fact that they had not been informed about this right.

In another case of contraventional apprehension, **6C**, the police officer, after having taken explanations of the committed offense and having drawn up the minutes on establishing the contravention, explained to the apprehended person that he has the right to hire a lawyer. The officer said that a lawyer could cost him 2-3 thousand lei, and, therefore, suggested to pay the fine imposed as a penalty within 24 hours, and in this case, the person would have to pay 50 % of the amount, that is 50 MDL. The offender did not sign the minutes and did not request a lawyer.

In other cases of contraventional apprehension (**3C**, **4C**, **5C**), the persons were not verbally informed about the right to contract a lawyer, but the order of actions undertaken by the police was the same: taking explanations, drawing up the contravention minutes and recording the decision of sanctioning.

³⁰³ Interview IA6.

³⁰⁴ See case 2Pn in **Annex no. 2**.

³⁰⁵ One of the authors of this study was able to talk to a person, A.I. who was 22 years old that was standing on the fifth floor in the corridor, at around 11:00. He had been in the Inspectorate from 6am. He said that his rights had not been explained to him, and that he had no lawyer and no apprehension minutes had been drawn up. He was interrogated by investigation officers who had apprehended him. At 11:30, the person apprehended in the morning was led by an investigation officer from the fifth floor to an office of a criminal investigation officer on the 3rd floor. When we asked the permission to attend, we received a refusal, because *„... it is not an apprehension. The person who was brought to my office will be heard as a witness”* said the criminal investigation officer. In about half an hour the interrogated person came out accompanied by the investigation officer, who led him to the fifth floor. The apprehended person left the Inspectorate at 13:30.

After signing the explanations and the minutes, upon the police's request, the offenders also signed the back page of the report, where the rights (including the right to a lawyer) and obligations are indicated in small, hard to read, letters. In none of the cases of this category of offences, were the rights read out or the explanation of the rights requested, and the police was not active in this respect.

4.2.4. Police and Lawyers' Perspective on the Right to Legal Aid

All the interviewed police officers have agreed that *it is necessary to ensure the right to legal aid, because the law provides for the obligation of the lawyer to participate during apprehension and interrogation of the suspect.*

Especially, some underlined the importance of this right for *observing the rights of suspects³⁰⁶; complying with the criminal procedural legislation; bringing into effect the right to access to justice³⁰⁷; ensuring the right to defence³⁰⁸.*

Some of the police officers interviewed about the right to legal aid, emphasized in their answers the quality of lawyers, especially those *ex officio*. They considered that the importance of the right to legal aid is diminished when the activity of the lawyer is formalistic:

- they play an important role, but the quality of their performance differs from case to case³⁰⁹;
- *if the lawyer is from territorial office, the attitude might be formal³¹⁰.*

The formality of legal aid has also been noticed, given that sometimes lawyers did not even address questions during interrogations of their clients and, basically, did not intervene, with some exceptions, when the infringement of the person's rights was obvious.

According to the observations and informal discussions in the Inspectorate, often, police officers with more experience would have a more positive attitude towards the right to legal aid. They recognized the benefits of the lawyers' presence, as this encouraged that procedures properly followed the law. The presence of a lawyer was seen as a protection for the police, a guarantee that the detention and interrogation process was properly conducted and,

³⁰⁶ Interview IP12.

³⁰⁷ Interview IP11, IP12.

³⁰⁸ Interview IP5.

³⁰⁹ Interview IP6.

³¹⁰ Interview IP14.

therefore, could not be challenged later. However, they acknowledged that they preferred passive lawyers because they did not want conflict situations, which would complicate their work.

Interviewed lawyers stressed that the delivery of legal aid to detained persons was a requirement of the law that must be efficiently realized, but lawyers' approaches and involvement differed from case to case. Some lawyers said that most police officers involved in apprehending suspects considered the participation of lawyers as a formality.

„The perspective of the police on the role of defence counsel during pre-trial detention is, in my opinion, a rather formal one, and cannot, usually, concretely influence this procedure³¹¹“.

„For police representatives, during the apprehension stage, the lawyer represents only a person who will come and sign some papers so that the criminal proceedings are complied with. In case of apprehension, the pursuit of this measure until the end is already decided by the criminal investigation body's representatives and negotiation in this respect in order to avoid apprehension is rarely successful³¹²“.

It has also been mentioned that the police attempts to diminish the role of the lawyer in front of the apprehended persons and, in some cases, they do everything possible not to provide an effective defence. There were also views that demonstrate that the police were more prudent when the lawyer was involved. *„Everything depends on the lawyer, but, in general, the police try to be more attentive to procedural requirements when a lawyer is involved. As to the police perspective, I believe that participation of a lawyer has become the norm for them, not a mere formality³¹³“.*

Following analysis of interviews with police officers, lawyers and informal discussions we can state that there are two types of officers: those who agreed that lawyers play a legitimate role, and those who did everything possible to diminish the importance of the lawyer and the delivered services, because they considered that the presence of a lawyer prevents effective investigations. We notice a general opinion among lawyers that, on the one hand, younger police officers are more likely to be hostile to them. On the other hand, older officers tend to adopt a benevolent and cooperative attitude within the limits of the law.

³¹¹ Interview IA1.

³¹² Interview IA2.

³¹³ Interview IA5.

Younger criminal investigation officers and investigative officers did not acknowledge any benefit for the system generated by ensuring the right to defence and that it might also work to their benefit. They were not trained in this area and, therefore, did not understand the broader context of the rights of suspects and how they could also strengthen the integrity of the criminal proceedings and the legitimacy of their work. Officers with more experience were more open to the rights of suspects and mentioned that they encouraged suspects to seek legal aid.

4.3. Delivering Legal Aid to Persons in Police Custody

4.3.1. Access to the Information in the Case File and Legal Aid – How They Interrelate

One of the fundamental components of the right to defence is the ability to be informed about the procedural acts which affect the interests of the defence and the evidential basis of the brought accusations. The value of this right increases in cases of delivering legal aid to apprehended persons, because the lawyer involved does not, practically, know anything about the case, when he/she comes to the police to deliver legal aid to the apprehended person.

In the cases observed in 2014, the content of this right included the possibility of the lawyer to read, study the documents of the case file and obtain copies of the materials of the case file and, sometimes, take notes.

The first source of information were the criminal investigation officers, who admitted the participation of the requested lawyer to provide emergency legal aid in procedures related to apprehension, from the moment the lawyer confirmed his/her powers in the respective case. They usually offered a very brief overview on the facts, but not regarding the evidence in their possession. In principle, the answers of criminal investigation officers to the question of providing information and evidence³¹⁴ were framed within relevant legislation and confirmed the facts recorder by researchers in the Police Inspectorate during the observation period:

„I have never provided evidence from the case file (copies of procedural documents where evidence is recorded) because it is a violation of the

³¹⁴ Have you ever provided a suspect or his/her lawyer with information from the case file (evidence administered by police)? How do you take the decision to provide information and when to provide it?

CPC³¹⁵. *The evidence in the criminal case file shall not be disclosed to any of the parties, because they represent the secret of the criminal investigation*³¹⁶. *The materials shall be presented to the parties upon the termination of the criminal investigation by the prosecutor*³¹⁷. *Information from the case file shall be disclosed only if there is no risk of hampering criminal investigation or damaging the interests of the offended party*³¹⁸.

Practically, in all cases observed, the lawyer received from the criminal investigation officer copies of the order on initiation of the criminal investigation and the apprehension minutes. Lawyers did not have to request that, providing information was a standard procedural action, although, sometimes, lawyers requested to be provided with additional materials. The information in the minutes on *reasonable suspicion* does not meet the requirements of the law. One lawyer mentioned in this regard that „*Most often, the essence of the suspicion/accusation is not clear (the date and place of the offense, concrete circumstances are not indicated) in case of apprehension and the grounds thereof are „copied” from the CPC, without being explained or related to the concrete case*³¹⁹”.

Some criminal investigation officers declared: „*I have always presented a copy of the motion to initiate criminal investigation and a copy of the complaint*³²⁰; *I have informed the suspect only about those decisions which affect his/her interests*³²¹”. In case studies **20P** and **21P**, the criminal investigation officer presented to the lawyer the complaint of the injured party, which had led to apprehension carried out at 14:50.

The client represented an additional source of information, especially because in addition to the two documents (copies) received from the criminal investigation officer, he had no access to the evidence on the allegations that were made. However, the apprehended person communicated to the lawyer certain *de facto* and *de jure* circumstances how he understood them and, perhaps, how he wanted to have them presented.

³¹⁵ Interviews IP1, IP2, IP3.

³¹⁶ Interview IP8.

³¹⁷ Interviews IP8, IP10.

³¹⁸ Interview IP11.

³¹⁹ Interview IA7.

³²⁰ Interviews IP1, IP2, IP3.

³²¹ Interviews IP7, IP8.

Criminal investigators, in accordance with the law, not allowed the defence at all the case materials available to criminal prosecution body in the procedure for documentation of detention, in particular, other acts or evidence of conditions, reasons and grounds for restraint.

Criminal investigation officers, according to the law, did not allow the lawyer to have access to all materials of the case available to the criminal investigation body when documenting apprehension, in particular, other documents which represent material evidence of conditions, reasons and grounds for apprehension.

Other evidence referred to is just voiced, without granting access to it and without knowing certainly whether such evidence exists, due to the reason of secrecy of investigation³²².

Lawyers of apprehended suspects were acquainted with the contents of the minutes of hearing of their clients, because they witnessed the hearing, which is according to the law. *Information from the case file shall be provided to the suspect or his/her lawyer, if the person has participated in the respective actions as suspect or accused³²³.*

We might suppose that there is incriminating evidence with a certain value. Lawyers might draw up certain conclusions, participating in the hearing of the suspect, for example, considering the formulation of questions by the criminal investigation officer. *I have not provided lawyers and suspects information from the case file, but during hearings I refer to certain evidence³²⁴.*

Because both the apprehension minutes and the minutes of the hearing of the suspect are procedural documents which record specific factual circumstances and how the legal provisions on apprehension and hearing the suspect are observed, the defence counsel is entitled to intervene with certain completions, clarifications and objections to what has been recorded in those documents. Such intervention of the defence may impact the subsequent development of the proceedings: challenge the illegal actions of the police during apprehension; declaring the nullity of the apprehension minutes; reducing the chances of prosecution to subject the apprehended person to pre-trial detention after the expiry of the term of apprehension;

³²² Interviews A2.

³²³ Interviews IP10.

³²⁴ Interviews P6, IP18.

release of the apprehended person, recusal of the criminal investigation body who documented incipient actions of the proceedings; punish persons who committed abuses; inadmissibility to ground decisions of the prosecution and sentences on the statements and other evidence which were illegally obtained.

In none of the cases observed, the lawyers intervened to the extent of their powers on the circumstances of the fact, because, as mentioned, it was difficult to create a well-documented picture of the deed committed by the suspect, in lack of materials containing evidence supporting the defence.

Although, in the majority of the monitored cases, we observed several violations of the rights of the apprehended suspect, lawyers were not active even when the violation of apprehended persons' rights was obvious.

Only in one case (**14P**) did the lawyer intervene with a request to the prosecutor to verify the legality of his client's apprehension³²⁵. When the lawyer insisted to have the exact place of apprehension indicated, the criminal investigation officer tore the apprehension minutes, included the necessary details and printed another minutes on the same person. In this copy of the minutes, the lawyer made written objections on the content, and then signed it.

As an exception from other cases, in case study **19P** the lawyer took note of the motion for ordering medical forensic expertise at the proposal of the criminal investigation officer, who had acted according to the law, having the right to recommend an expert and to address additional questions, but did not exercise these rights.

*The only evidence we provided was the forensic report*³²⁶, said one of the interviewed criminal investigation officers. Providing the suspect and his defender with the forensic report is another possibility, according to the criminal procedural law, to take note of the evidence of the case file at a non-advanced stage of criminal investigation. Obviously, not in all cases there are forensic investigations conducted or completed by the time when the suspect is apprehended.

Lawyers had the possibility to sometimes find out from the content of the apprehension minutes about the existence of statements of the victim and witnesses. But usually, they were not able to get to know the content of these statements.

³²⁵ The criminal investigation officer expressly stated to the lawyer that he was always making problems and that he would no longer ask for his participation in the criminal cases he was conducting.

³²⁶ Interview IP4.

Case study **19P** was an exception, in which the lawyer had participated in confrontations conducted between the apprehended client and two other persons³²⁷. A lawyer involved in the confrontations carried out with his client has possibility to also take note of the statements of other persons, witnesses or the injured party. The initiative to carry out the confrontation, usually, comes from the criminal investigation officer at an early stage of the proceedings, when there are essential contradictions between the statements of the apprehended suspect and the statements of other persons heard in the proceedings. Lawyers did not request confrontations in the observed cases, at least, immediately after hearing of the suspect, because they were not aware of statements made by other persons. It was unnecessary for lawyers to request confrontations, when their clients refused to testify.

The volume of information presented to the lawyers before client-lawyer consultations, on the grounds of suspicion, circumstances of apprehension and details of the case, represent an important factor that determines the effectiveness of the right of access to a lawyer. In some respects, the lack of disclosure of evidence to lawyers was detrimental to the effectiveness of legal aid and the position of the suspect. For example, if the lawyers are not provided with details about the credibility and the nature of evidence, as well as clear information about the reasons and circumstances of the arrest, it is difficult to argue in favor of the release of their client or recommend possible reconciliation. Moreover, often lawyers have no choice but to recommend the suspects to remain silent hoping to get more information disclosed, even if silence seems not be in the interest of the client and may impact on the length of detaining the suspect in police custody.

Failure to disclose information also affects the ability of the lawyer to collect information from the client and deliver effective aid.

Those described above lead to the same conclusion reached two years ago – the limited access to the case file is one of the main reasons why lawyers are not particularly active during the pre-trial stage procedures³²⁸.

³²⁷ The researcher did not have the permission to be present at the confrontation. We found the initiation of the confrontation strange, because the suspect had refused to testify when being heard as suspect.

³²⁸ Ed Cape, Zaza Namoradze, *Effective Criminal Defence in Eastern Europe*, Chişinău, 2013 (chapter on the Republic of Moldova written by Nadejda Hriptievschi), p. 187, available in English: <http://www.opensocietyfoundations.org/sites/default/files/criminal-defence-20120604.pdf>

4.3.2. Client-Lawyer Consultation

When and how long the consultation takes place. The term for consultations is a short period of time, as the lawyer, often never meets the suspect beforehand and knows few details about the case. Consultations with apprehended persons take place, practically, in all cases where legal aid is delivered. We have noticed two cases³²⁹, which constitute an exception from the general finding.

In the case study (1P) the lawyer had not had any confidential meeting with the apprehended client and, in general, had not communicated with him during the period of drawing up the apprehension minutes. The reason was that the apprehended was sleeping during that time in the chair of the criminal investigation office, being, according to the observer, seriously inebriated. After having been awakened by the police officer in order to sign the apprehension minutes, the lawyer appeared and tried to explain his role, but the suspect fell asleep again. The lawyer signed the apprehension minutes and left³³⁰.

Consultation of apprehended persons always took place after the lawyer had appeared and confirmed his/her powers to the criminal investigation officer (by mandate, license card). The minimum period of consulting clients was 10 minutes, but in no case did it exceed 20 minutes. In some cases the lawyer was informed of the apprehension minutes before consulting his client. In other cases, the consultation was followed by the taking note of the apprehension minutes and hearing of the suspect. Almost always were the consultations conducted until the hearing of the apprehended person by the criminal investigation officer.

An interviewed lawyer said that *he needs 30 minutes for counseling his client before having him heard by the criminal investigation officer*³³¹.

Given the fact that suspects had always been *de facto* apprehended by investigative officers before they were conveyed to criminal investigation officers, they had been interrogated on certain facts that served basis and reason for apprehension, obviously, without having been consulted in advance and without being assisted by lawyers.³³²

³²⁹ Interviews 1P, 16P.

³³⁰ The officer presented to the lawyer a conviction judgment, on the basis of art. 186, para. 2, let. d), CP, of one year of imprisonment of the apprehended person, M.V. issued by the Centru Court, mun. Chişinău, stating that the reason for apprehension is absconding from the enforcement of the sentence.

³³¹ Interview IA4.

³³² Case study 2P.

The period of consultation was not limited in any of the cases. This could have happened if the lawyer on duty had arrived late to the inspectorate and the 3 hours term from the moment of drawing up the apprehension minutes had expired³³³. *A lawyer mentioned in this respect that they were limited in time to deliver a thorough consultation, especially, during the first meeting*³³⁴.

Confidentiality of meetings. In the majority of the monitored cases, meetings with clients took place in the halls of the Inspectorate because „usually, there are no normal conditions to conduct a consultation in the corridor³³⁵”.

In case of consultations in the corridor, neither the lawyer, nor the suspect requested a special room. We noticed that during the consultations in the corridor there were several people, police dressed in uniform and in civilian clothes and others who had come to the Inspectorate for various reasons. Most often, they were at a distance where their discussion could be overheard by others. Criminal investigation officers, who participated in the *de facto* apprehension of the suspect consulted by the lawyer, or those officers who were bringing the apprehended into the office of the criminal investigator, after the arrival of the lawyer would spend some minutes around this office³³⁶. Sometimes they would intervene with some comments, questions or responses addressed to the lawyer and the client. There were cases when the lawyer or his/her client would address these policemen with certain questions regarding the factual and legal circumstances of the apprehension.

In the case study **16P**, the lawyer did not have confidential consultations with the client. He was against any of the researchers to be present in any action related to his client’s apprehension, *because it is a specific case and a foreign citizen is apprehended*³³⁷.

³³³ Calculated from the moment of the *de facto* apprehension.

³³⁴ Interview IA3.

³³⁵ Interview IA3.

³³⁶ Case study 14P.

³³⁷ The researcher had this certainty, because he was next to the office where the suspect was located in the moment when the latter was brought by the criminal investigation officers. The lawyer showed up later and did not allow the researchers to be present neither during the documenting of the apprehension nor during any other procedures. For the benefit of the research, I waited a few steps away from that office for about an hour, until the lawyer went out. The researcher learned from the criminal investigation officer, who was in that office, that the apprehended had been interviewed as a suspect.

A lawyer expressed his concern regarding the manner in which confidentiality of consultations was observed. *In general, lawyers' access to apprehended suspects when located in police inspectorate, is unhindered, yet there is no certainty as to the confidentiality of the client-lawyer consultations*³³⁸.

Although he invoked the lack of conditions, *the problem is lack of space for bringing these rights into effect within inspectorates*³³⁹. In two cases the client-lawyer consultations took place in separate rooms where only they were located³⁴⁰.

It was found that providing the suspect with information about his/her rights was carried out when the lawyer requested to be allowed to meet his/her client. It was noticed that the CIO announced the suspect about his rights, including about the right to consult a lawyer before making statements, only after the researcher proposed the beneficiary to have a meeting and confidential discussions within the research³⁴¹.

Thus, the criminal investigation body had not provided conditions for the confidential meeting between the apprehended person and his lawyer until the first hearing, although there are conditions and possibilities in this respect³⁴².

Collecting information from the suspect and taking note during the consultations. There was no perseverance noticed on the part of lawyers to collect enough information from the client in order to deliver qualitative legal aid. Lawyers were, usually, starting the consultations by asking the suspects if they knew the reasons for their apprehension. Almost in all monitored cases, the lawyer asked the client about the deeds which constituted reason for apprehension.

In their turn, the lawyers informed the suspects about the information made available to them by the police before asking them explanations on such information.

Lawyers did not show much interest in describing the facts from the suspect's perspective, dedicating very little time to allowing the suspect to speak freely, and rarely stopped them to clarify details. Sometimes this would create a real tension concerning the role of the lawyer, whereas sometimes suspects were cautious (which is understandable) with the lawyer (which

³³⁸ Interview IA1.

³³⁹ Interview IA5.

³⁴⁰ The lawyer did not agree that the researcher be present in these cases.

³⁴¹ Interview IA3.

³⁴² There is an office in the inspectorate designed for criminal investigation actions, which are to be carried out with apprehended persons and an office for minors.

usually just met him for the first time), and they were not willing to open up in communication with the lawyer.

The lack of trust towards the lawyer was induced by the police: *they are first manipulated by the CIO, which leads to the fact that sometimes beneficiaries mistrust lawyers³⁴³, and determines the apprehended persons to be more reserved in the communication with their lawyers.*

Out of the ten interviewed lawyers, only two indicated that they were interested to get information on client's rights, by the moment of coming to the police.

One lawyer reasoned the opportunity of consulting the apprehended client in the following manner: *„it is dictated by the need to know why he was brought to the inspectorate, to find out if there was physical or psychological force applied to him, and consult him about further behavior during the concrete procedural measure that is to take place³⁴⁴“. „I gather evidence about the illegal apprehension, if there was illegal apprehension and other illegal actions of the police³⁴⁵.“*

Clients were virtually always asked about previous convictions presumably to determine how familiar they were with the detention procedures. Lawyers did not show interest in the observance of their clients' rights from the moment of physical apprehension to the arrival into the inspectorate, but sometimes wondered if they had been beaten, in case they noticed visible traces³⁴⁶.

For lawyers the most common approach was to check if their clients had given statements before and what the content was, but did not check whether they had been told about their rights before or during the interrogation process.

Basically, in none of the monitored cases made the lawyer notes during consultations with his client.

Explaining the role of the lawyer. Often lawyers told the suspect that the lawyer-client consultation and everything that the suspect tells the lawyer is confidential. This is an important step to gain trust of the suspect and is an issue guaranteed by the Directive on the Right to Access to a Lawyer. Lawyers mentioned that the payment for their services would be made by the state. When asked by clients, lawyers replied that they could not promise their release

³⁴³ Interview IA3.

³⁴⁴ Interview IA1.

³⁴⁵ Interview IA4.

³⁴⁶ The lawyer noticed a scar on his client and wondered about its origins in the case study 21P.

and investigation in liberty or discontinuing criminal investigation, because these decisions were within the competence of the criminal investigation officer and the police. Defenders also informed their clients that they would attend the interrogation of the apprehended person, but during this action they would not be able to communicate freely, it was, therefore, necessary to adopt a conduct strategy. Lawyers did not inform them about the rights of the lawyer and his involvement in procedural actions carried out with the apprehended person.

The possibility of summary proceedings or a plea bargain agreement was also addressed even when suspects made no confession to the lawyer or indicated that they had not committed the crime. However, the lawyers did not explain the suspects the various stages that would follow, in a broader procedural context.

Explaining the apprehension procedure. Once they had collected information from the suspect, some lawyers continued to also tell them about probable procedure regarding the interrogation, length of apprehension, suspect's potential arrest at the request of the prosecutor and the final outcome of the case, reminding them of their right to silence. The interviewed lawyers stated that explanations provided to the suspect about his/her legal rights and the procedure to follow, is an important function of the consultation. In the light of the stress of arrest and detention, they discovered that the suspects often did not realize for how much time they could be apprehended and had little knowledge of the procedures involving the prosecutor or the investigative judge. Although they had signed the document notifying them of their rights, the suspects did not know that they had been notified about their rights and, thus, had no understanding of those rights³⁴⁷.

During the apprehension stage, the lawyer has a very important role in explaining the reasons for apprehension, as well as its legality³⁴⁸.

Lawyers treated differently those who had previous experience of detention and interrogation by the police. These suspects „re-offenders” were considered to be informed about the system and not in need of consultancy to the same extent as first time suspects. While it is true that such suspects

³⁴⁷ In at least one case, the document of notifying about the rights was not ready when the lawyer requested it. It is clear that it was not ready at the moment mentioned in the official documents.

³⁴⁸ Interview IP13.

are familiar with legal procedures of detention, such an approach resembles a model of counseling with a „single measure for all.” The lawyers’ approach was an excessively routine-like model of delivering legal aid.

Requesting services of an interpreter. We did not observe a large number of cases involving foreigners or people who did not understand the Romanian language, but of the ones monitored, we saw lawyers who were not proactive in representing their clients’ interests by ensuring the presence of an interpreter. In the case of apprehending a Turkish citizen, no interpreter was requested, because the apprehended person would understand Romanian³⁴⁹. We managed to talk to the detainee in Romanian, with his consent, about the circumstances of apprehension, and found that he did not understand the legal terminology.

The lawyers did not recommend the suspect to request an interpreter and did not themselves request the police in case the apprehended person did not know the Romanian language³⁵⁰. In the cases that we monitored, there was no attempt made to have an interpreter appointed for suspects whose Romanian was very poor. The lawyer would ask a Russian-speaking suspect if he understood the Romanian language and if the answer was negative, than the lawyer would speak Russian with his client. In such cases, the lawyer would not request an interpreter even if he did not know very well some legal terminology. Some criminal investigation officers communicated with the apprehended persons in a distorted Russian language, helped and corrected by lawyers. The apprehension minutes in Russian was also filled in with the help of the lawyer³⁵¹.

4.3.3. Lawyers’ Perspectives on their Role

Just as the police’s attitude towards the rights of the suspects can help those to become more or less effective in practice, the manner in which lawyers perceive their own role is also crucial in terms of how they address the delivery of legal aid in police custody. Research has shown that there is often a gap between the lawyers’ speech on the importance of the rights to defence on the one hand, and their own capacity (and even desire) to make those rights effective, on the other hand³⁵².

³⁴⁹ Interview 16P.

³⁵⁰ Interviews 19P, 20P, 21P.

³⁵¹ Interviews 20P, 21P.

³⁵² See p. 4.3.3 of the present Report.

The presence of the lawyer in the Police inspectorate is a signal to the police that the suspect has a lawyer who is defending his/her rights and is not left on his/her own. The police officer is required to observe these rights, because, otherwise, there is the risk of being held liable³⁵³. Starting from the moment of the arrival of the lawyer to the inspectorate, the police change their tactics, observing, at least, formal procedures prescribed by the law in respect of the apprehended persons.

Lawyers complain about the actions of the police in respect to their clients until their arrival and the first meeting with the client, doing everything possible to oppose an effective defence, which diminishes their role.

They know it is necessary, but they minimize our role prior to the arrival of the lawyer to the beneficiary³⁵⁴.

If the police have enough evidence, there is no reason to enter in a conflict with the defence. However, the situation is opposite in case of lack evidence, they try not to inform him/her of the right to a lawyer of his/her own choice, influencing the person to waive the competent counsel who challenges violations and use strategies for removing the competent lawyer from the proceedings, etc.³⁵⁵.

Suspects are not always informed about the existence of this right. Especially, if explanations are taken from the person without informing him/her about the existence of the suspicion against him/her and without informing him/her, in general, about rights³⁵⁶.

The problems mentioned above confirm that the lawyer's efficiency depends on the time offered and the moment of appearing before the client.

The earlier the beneficiary is delivered qualified assistance, the higher his/her chances for effective protection of his/her rights are³⁵⁷.

While lawyers understand the importance of their role and signaled vicious working practices with apprehended clients before the lawyer appears at the police, the researchers could not identify approaches and effective actions of lawyers to reduce abuses by the police³⁵⁸.

³⁵³ Interview IA1.

³⁵⁴ Interview IA3.

³⁵⁵ Interview IA8.

³⁵⁶ Interview IA7.

³⁵⁷ Interview IA3.

³⁵⁸ The only exception is the case study 14P.

A lawyer referred to her personal performance, considering it quite good and proactive: „I am personally known as an uncomfortable lawyer because I ask and insist on an active role of the criminal investigation officer in providing an office for confidential meetings with the client prior to any procedural actions. Similarly, I request the presence of a translator and medical assistance, if needed, ensuring the right to communicating by telephone to the relatives of the suspect about the apprehension, submit objections and complaints in case of any violations of the apprehended persons' rights³⁵⁹.

The same lawyer underestimated the role of public defenders, on the basis of what had been communicated by the criminal investigation officer. *On the other hand, the criminal investigation officers told me that I ensure punctuality and compulsory attendance at any request, things that many ex officio lawyers do not offer*³⁶⁰.

The opportunity of consulting the apprehended client is dictated by the need to know why he was brought to the inspectorate, to find out if there was any physical or psychological force applied, and consult him about prospective behavior in carrying out the concrete procedural measure which is to take place³⁶¹.

Another lawyer believes that the presence of the lawyer makes criminal investigation officers more responsible in handling criminal cases and carrying out procedural actions only in the presence of the lawyer, explaining the right to have confidential conversations with the defence counsel before the interrogation³⁶²; the client is not blackmailed or forced to confess something against himself³⁶³.

What is more, lawyers believe that they contribute to ensuring procedural compliance and *securing observance of the procedure and preventing abuse*³⁶⁴ as well as providing psychological and moral support to the apprehended person who is stressed because of the limited individual freedom and who is worried about his/her safety³⁶⁵.

³⁵⁹ Interview IA6.

³⁶⁰ Interview IA6.

³⁶¹ Interview IA1.

³⁶² Interview IA8.

³⁶³ Interview IA8.

³⁶⁴ Interview IA2.

³⁶⁵ Interview IA2.

Based on the materials and practices observed, the researchers have explored the lawyers' perspectives regarding their own role - how they understand the nature and scope of the criminal lawyer's role in advising suspects, the factors that constitute and constrain this role, and the extent to which lawyers themselves act to limit the nature of the delivered advice and assistance.

The research suggests a number of factors that determines the role of the lawyer in advising the suspects during police custody. In addition to poor remuneration, lawyers are constrained in different ways by the legal framework according to which they operate and their limited access to information about evidence regarding the suspect.

4.3.4. Police Perspectives on the Role of the Lawyers

There is no common perspective of the police on the role of criminal defence lawyer during police custody. It varies from case to case. Opinions differ. Some see lawyers as opponents of the police investigation, with a reduced role in criminal proceedings; others consider them useful for the police.

At the phase of apprehending the suspect, the lawyer *has a very important role in explaining and informing him/her of his/her rights and obligations*³⁶⁶. Some of police officers mentioned certain weaknesses in the mechanism of guaranteed state legal aid, especially during nighttime.

*When it comes to ex officio lawyers, there are big problems. When requesting a defender during night time, in case of an apprehension, I have personally faced problems of failure to appear, not answering the phone, which leads to the expiry of the apprehension period*³⁶⁷.

We have not identified any cases of lawyers being late or absent, at least, in cases which were documented as criminal apprehensions.

An investigation officer expressed his dissatisfaction with the attitudes of lawyers in some cases: *I think that at the stage of the suspect's apprehension, in order to be paid for the delivered services, some lawyers mislead the person who already wants to cooperate with criminal investigation or the ascertaining body. The lawyer recommends this person to refrain from statements*³⁶⁸. Perhaps in this case the officer did not refer to *ex officio* lawyers.

³⁶⁶ Interview IP13.

³⁶⁷ Interview IP8; similar answers were provided in IP10, IP14, IP17, IP19, IP20.

³⁶⁸ Interview IP17.

It was surprising that a few interviewed police officers told about some irresponsible practices of lawyers who are guided by formalism, specifying that it was characteristic for *ex officio* lawyers. *In most cases, the presence of the lawyer is a formality*³⁶⁹; *In some cases it is formal*³⁷⁰; *If the lawyer comes from the NCSGLA, his/her attitude may be formal*³⁷¹; There were opinions that the lawyer's role during criminal proceedings *depends on his craftsmanship*³⁷².

However, very few officers shared the lawyers' view about their function as the one which increases the integrity of the criminal investigation and, thus, contributing to reaching the objectives of the police.

The majority of police officers considered that the suspect's lawyer acted inconsistently. The main difference was between those who believed that this was destructive for the procedure and those who believed that in practice, despite the „complications” arising in their activity with the intervention of lawyers, the participation of a lawyer legitimizes their actions, and the law does not allow for deprivation of the apprehended persons of this right. Both categories agreed that lawyers were passive and had a standardized approach in each case, and that they were able to predict lawyers' actions both in relation to an apprehended client and police officers.

According to a lawyer, the police *are more comfortable to work with an ex officio lawyer*³⁷³, because these are often passive.

³⁶⁹ Interview IP7.

³⁷⁰ Interview IP20.

³⁷¹ Interview IP14.

³⁷² Interview IP2.

³⁷³ Interview IA4.

5. **Hearing the Apprehended Suspect and the Right to Silence**

5.1. **Importance, Evidential Value and Admissibility of Suspect's Statements**

Criminal proceedings, both the phase of criminal investigation and the examination of the case, are inconceivable without interrogating the suspect (later the accused and defendant), around whom the entire activity of the parties is concentrated, as a potential source of the most extensive and useful information for the case. The suspect, accused and defendant are sources of evidential information just like the witness and the victim. The statements of the suspect, accused, defendant are written or oral information submitted by them during the hearing as provided in the CPC regarding the circumstances that served as grounds to recognize them in that capacity and other circumstances of the case that they are aware of³⁷⁴. According to their procedural nature, the suspect's statements, as well as the statements of the accused are, on the one hand, sources of evidence, on and, the other hand, their means of defence.

Among the evidence provided for in article 93, para. 2 of the CPC the statements of the suspect, accused and defendant are also mentioned. The basis of their statements could, usually, represent the personal perception of the combination of circumstances and facts of legal significance, to be established in order to solve the criminal case.

The official aims of interrogating the suspect are not expressly provided for in the CPC, but they can be deduced by comparing the provisions governing

³⁷⁴ Art. 103, para. 1, CPC.

the hearing of the suspect³⁷⁵ with the content of certain general norms of the CPC³⁷⁶, and, namely, establishing the following:

- the circumstances which represented grounds for attributing this capacity to the person;
- other circumstances of the case known to him/her .

Taking into account the fact that the CPC sets the circumstances which are to be established during the criminal proceedings (*factum probandum*)³⁷⁷ we may conclude that in case of hearing the suspect the following facts shall be proven:

- 1) facts related to the existence of the elements of a crime and any circumstances excluding the criminal nature of an act;
- 2) circumstances provided for in the law that either mitigate or aggravate the criminal liability of the perpetrator;
- 3) personal data characterizing the defendant or the victim;
- 4) the nature and extent of the damage caused by the crime;
- 5) the availability of goods to be used or that were used for the commission of the crime or that were obtained by crime irrespective of whom they have been transmitted to;
- 6) all the circumstances relevant to setting a punishment.

In cases with minor suspects, the following shall be additionally established:³⁷⁸

- 1) the age of the juvenile (date, month and year of birth);
- 2) the conditions in which the juvenile lives and is educated, his/her level of intellectual, volitional and psychological development, peculiarities of his/her character and temper, his/her interests and needs;

³⁷⁵ Art. 103, para. 1, CPC.

³⁷⁶ According to art. 19, para. 3, CPC, the criminal investigation body must take all measures provided for in the law to ensure a comprehensive, complete and objective investigation of the circumstances of the case, to identify the circumstances that prove the guilt of the suspect/accused/defendant or that discharge that guilt and to identify any circumstances that mitigate or aggravate their liability. The prosecutor and the criminal investigative body shall, within the limits of their competence, initiate a criminal investigation if they are informed in the manner set forth in this Code about the commission of a crime and shall undertake the actions necessary to determine the criminal act and the guilty person. (art. 28 para. 1, CPC). The object of a criminal investigation is to collect evidence necessary to confirm the existence of a crime, to identify the perpetrator, to determine the need to send or not to send a criminal case to court according to the law and to establish the liability of the perpetrators. (art. 252 para. 1, CPC).

³⁷⁷ Art. 96, CPC.

³⁷⁸ Art. 475, CPC.

- 3) the influence of adults or other juveniles on the juvenile;
- 4) the reasons and conditions that contributed to the commission of the crime.

The suspect or the accused are not bound, but have the right to provide information. The apprehended person shall be heard if he/she accepts to be heard.³⁷⁹ The suspect is entitled to: *give or refuse to give testimony*.³⁸⁰ This right is repeated and developed in para. 4 of the same article: *The suspect has the right to testify or refuse to testify, being informed that in case he refuses to testify there is no negative consequence, and if he makes statements, they could be used as evidence against him.*

The suspect cannot be forced to testify against himself/herself or against his/her close relatives, or to confess his/her guilt and cannot be held liable for refusing to make these kind of statements.³⁸¹ Examining a person as a witness if certain evidence is available indicating that he/she committed a crime shall be prohibited³⁸².

Usually, the suspect is not liable for false statements, except where he/she has made an intentionally false accusation that the offense had been committed by a person who did not have anything to do with the commission of the crime and for false statements made under oath³⁸³.

Suspect's statements represent a distinct type of evidence.³⁸⁴ No evidence has a pre-defined value for the criminal investigation body or court.³⁸⁵ There is no exception in this regard. Therefore, the suspect's statements have no advantages or privileged evidential value compared to other evidence administered according to the law.

Statements of the suspect or the accused can be obtained not only within the hearing, but also during their confrontation with other participants of the proceedings (victim, witness). What is more, the statements of the suspect, accused have an evidential value in examining and clarifying statements on

³⁷⁹ Art. 103, 104, 167, para. 4, CPC.

³⁸⁰ According to art. 64, para. 2, p. 10, CPC.

³⁸¹ Art. 21, CPC.

³⁸² Art. 63, para. 7, CPC.

³⁸³ Art. 64, para. 4¹, CPC.

³⁸⁴ Art. 92, para. 2, p. 1) CPC.

³⁸⁵ Art. 101, para. 3, CPC.

site and presentation for recognition (when certain persons or objects are presented to the suspect or the accused for identification)³⁸⁶.

An admission of guilt by a person suspected or accused of the commission of a crime may substantiate a charge only to the extent it is confirmed by facts and circumstances resulting from the body of evidence available in the case³⁸⁷. Even if the suspect or the accused pleads guilty, the criminal investigation body is obliged to take all measures provided for by the law in order to fully and objectively investigate all aspects of the circumstances of the case to establish the truth³⁸⁸.

The data communicated by the suspect, accused, defendant cannot serve as evidence if it is based on information whose source is unknown. If the suspect's statements are based on the statements of others, it is necessary for these people to be heard. Admissibility of information communicated by the suspect is decided by the criminal investigation body, *ex officio* or at the request of the parties or, as the case may be, by the court³⁸⁹.

The statements of the defendant made during criminal investigation may be read out, and the audio and video recordings of such statements may be played at the request of the parties in the following instances:

- when there are essential contradictions between the statements made during the hearing and those made during the criminal investigation;
- when the case is tried in the absence of the defendant. The same rule shall apply to reading out the statements of the defendant previously made before the court or the investigative judge if the latter informed him/her about the possibility of them being read out in court³⁹⁰.

Thus, the suspect's statements during the pre-trial phase may be read out in court only after he/she has presented evidence to the court, and it became obvious that there are essential differences between the statements, and one of the parties requests the court to read out the statements made during the pre-trial phase. The Moldovan practice also suggests that when the defendant chooses to remain silent during the court hearing on the merits of the case, the prosecutor

³⁸⁶ Suspect's statements in this case shall focus on individual peculiarities of the persons or objects, as well as on the circumstances in which they had been perceived before the initiation of the criminal investigation.

³⁸⁷ Art. 103, para. 2, CPC.

³⁸⁸ Art. 254, para. 2, CPC.

³⁸⁹ See art. 347, para. 3, CPC.

³⁹⁰ Art. 368, CPC.

may ask the court to allow the reading out of statements made during pre-trial phase, without depriving the defendant of the opportunity to make statements at a subsequent stage, if he/she so decides. All the evidence managed in a criminal case shall be comprehensively, completely and objectively verified³⁹¹.

During criminal proceedings, no one may be subjected to torture or to cruel, inhumane or degrading treatment; no one may be detained in humiliating conditions; no one may be forced to participate in actions that undermine human dignity³⁹².

In the course of criminal proceedings, no one shall be physically or mentally abused, and any actions or methods that jeopardize the life or health of a person, even with his/her consent and that endanger the environment shall be prohibited. A detainee or a person subject to pre-trial detention may not be subject to violence, threats or methods that would affect his/her ability to make decisions or to express his/her views³⁹³.

The following cannot be accepted as evidence in the criminal proceedings, and, therefore, are excluded from the case file and cannot be presented in court and serve as basis of sentence or other court decisions:

- 1) information obtained by application of violence, threats or any other constraint measures, by violating the person's rights and liberties;³⁹⁴
.....
- 4) information obtained by a person who has no right to carry out procedural actions in a criminal case;
.....
- 8) information obtained with essential violation of the CPC by the criminal investigation body;
.....
- 11) information obtained by provocation, facilitation or encouraging the person to commit a crime;

³⁹¹ Art. 100, para. 4, CPC.

³⁹² Art. 10, para. 3, CPC.

³⁹³ Art. 11, para. 9, CPC.

³⁹⁴ See the Decision of the Extended Criminal Board of the SCJ of 19 March 2013, Case file no. 1ra-48/13, available at: http://jurisprudenta.csj.md/search_case_lawp.php?id=33. The defence invoked the case of Vetrenco v. Moldova, jud. of 18 May 2010, meaning that neither the indictment nor the decisions of the courts addressed the defendants' version of having been ill-treated and forced to declare during criminal investigation that both of them had murdered the victim, each of them having stabbed the victim with a knife once.

.....

12) information obtained by promising or offering an advantage prohibited by law.

.....

Thus, the ECtHR, in its judgment of 16.12.2008, in the case of *Levința v. Moldova*, §100, application no. 17332/03, reiterated that, *since the applicants in the present case have been subjected to torture, the Court considers it unnecessary to determine the extent to which the domestic courts relied on evidence obtained as a result and whether such evidence had been determinant to the applicants' conviction. The mere fact that the domestic courts actually relied on evidence obtained as a result of torture rendered the entire trial unfair*³⁹⁵.

5.2. The Purpose, Functioning and Regulation of the Hearing of Suspect and the Right to Silence; Compliance with ECHR Standards

The domestic legislation provides for both the right to silence, and the right not to testify against another person, while the ECtHR jurisprudence establishes that, based on the guarantees provided for by art. 6 para. (1), the person charged with a criminal offence is not required to actively co-operate with the judicial authorities³⁹⁶. Obliging the person to testify, which might be self-incriminating is contrary to art. 6 ECHR³⁹⁷.

Thus, the apprehended person cannot be forced to testify against himself/herself or to plead guilty. A person to whom a criminal investigative body suggests making revealing statements against himself/herself shall be entitled to refuse to make such statements and may not be held liable for this³⁹⁸. The apprehended person is informed about the right to silence while being informed about the apprehension minutes and being handed out the information about procedural rights. In the case of *Țurcan and Țurcan v. Moldova*, ECtHR found that *„the Court is particularly struck by the reasons for D.T.'s detention starting on 8 November 2005, namely that he refused to disclose to the prosecution the*

³⁹⁵ jud. available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112868>

³⁹⁶ ECtHR, *Yağcı and Sargın v. Turkey*, 08.06.1995, §66.

³⁹⁷ ECtHR, *Saunders v. United Kingdom*, 17.12.1996, §67-76, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58009#\[\"itemid\":\[\"001-58009\"\]\]](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58009#[\)

³⁹⁸ Art. 21, CPC.

*names of witnesses who could prove his innocence at trial. It considers that this not only cannot constitute a ground for detaining a person, but it is in breach of the right of the accused to remain silent as guaranteed by Article 6 the Convention*³⁹⁹.

Thus, the CPC provides that, before the apprehended person makes his/her statements, the criminal investigation body must inform him/her about the following⁴⁰⁰:

1. the right to make statements or to refuse to make statements;
2. the fact that if he/she refuses to make statements, he/she shall not be subject to any unfavorable consequences;
3. that in case of testifying, these statements could be used as evidence against him/her;
4. that the accused or the defendant shall not be liable for his/her testimony unless he/she makes a deliberately false accusation that the crime has been committed by a person who, in fact, was not related to the commission of the crime, and if he/she makes false testimony under oath;
5. that the exercise or waiver by the accused or the defendant of the rights granted to him/her may not be interpreted to his/her detriment and may not have unfavorable consequences for him/her.

An admission of guilt by a person suspected or accused of the commission of a crime may substantiate a charge only to the extent it is confirmed by facts and circumstances resulting from the body of evidence available in the case⁴⁰¹.

As to the interrogation of the apprehended person, the Criminal Procedure Code provides for some basic rules. Thus, the suspect is heard only in the presence of a lawyer, immediately after the apprehension. It is not allowed to hear a suspect who is tired or during nighttime⁴⁰². If the suspect, accused is unable to meet for the interrogation, the criminal investigation body shall hear him/her at the place of stay.

According to the domestic legislation, before the interrogation, the CIO shall:
(1) identify the apprehended person⁴⁰³;

³⁹⁹ ECtHR, *Saunders v. United Kingdom*, 17.12.1996, §67-76, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58009#{"itemid":\["001-58009"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58009#{)

⁴⁰⁰ ECtHR, *Saunders v. United Kingdom*, 17.12.1996, §67-76, [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58009#{"itemid":\["001-58009"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58009#{)

⁴⁰¹ ECtHR, *Țurcan and Țurcan v. Moldova*, §51.

⁴⁰² Art. 64, CPC.

⁴⁰³ Art. 103, para. 2, CPC.

- (2) explain the essence of the suspicion and the right to silence and prohibition against self-incrimination;
- (3) ask if he/she accepts to testify regarding the incriminated suspicion/accusation;
- (4) ask, in case the suspect/accused agrees to make statements, if he/she admits the imputed suspicion or charge and propose that he/she provide written explanations thereon. The incapacity to write or the refusal of the suspect/accused to personally write a statement shall be recorded in the transcript by the interrogating officer;
- (5) begin the interrogation of a suspect/accused/defendant with reading or reminding him/her of previously made statements;
- (6) interrogate each suspect/accused separately. The interrogation officer shall undertake measures to prevent communication between suspects/accused persons summoned in the same case;
- (7) record the statements of the suspect/accused in the interrogation minutes⁴⁰⁴.

The length of an uninterrupted interrogation cannot exceed 4 hours, and the length of the interrogation conducted on the same day cannot exceed 8 hours⁴⁰⁵. In the case of seriously ill persons, the length of interrogation shall be determined by taking into account medical doctor's instructions.

There are situations when the person initially summoned as a witness is heard as a suspect. In the practice of the Republic of Moldova, these situations leave room for abuses, particularly, in terms of ensuring the right to silence. Moreover, the ECtHR case law has determined that in such circumstances the person is also entitled to silence. Therefore, in the case of *Brusco v. France*, the applicant suspected of having instigated to commit an assault, was apprehended and then questioned as a witness after which he had to take an oath. According to the Court, he was not just a witness, but was, in reality, subject to „criminal charges” and, therefore, enjoyed the right not to incriminate himself and to remain silent. This situation was aggravated by the fact that Mr. Brusco was assisted by a lawyer only twenty hours later after having been apprehended. If

⁴⁰⁴ Unless upon the interrogated person's request in urgent cases, which shall be reasoned in the interrogation minutes.

⁴⁰⁵ The CPC provides that the person conducting criminal investigation before hearing the suspect/accused, asks his/her name, date, month, year and place of birth, clarifies his/her citizenship, education, military status, civil status and the persons he/she is supporting, his/her occupation and domicile and any other information necessary to identify the person in the respective case.

his lawyer had been present, he could have informed Mr. Brusco about his right to remain silent⁴⁰⁶. Also, the ECtHR has found that persons being questioned by the police, other than suspects, must be assisted by a lawyer during the interrogation if they become persons suspected of a crime⁴⁰⁷.

Moreover, the domestic law provides that the information obtained through violence, threats or other means of coercion, violation of rights and freedoms cannot be accepted as evidence and, therefore, is excluded from the case file, cannot be presented in court and cannot represent the basis of the sentence or other court decisions⁴⁰⁸. The information submitted by the suspect/accused, cannot serve as evidence if it is based on information whose source is unknown⁴⁰⁹.

Thus, the national legislation is, to a great extent, in compliance with the ECHR standards on observing the right to silence.

5.3. Standards and Legal Requirements on the Role of the Lawyer during the Interrogation of the Apprehended Suspect

The Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013⁴¹⁰ on the Right of Access to a Lawyer provides that every suspect is entitled to have his/her lawyer present during interrogations and „effectively participate”,⁴¹¹ but does not further articulate their role⁴¹². The directive is consistent with, but does not develop the ECtHR case law, which suggests that the

⁴⁰⁶ Art. 104, CPC.

⁴⁰⁷ The suspect, accused, defendant has the right to a break of up to 20 minutes during 4 hours of interrogation.

⁴⁰⁸ ECtHR, Brusco v. France, 14.10.2010, para. 44-55, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100969>}}

⁴⁰⁹ ECtHR, Alexandr Zaichenko v. Russia, 18.02.2010, para. 52-60, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97346#i=001-97346>}}

⁴¹⁰ Art. 94, (1)(1), CPC.

⁴¹¹ Art. 103, CPC.

⁴¹² Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, published in the Official Journal of the European Union, part I, L 294 of 06.11.2013, available at <http://eur-lex.europa.eu>.

mere presence of a lawyer at an interrogation is not sufficient to provide „practical and effective” legal assistance and that a lawyer should be able to participate actively in the interrogation⁴¹³. For the purposes of this section, the key question is what is meant by „active” or „effective” participation of the lawyer. Given the general principles, we suggest that this implies that a lawyer should be able to use powers and resources available to a defence lawyer in criminal proceedings in order to protect his/her client from self-incrimination, to protect his/her right to remain silent, to maintain equality of arms and, finally, to ensure a fair trial. In this regard, lawyers should observe the interests of their client in a loyal manner⁴¹⁴. In practice, the role of lawyers during interrogations may entail the following: advising clients about their legal situation; trying to ensure that clients’ decisions are observed, especially, if they choose to exercise their right to remain silent, offer „moral” support to their client; challenge unfair or illegal interrogations; ensure, where appropriate, that the client’s version of the events is articulated; and ensure that the interrogation minutes are adequate and fair.

In Moldova, there are no special norms regulating the lawyer’s behavior during the interrogation of the client. The CPC provides only that the lawyer is present, but there are no rules detailing such participation. Therefore, we may conclude that the lawyer can do anything which is not illegal during the interrogation, observing the general rules of participation in proceedings.

Given that, before the first hearing, the apprehended suspect is entitled to receive confidential legal aid from the lawyer⁴¹⁵, an active lawyer may consult the client on his/her behavior and the defence strategy during the interrogation. The purpose of the lawyer’s participation in the interrogation of the suspect could be: to clarify the circumstances which counter argue charges, exclude criminal liability of the person they defend or mitigate the punishment or coercive procedural measures, as well as to deliver the necessary legal aid⁴¹⁶.

⁴¹³ Art. 3, para. 3, let. (b).

⁴¹⁴ Other than determining that participation „may be according to the procedure of the national law, provided that these procedures do not prejudice the effective exercise and essence of that right”.

⁴¹⁵ See Chapter 1, section 2.5.4.

⁴¹⁶ In general, please, see UN Basic Principles on the Role of Lawyers, which set the lawyers’ powers in broad terms: to deliver assistance to their clients on their legal rights and obligations; to assist clients in an adequate manner; to try to defend human rights and fundamental freedoms; as well as to observe in a loyal manner their clients’ interests (the Eight United Nations Congress on the Prevention of Crime and Treatment of Offenders, Havana, 27 August - 7 September 1990, Principles 13-15).

The normative grounds for the participation of the lawyer in interrogation of the suspect is the following provision: *the interrogation of the suspect, defendant is carried out only in the presence of the lawyer chosen or appointed ex officio, immediately after apprehending the suspect or, if appropriate, after submitting charges if he/she accepts to be interrogated*⁴¹⁷.

The content of some articles of the CPC⁴¹⁸ provides for the lawyer's right to participate as a defender in criminal investigation actions, as well as certain rights related to this important tool for achieving defence, legal aid and representation in litigation.

The defender has the right *at the suggestion of the respective body, to participate in the procedural actions performed by the criminal investigation body and in all procedural actions as requested by him/her*⁴¹⁹.

It is also provided the right of the lawyer *to participate in any procedural action involving the person he/she is defending if requested by the person defended or by the defense counsel*⁴²⁰.

Lawyer's presence during criminal investigation actions involving the suspect, on the one hand, aims at offering legal aid in identifying circumstances that have importance for the defence, and, on the other hand, contributes to the observance of procedural rules of interrogation set by law.

Failure to meet legal provisions on mandatory participation of the lawyer is considered an essential violation of the criminal procedure law. In accordance with article 94, para. 1, p. 2 of the CPC, in criminal proceedings, data obtained *by a violation of the right to defence of the suspect, accused, defendant shall not be admitted as evidence and, hence, shall be excluded from the case file, cannot be presented in court and cannot substantiate a sentence or any other court decisions.*

This criminal procedure norm which regulates the participation of the lawyer provides as follows: *In order to verify or clarify the statements of a witness, injured party, suspect/accused about the events of a crime that occurred in a specific place, the representative of the criminal investigative body shall have the right to attend the crime scene together with the interrogated person and, as the case may be, with the defence counsel, interpreter, specialist,*

⁴¹⁷ Art. 64, para. 2, p. 4, CPC.

⁴¹⁸ See art. 68, para. 2, CPC.

⁴¹⁹ Art. 104, para. 1, CPC.

⁴²⁰ Art. 68, 80 and 92, CPC.

*legal representative and shall propose that the interrogated person describes the circumstances and objects of previous or current statements*⁴²¹.

The very fact that the lawyer is present disciplines the criminal investigation body from a legal, procedural and psychological perspective. The purpose of assisting the suspect during criminal investigation actions might be to provide psychological support to the client, ensure the legality of the action to be carried out and the observance of the rights and legal interests of the defended or represented person.

When it comes to participation in the interrogation of the suspect and performing other criminal investigation actions, the defender is entitled to:

- explain to the person that he/she defends the rights and draw the attention of the person who carried out the procedural action to the violations of the law committed by him/her;
- request the recusal of the person conducting criminal investigation, judge, prosecutor, expert, interpreter, translator, court clerk;
- object to actions of the criminal investigation body and request the inclusion of his/her objections in the respective minutes;
- familiarize himself/herself with the minutes of the actions carried out with his/her participation and request their completion or the inclusion of his/her objections on the veracity of the information indicated in the respective minutes.

When participating in the hearing of a witness, the lawyer of the witness must react properly if leading questions are addressed. *It is not allowed to address questions which do not relate to the evidence and which are clearly aimed at insulting and humiliating the interrogated person*⁴²².

Under the permission of the criminal investigation body, the witness's lawyer is entitled to address questions, comments, provide guidance to the person whose interests he/she defends⁴²³. Unfortunately, the right to address questions, observations, provide guidance is not specifically mentioned in the CPC⁴²⁴, in other words, this right is not provided for a lawyer – defender, i.e. when participating in the interrogation of a suspect.

⁴²¹ Art. 68, para. 1, p. 2, CPC.

⁴²² Art. 109, para. 2, CPC.

⁴²³ According to art. 92, para. 2, p. 6, CPC.

⁴²⁴ Art. 68, CPC.

5.4. Interrogation of the Apprehended Suspect in Practice

5.4.1. The Manner of Carrying Out and Duration of Interrogation

During the observation period in the Police inspectorate, there were cases when, from the very beginning, the apprehended persons were interrogated by some investigative officers who had participated in the physical apprehension of the suspect, simultaneously or one by one, without the participation of a lawyer, without informing about the person's rights. A second interrogation was conducted by the criminal investigation officers in the presence of the counsel and informing about the rights. Criminal investigation officers often carried out interrogations in open hearings and allowed investigative officers to participate *de facto* in the interrogation of the suspect, by addressing remarks or questions to the apprehended person. In the majority of cases, interrogations were conducted in the office of the investigative officers and criminal investigation officers. There were exceptions, when apprehended persons were interrogated in a special office for criminal investigation⁴²⁵.

We were present at a discussion between an investigative officer and an apprehended person who was kept in the so-called „iron cage” next to the guard unit. Given the fact that the police officer had brought him a piece of bread and promised to release him in, at the most, 24 hours, the apprehended person gave up and promised that after being released he would contact the police officer immediately after finding out where his accomplices were. The police officer promised, upon the apprehended person's request, not to tell anyone the information obtained and the source thereof.⁴²⁶

A criminal investigative officer started to interrogate an apprehended person, who was behind bars in the „iron cage”, but 10 minutes later, he released the person, as the latter had been persuaded by his lawyer to personally write statements, sitting at the table⁴²⁷.

However, usually, the interrogation conducted by criminal investigation officers was carried out almost immediately after bringing in the apprehended person, who was often under stress.

⁴²⁵ On the first floor, not far from the Guard Unit of the Inspectorate.

⁴²⁶ At the end of this „interrogation”, the police officer said that he was investigating a case in which the offended party was a policeman and „this is the way we work”, being proud of the obtained result.

⁴²⁷ Case study 13P.

Questions, together with threats of „throwing into jail” sometimes would follow one after another without waiting for an answer. In most cases, the questions of the criminal investigation officers were addressed on high tones, therefore the answers received were sometimes on the same tones. In none of the cases of this kind it was observed that the suspect had been informed about his/her rights or his/her rights were ensured, including the right to defense. If the interrogated person requested a lawyer or to communicate with relatives about his/her location, the police were saying that the person was not apprehended and would surely benefit from these rights in 3 hours, after drawing up the apprehension minutes⁴²⁸.

The hearing of the suspect by the criminal investigation officer always started with establishing the person’s identity. Then followed the explanation of the rights of the person to be interviewed. The hearing *per se* would start with a free narrative of the story itself. Then, it was time for a guided narrative (addressing questions). The interrogation would be concluded with verifying and signing the minutes.

As to the hearing of apprehended persons suspected of having committed contraventional offences, the researchers generally witnessed the following „standardized algorithm of actions”:

1. hearing and recording of statements in the minutes;
2. drawing up the minutes of contraventional sanctioning and informing the person of the content of this document, including the decision on sanctioning;
3. taking note of the rights of the offender and confirming it by signature⁴²⁹.

There was an enormous pressure on people interrogated for contraventional offenses to plead guilty⁴³⁰. Contraventional cases were documented by district police officers.

The duration of interrogations conducted by investigative officers exceeded 2 hours. The interrogation of suspects by criminal investigation officers lasted for up to 1 hour and 30 minutes⁴³¹. In the case study **23P**, the interrogation of

⁴²⁸ See Annex no. 2 - 2P.

⁴²⁹ In other words, offenders were signing on the back of the minutes of contraventional sanctioning, confirming that they took note of the rights written on that page with smaller font than other information included in that document. Basically, offenders were not reading their rights, wishing to leave the Inspectorate as soon as possible.

⁴³⁰ Case studies 3C, 4C.

⁴³¹ Case study 13P.

the apprehended suspect lasted for 35 minutes⁴³². If the apprehended person refrained from testifying, the interviews would not last longer than 15 minutes⁴³³.

5.4.2. Recording Interrogations

Investigative officers did not record all statements obtained from persons apprehended by them⁴³⁴. As mentioned earlier, the record of the interrogation by criminal investigation officers is a part of the case file and can be used as evidence for taking decisions in criminal proceedings. For this reason, the prospects for a fair trial depend on whether the interrogation minutes are complete and accurate. Neither lawyers, nor suspects had any objections, clarifications or additions regarding the facts recorded in the minutes.

Usually, criminal investigation officers drew up the interrogation minutes even if the suspect refused to testify, stating about the refusal. However, researchers noticed that sometimes the suspect had not read the interrogation minutes before signing it, relying on the fact that this document had been read by the lawyer.

In the case study **2P**, investigative officers interrogated the suspect without recording his statements. In the case study **24P**, an investigative officer interrogated a suspect without recording his statements. However, on the same day, the suspect was interrogated by a criminal investigation officer, who recorded the statements in the minutes.

In the case study **25P**, after returning from on-site investigation, the criminal investigation officer interrogated the suspect, who did not admit his guilt, without recording the statements. Afterwards, the criminal investigation officer agreed that the suspect be interrogated by an investigative officer. During that interrogation, at one point, the suspect confessed to have committed the theft, but his statements were not recorded in any way or written down. One more interrogation took place, conducted by the criminal investigation officer, who, finally, recorded the self-incriminatory statements made by the suspect in the absence of his lawyer.

Some interrogated suspects refused to sign the interrogation minutes. In the case study **13P**, the suspect did not want to sign the interrogation minutes, where he had personally recorded his statements, but he was then persuaded by

⁴³² See details on this case in **Annex no. 2**, facts recorded in the field journal of 28.08.2014.

⁴³³ Case study 19P.

⁴³⁴ Case studies 2P, 24P, 25P.

the criminal investigation officer and his lawyer to do so and, ultimately, he gave up. A person apprehended for a contraventional offence did not want to sign the minutes in which his statements had been recorded by the district police inspector, because, as he said, he did not understand the Romanian language written in Latin characters, but only the Moldovan language written in Cyrillic. After the district inspector had read out the content of the statements, he convinced the suspect to sign the minutes, thus confirming the veracity of those statements⁴³⁵. In another case, the lawyer failed to convince the suspect to sign the interrogation minutes and other procedural documents⁴³⁶.

It was surprising to find out in a discussion with a criminal investigation officer that *an ex officio lawyer had refused to sign the apprehension minutes, because his client had refused to do so.*

Criminal investigation officers did not record the questions addressed by them⁴³⁷. As a result, the description of the interrogation and the statements given by the suspect were spontaneous and coherent, which, *inter alia*, may give the impression that the suspect was more competent, more thorough and consistent in his statements than he/she was, in fact.

5.5. The Right to Silence during Interrogation

5.5.1. Notification of the Right to Silence during Interrogation

Even if the apprehended suspect received a letter of rights⁴³⁸, after having been familiarized with the apprehension minutes, every time, before the interrogation by a criminal investigation officer, the suspect was asked if he/she wanted to testify, being informed about the right to personally write his/her statements. This, however, did not happen in any interrogation case instrumented by investigative officers, who did not inform about and did not explain this right. District officers, who, as previously mentioned, allowed reading the rights of the

⁴³⁵ Case study 12C.

⁴³⁶ Case study 19P.

⁴³⁷ Recording the questions in the interrogation minutes is not practiced; it is rather done in the minutes on confrontation.

⁴³⁸ Called in our jurisdiction MINUTES on notifying the apprehended person about the rights and obligations of the suspect, presenting explanations on them and handing out written information about these rights and obligations.

contravention suspect, including the right to remain silent, after informing the person about the application of a contraventional sanction.

The suspect was not informed, in particular, about the right to silence before the interrogation, but received written information about his rights, which he did not read. He was encouraged by the criminal investigation officer and lawyer to testify, having the possibility to personally write in the minutes. He was assisted throughout the interrogation by the lawyer who helped him formulate the statements, which were written in Cyrillic. The suspect refused to sign his statements, but was persuaded by the criminal investigation officer and lawyer, and finally signed the minutes. The suspect said he could not read his rights in the Romanian language written in Latin letters. The criminal investigation officer read only his right to defense and said it would be good for him to read and to know all the rights⁴³⁹.

In case study **24P**, investigative officers interrogated the suspect without telling him about the right to silence. In the case study **25P**, the suspect was informed in writing of his rights by the criminal investigation officer, including the right to silence, only after he had agreed to be informally heard by an investigative officer, but he had not been informed about the rights of the interrogated person and had admitted to have committed attempted theft.

Suspects do not understand the meaning of the right not to incriminate themselves. The decision not to answer certain questions during the interrogation is taken before being questioned, through suggestions offered to the client and explaining the right not to incriminate himself/herself. During the interrogation, the police (usually, explicitly) ban the lawyer to get involved in the suspect's process of answering questions⁴⁴⁰.

5.5.2. Explaining and Understanding the Right to Silence

It is obvious that in cases where suspects were not notified about the right to silence, this right was not explained.

Criminal investigation officers and lawyers did not always explain that the refusal to testify could not have adverse consequences for the suspect during the proceedings. We did not notice police officers explaining that the right to silence was not an absolute right and the risk of criminal liability for making false statements regarding other people who allegedly committed the crime. The officers told that if the suspect refused to testify, he/she could change his/her position at any later stage and may accept to cooperate with the

⁴³⁹ Case study 13P.

⁴⁴⁰ Interview IA7.

criminal investigation body. In cases provided for in the law, suspects could count on a plea bargain agreement or reconciliation of the parties and ceasing the criminal investigation.

It is difficult to explain this right, but it is understandable if the lawyer makes efforts and insists to be sure that his client understood it. In general, we refuse to give statements at night or if the person is confused at the moment and cannot decide what position to adopt. Thus, a request on refusing to make statements is submitted pursuant to article 104, CPC⁴⁴¹.

In cases where suspects refused to make any statement, we considered that they understood this right⁴⁴². In the case study **19P**, the suspect refused to sign to confirm that he had received in writing his rights, because he read the apprehension minutes and the interrogation minutes of the hearing in which his refusal to testify had been recorded, and that he had been offered a copy of the motion on recognizing him as a suspect. The lawyer explained to the suspect that his signature would not constitute admission of guilt, but his client did not change his position. The criminal investigation officer told him that he would provide him with the motion for carrying out forensic examination in this case. The suspect replied that he did not want it, because he could not read and write in Romanian. Before the hearing, the criminal investigation officer had provided him with a paper with the rights and obligations of the suspect in the Russian language; however, the suspect never read it.

5.5.3. The Right to Silence and Police Strategies to Interrogate Apprehended Persons

In general, criminal investigation officers observe the procedural guarantees of the interrogated persons. Usually, criminal investigation officers reacted adequately when apprehended persons made use of their right to silence, limiting themselves to recording the refusal to make statements in the interrogation minutes, simply saying *it is your right* and did not urge them to testify.

The right to silence is one of the rights which the criminal investigation officer most often informs about⁴⁴³.

Sometimes, criminal investigation officers, investigative officers and even lawyers encouraged suspects to give up on their right to silence. The most

⁴⁴¹ Interview IA6.

⁴⁴² Case studies 21P, 22P.

⁴⁴³ Interview IA3.

insistent pressures were made when the lawyer did not attend the hearing: during interrogations carried out by investigative officers and district officers.

In the case study **23P**⁴⁴⁴, the criminal investigation officer destroyed a form containing explanations, where the apprehended person had personally written the he did not want to make statements and signed that document. After that, the criminal investigation officer suggested the suspect to make statements, because, otherwise, he would have been apprehended. Thus, he obtained a confession recorded in another form, personally written by the suspect. Later, when the lawyer arrived, the suspect was interrogated once again, and he was asked if he wanted to testify. The suspect pleaded guilty, encouraged by the lawyer during consultations.

In the case study **24P**, the criminal investigation officer organized the confrontation with the suspect who refused to make statements and sign the minutes, although according to the criminal procedure law, the confrontation is carried out between those who gave contradictory statements before⁴⁴⁵. The intention was that the suspect, who initially had chosen to keep silent, when confronted with his accomplices, eyewitnesses or the injured party could be provoked to contradictory discussion and provide some information⁴⁴⁶.

Five investigative officers addressed questions in the Russian language, at high tones, to an apprehended Roma person regarding his connection to robberies and burglaries committed in the case study **2P**. They had not informed him of any rights before asking questions. All questions were leading and incriminating. Sometimes, without waiting for answers, more questions were asked. While the suspect was indignant because he could not call his relatives, the police officers were talking among themselves in Romanian, which the apprehended person did not understand. The suspect had initially denied his involvement in criminal activity and said that he had never been to the district and town D. where one of the crimes, which the officers were asking about, had been committed. At one point, the suspect went to the toilet, accompanied by an investigative officer, who offered him a cigarette. Once returned, the suspect admitted that he had been in the district and town D. in the north of the country, but only at night and, therefore, was not sure from the very beginning and could not provide details. He also spoke about some persons from his entourage, including relatives⁴⁴⁷.

⁴⁴⁴ See details on this case in **Annex no. 2**.

⁴⁴⁵ Art. 113, CPC.

⁴⁴⁶ It is a procedure which is sometimes used by criminal investigation officers.

⁴⁴⁷ See the records from the field journal for the case study 2N.

In the case study 25P, the suspect was heard by an investigative officer in a separate office. The answers were recorded. No right of the suspect was clearly communicated. He asked why he was not informed about anything, believing that the police must tell him what would happen to him next. The investigative officer said that *all of this will follow later, but first, he must admit to the attempted theft*. The apprehended person denied any involvement in any offense until the moment when the investigative officer said that anyway the police had evidence, including video recordings from the camera installed in the backyard where he had entered. When providing self-incriminating statements, the suspect asked not to inform his relatives about his apprehension.

5.6. Lawyers' Performance Before and During Interrogation

5.6.1. Counseling the Suspect about His/Her Behavior during the Interrogation and the Opportuneness to Answer Questions

Usually, lawyers clarified the position of the client regarding his/her availability to provide statements to the police. In general, most lawyers relied upon limited information for quite standardized recommendations before the interrogation. They discussed the approach to be adopted during interrogation and some versions about the further course of investigations.

Lawyers did not explain how the suspects should behave during interrogation, so that they could successfully explain their version to the police. The decision as to answer police questions or not, is one of the most important decisions for the suspect.

There were cases when it was necessary to explain the right to silence and its consequences: *Even if it happens that some of the suspects do not understand the initial meaning of the right to not incriminate oneself, it is not difficult to explain the content of this right and with a minimum effort they quickly understand its meaning*⁴⁴⁸.

Only in one out of the four cases of consultations observed in 2014, the lawyer recommended the suspect not to keep silent, although it appeared that the client was not prepared to disclose any information to the police. At the beginning of the interrogation, the lawyer said it was in the interest of the client to answer questions⁴⁴⁹.

⁴⁴⁸ Interview IA1.

⁴⁴⁹ Case study 13P.

Counseling on how to respond to police questions cannot be separated from the context of the interrogation, which is different from case to case. Some of the suspects already knew that they would remain silent, even before speaking to their attorney because they were adamant in their decision. For example, if they decided to wait until they had full access to the case file. In the case study **19P**, the apprehended person who was interrogated not only remained silent but also refused to sign several procedural documents presented by the police officer, even if he had been consulted by a lawyer who had told him that the signature did not mean admitting the guilt. However, the majority of the suspects do not keep silent and even those who intend to do so, arrive to the conclusion that this is a strategy difficult to follow in practice⁴⁵⁰.

There was no consistent approach in counseling suspects in order to determine whether they should only answer some of the questions of the police. The observers did not witness any situations where the client would be advised to answer only the questions put forward by the defence attorney during the interrogation. In most counseling sessions that we monitored we noticed standard expressions and ways of providing counseling to suspects.

Some lawyers mentioned that they recommended keeping silence in certain situations or conditions agreed upon during counseling. *If the client does not plead guilty or partially admits his/her guilt, and the defense rationale is still not well-thought, versions are in need to be further processed and defined, I conclude that it is appropriate to advise him not to answer questions during interrogation or to make use of his/her right to refuse to testify until we know what evidence the criminal investigation possesses which would prove the client's guilt*⁴⁵¹.

The client is advised not to participate in the interrogation when he/she is charged with a serious, especially serious or exceptionally serious crime, with accomplices, and the client wants to partially plead guilty or wishes to reflect on the deeds committed and has not made up his/her mind regarding statements⁴⁵².

According to one of the lawyers, the exercise of the right to silence depends on the fact whether or not the suspect admits the guilt, especially in cases involving multiple participants.⁴⁵³

⁴⁵⁰ Case studies 13P, 23P.

⁴⁵¹ Interview IA1.

⁴⁵² Interview IA2.

⁴⁵³ Interview IA3.

Another lawyer said that he explained the risks and opportunities, including the meaning of the right not to incriminate oneself⁴⁵⁴.

5.6.2. Presence of Lawyers in Interrogation of Suspects Apprehended by the Police

In all the cases observed in 2014, where the lawyer attended the police station to provide legal aid and assistance, he/she also participated in the police interrogation of his/her client by criminal investigation officers⁴⁵⁵. As mentioned, in all the observed criminal cases, including those cases, in which the lawyer participated, before his/her arrival in the inspectorate, the clients had been interrogated by investigative officers. Lawyers said that the decision to participate in interrogation depended on the requirements of the law of compulsory participation in certain cases.

The decision on whether or not to participate in the police interrogation is dictated by the criminal procedure provisions which specify the cases where participation of defence counsel is mandatory, and by the fact that I am informed by the officer about the need of my participation in questioning the client and drawing up the respective document⁴⁵⁶.

In cases of contraventional offences, the *ex officio* lawyer never participated in interrogations, because, according to the law, those are not a part of the category of mandatory state guaranteed legal aid, but neither the offenders requested the presence of a lawyer⁴⁵⁷.

Another factor that influenced the lawyers' participation in interrogations was the manner in which the police would choose the time for the interrogation. The problem was that in most of the observed cases investigative officers interrogated the apprehended in the absence of a lawyer, without informing about rights and imputed crimes, followed by an interrogation by a criminal investigation officer in the presence of the lawyer.

We have observed a vicious practice – to apprehend persons and work with them, based on establishing acts (art. 263, 273, CPC), in the absence of the lawyer, translator etc., during which serious abuses of the person's rights are committed⁴⁵⁸.

⁴⁵⁴ Interview IA4.

⁴⁵⁵ We remind that observations were carried out in 18 hearings of the suspect, out of which in 12 hearings the lawyer did not participate.

⁴⁵⁶ Interview IA1.

⁴⁵⁷ Case studies 3C, 4C, 5C, 6C, 7C, 8C, 9C, 12C.

⁴⁵⁸ Interview IA5.

However, prior to this procedural action and until the arrival of the defender, the suspect is interrogated, pressured, intimidated by different police officers without ensuring, first, consultation with a lawyer, breaching in this way his/her right to legal aid⁴⁵⁹.

The interrogations which are not formally recorded in any official document are known only to the police officer who carries them out and the lawyer finds out about them from the client only after they took place⁴⁶⁰.

But given the fact that the suspect cannot describe the overall situation through telephone conversations with his/her lawyer, the criminal investigation bodies have developed a practice, according to which, before the lawyer manages to discuss with the client, the representatives of the criminal investigation body through friendly discussions address to the suspect some questions, which may lead to collecting new evidence against him/her⁴⁶¹.

There was a case different from what is practiced by investigative officers, which also „contributed” to avoiding the presence of the lawyer during the interrogation of the *de facto* apprehended suspect, but where no apprehension minutes was drawn up⁴⁶².

5.7. The Role of Lawyers in Interrogation in Practice

The mere presence of a lawyer disciplined the criminal investigation from a legal, tactical and psychological point of view. In the 6 interrogations

⁴⁵⁹ Interview IA1.

⁴⁶⁰ Interview IA1.

⁴⁶¹ Interview IA2.

⁴⁶² At 18:45 a man was brought in (29 years) by officers of the National Patrol Inspectorate (NPI). He was interrogated by an officer on duty. The man said that he had been stopped at 17 o'clock by NPI officers, because he had violated traffic rules and they had drawn up the minutes on contravention. The documents he presented to the police were not remitted. His hearing was focused on extending the vignette and he was told that it had some peculiarities which made one suppose falsification of public documents (criminal offense). The suspect did not respond to all questions asked by the police officer. The minutes was read and signed. The suspect also provided a receipt that he would appear when summoned. The technical passport of the vehicle and the driving license were returned and the suspect signed for confirming the fact that he had no claims. He was informed that the vignette shall remain in the case materials in order to conduct the technical expertise of the document. He was released at 19:25. The rights of the respective person were not communicated to him and he was not asked if he wanted to exercise his right to have a lawyer.

carried out in the presence of a lawyer, there were noticed radically different approaches compared to the 12 monitored interrogations conducted in the absence of a lawyer.

It was obvious that tactics were different and, basically, much fewer violations were identified. During the hearings, the lawyers manifested themselves more through physical presence and explaining the consequences of the right to silence⁴⁶³. We even noticed one case of inciting the undecided client during counseling to provide statements and the assistance being offered to help the client to formulate his thoughts as consistently and explicitly as possible. Basically, after the suspect wrote two or three sentences or phrases in the minutes, long breaks followed in order to listen to the questions of the criminal investigation officer, preliminary consultations between the lawyer and the client on formulating the answers and additional facts to be recorded by the suspect in the apprehension minutes⁴⁶⁴.

After having filled out personal data in the minutes of the interrogation, the lawyer would explain to his clients the right to silence, which they made use of, and read out the content of the minutes for a woman who could not read and write,⁴⁶⁵.

Given the passivity of lawyers, we can easily describe what they failed to deliver. In none of the 6 interrogations of the apprehended persons conducted in the presence of lawyers, did they:

- address questions on the factual circumstances, insisting that these be recorded in the minutes;
- object on leading questions, when necessary;
- request the recusal of the criminal investigation officer who admitted serious violations of the rights of the apprehended suspect⁴⁶⁶;

⁴⁶³ Case study 23P.

⁴⁶⁴ Case study 13P.

⁴⁶⁵ Case study 20P.

⁴⁶⁶ Although, according to the observer, this was the case in the case study 14P, the criminal investigation officer made verbal pressure on the lawyer, who had made objections to the apprehension minutes and tried to clarify the exact time, place and circumstances of the apprehension. The respective officer had allowed the presence of investigative officers and allowed them to ask questions and exert pressure on the suspect during the interrogation.

- request breaks when it was necessary to clarify the position⁴⁶⁷;
- notify the person who was carrying out the procedural action about the violations of the law committed by him/her and by other persons during the interrogation (for example, the presence of other persons, colleagues, investigative officers in the office where the client was being interrogated and even their intervention with questions and clarifications to what the suspect had mentioned)⁴⁶⁸;
- requested to include in the interrogation minutes the passiveness or activeness of other persons⁴⁶⁹;
- requested the completion or inclusion of the lawyer's objections on the veracity of the information recorded in the respective minutes⁴⁷⁰.

A mere physical presence of the lawyer without his/her active involvement, may actually damage the client's interests if no objections are made and correspondingly recorded, because the presence of a lawyer practically legitimizes the actions of the CIO.

There were no consultations with the client immediately after the interrogation in the monitored cases, except when it was proposed that after the interrogation confrontation with some witnesses be carried out⁴⁷¹. In general, the lawyer and the client would part agreeing to see each other another day or, eventually, upon the examination of the pre-trial detention motion.

We have noticed that some lawyers who assisted the apprehended suspect would come to the Inspectorate to take part in some actions, such as confrontations, additional interrogations, assisting clients in reconciliation with the injured party, etc., the second or third day after the apprehension, as well as in case if their clients were released.

⁴⁶⁷ Art. 4, para. 3¹, CPC prohibits uninterrupted interrogation of a suspect for more than 4 hours, but there is no express provision on prohibiting interruptions before the expiry of the 4 hour period, including for the purposes of counselling. Art. 64, para. 2, p. 6, CPC provides the suspect with the right to have meetings with his/her defender in confidential conditions, without limiting the number and duration thereof. In practice, it is considered that this article is not applicable for purposes of requesting interruptions during the interrogation in order to hold lawyer-client consultations.

⁴⁶⁸ Case studies 14P, 16P, 23P.

⁴⁶⁹ Case studies 14P, 16P, 23P.

⁴⁷⁰ We could consider that the suspect's statements were truthfully recorded, because the researcher did not have the possibility to read the respective minutes.

⁴⁷¹ Case study 19P.

6. Medical Assistance and Vulnerable Suspects

6.1. The Right to Medical Assistance

The right to medical assistance is regulated in the national legislation. Moreover, during the interviews with police officers, most of them mentioned that over the past years there had been positive changes regarding the regulation and the observance of the right to medical assistance.

6.1.1. Legislative Regulation of the Right to Medical Assistance and Its Compliance with ECHR Standards

Immediately after the apprehension or after the person was informed about the decision on application of the preventive measure, CIO shall facilitate the access of the apprehended person to independent medical examination and medical assistance, including at the expense of the apprehended person⁴⁷². What is more, the apprehended person has the right to submit requests for independent medical assistance.

At the same time, the administration of the institution where the apprehended or arrested are placed, shall ensure that the detained have access to independent medical examination and assistance⁴⁷³. Hospitals in penitentiaries ensure temporary placement of all categories of detainees who need medical assistance, observing the rules on separate detention based on the specific disease, procedural capacity of the person, gender and age⁴⁷⁴.

A similar obligation of the state also follows from art. 3 ECHR. Although art. 3 of the ECHR cannot be interpreted as a general obligation to release

⁴⁷² Art. 64, para. 15¹, CPC.

⁴⁷³ Art. 187, para. 2, CPC.

⁴⁷⁴ Art. 6, para. 7 of the Law on the Penitentiary System.

detainees due to health reasons, it provides for the obligation of the state to protect physical integrity of the ones deprived of their liberty, for instance, by granting them necessary medical assistance⁴⁷⁵. The safeguards of art. 3 mainly refer to the fact (1) whether or not the person needed medical assistance; (2) whether or not such assistance was granted; (3) what suffering was caused due to the failure to grant such assistance; and (3) if such suffering exceeds the minimal level of severity.

Although the Moldovan legislation provides for the right to medical assistance, the ECtHR jurisprudence against Moldova identified many violations of this right. ECtHR has established that the detainees were not granted necessary medical assistance⁴⁷⁶. In the case of *Levința*, it was requested that the applicant who was being detained at PDI be examined by a medical doctor, this request was not successful. In the case of *Boicenco*, during several months no measures were taken in order to diagnose the applicant who was in a critical condition and in the case of *Stepuleac* the preliminary diagnosis was not verified⁴⁷⁷.

In the case of *Șarban*, it was refused to grant medical assistance in the PDI of Center for Fighting Economic Crimes and Corruption and to have the applicant examined by a medical doctor of his choosing, while the recommendation made by a neurologist that the applicant be examined by a neurosurgeon was not followed. In the case of *Istratii and others*, one of the applicants was transferred to the hospital for a surgical intervention with a three hour delay, he was handcuffed during the operation and was brought back to the PDI after four hours after the operation. IN the cases of *Levința* and *Gurgurov*, the administration of the PDI refused to have the applicants hospitalized, although that had been recommended by medical doctors, and in the case of *Oprea* the applicant was hospitalized two weeks later. In the case of *Brega*, medical assistance in a renal crisis was not granted during 12 hours, and in the case of *Holomiov* medical treatment for renal illness was not offered for almost two years⁴⁷⁸.

⁴⁷⁵ *Șarban v. Moldova*, judg. of 4 October 2005, §77.

⁴⁷⁶ *Șarban* (04/10/2005) §§68-91; *Boicenco* (11/07/2006), §§112-119; *Holomiov* (07/11/2006) §§109-122; *Istratii ș.a.* (27/03/2007) §§42-59; *Stepuleac*(06/11/2007) §59; *Levința* (16/12/2008) §§85-91; *Paladi* (10/03/2009) §§68-72; *Brega* (20/04/2010) §42; *Oprea* (21/12/2010) §§36-42.

⁴⁷⁷ Vladislav Gribincea, Enforcement of ECtHR judgments by the Republic of Moldova, 1997-2012, CRJM, Chișinău, 2012: <http://crjm.org/app/webroot/uploaded/Executarea%20hotarilor%20CtEDO%20de%20catre%20RM%201997%20-%202012.pdf>, p. 137

⁴⁷⁸ Vladislav Gribincea, Enforcement of ECtHR judgments by the Republic of Moldova, 1997-2012, CRJM, Chișinău, 2012 <http://crjm.org/app/webroot/uploaded/Executarea%20hotarilor%20CtEDO%20de%20catre%20RM%201997%20-%202012.pdf>, p. 137

All the above-mentioned violations are due to a lack of diligence of the administration of the detention center or of the criminal investigation body, which can only be repaired by strengthening the professional discipline. It seems that the violations stated in the cases of *Gurgurov* and *Levința* had the purpose of concealing the traces of bodily harm. Starting with 27 October 2012, after the amendment of art. 64 din CPC, the risk of occurrence of situations established in the cases of *Gurgurov* and *Levința* may diminish⁴⁷⁹.

6.1.2. Identification of Suspects Who Need Medical Assistance

The Criminal Procedure Code provides that the person may request medical assistance. Likewise, if at the time of apprehension it is established that the apprehended person shows certain signs of bodily harm, the person conducting criminal investigation shall immediately inform the prosecutor, who will immediately order a forensic medical examination or, as the case may be, a forensic medical expertise in order to establish the origin and character of the respective bodily harm⁴⁸⁰. Thus, the request of the apprehended person for medical assistance shall be indicated in the minutes of apprehension, where the physical condition of the apprehended person shall be described, any complaints regarding health condition, request for a medical examination, including at the expense of the apprehended person⁴⁸¹.

Although the law provides for the observance of the right to medical assistance, in practice, its realization by the CIO is difficult. Based on field observations, it has been established that, most often, medical assistance is requested, when necessary, after the apprehension, although the majority of police officers mentioned that *when apprehended, the person is mandatorily asked about his/her state of health and, if he/she wants to be assisted by a medical doctor. Moreover, some of them have mentioned that, due to the fact that the apprehended person enjoys medical assistance, it is possible to establish when the bodily harm was caused and its gravity.*

From the analysis of a number of apprehension minutes, done for the purposes hereof, it has been established that the apprehended person separately signs

⁴⁷⁹ Vladislav Gribincea, Enforcement of ECtHR judgments by the Republic of Moldova, 1997-2012, CRJM, Chișinău, 2012 <http://crjm.org/app/webroot/uploaded/Executarea%20hotararilor%20CtEDO%20de%20catre%20RM%201997%20-%202012.pdf>, p. 137

⁴⁸⁰ Art. 167, para. 6, CPC.

⁴⁸¹ Art. 167, CPC.

the part of the minutes regarding the health condition. At the same time, some of the minutes contain general information about the health condition of the apprehended person established based on visual verification by the person who draws up the minutes. In some of the minutes, there was a separate note regarding the fact that the apprehended person „does not have any claims against police officers regarding application of physical force and did not sustain bodily harm”.

6.1.3. Granting of Medical Assistance

National criminal procedural legislation does not contain special provisions regarding the manner of granting medical assistance to apprehended persons, being limited to a simple declaration of the right to medical assistance. Neither such provisions are found in the institutional acts of the General Police Inspectorate. At the same time, both observations and interviews with police officers lawyers carried out for the purposes of this study, revealed the fact that emergency medical assistance is granted by medical personnel of the Emergency Hospital (903) who are contacted by police officers at the request of the apprehended person or *ex officio*. One of the problems identified by police officers during interviews was the fact that it would take too long for the ambulance to arrive.

As a rule, medical assistance is provided in the premises of the police inspectorate and only in case of emergency the apprehended person may be transported to the hospital. In one monitored case, the apprehended person complained of ache in the legs, police officers called the ambulance and medical doctors provided emergency assistance in the premises of the inspectorate. That person was not taken to the hospital, because the doctors had concluded that his legs were not fractured. Later on, CIO again called the ambulance because the apprehended person felt even worse. At the repeated request the person was transported to the hospital⁴⁸². One of the interviewed police officers mentioned that, *as a rule, medical assistance is provided in the office where the apprehension minutes is drawn up*⁴⁸³.

Based on the observations, it has been established that sometimes apprehended persons can be hospitalized in the Narcology Dispensary. In a monitored case, one of the apprehended persons was banging his head against the walls, because he did not feel well, the 903 service was contacted. The emergency doctors, who came 15 minutes later, recommended to have

⁴⁸² Case study 25P.

⁴⁸³ Interview IP2.

psychiatrists invited. Psychiatrists established that the apprehended person was suffering *delirium alcoholicum* and hospitalized that person (for 2-3 or 10 days) in the Narcology Dispensary⁴⁸⁴.

At the same time, some of the interviewed lawyers mentioned that „*the suspects that needed medical care while in police custody cannot enjoy adequate medical assistance, due to the fact that there are no qualified medical personnel in the PDIs, while CIO/prosecutors consider that contacting medical services is simply a pretext for avoiding apprehension or pre-trial detention*”⁴⁸⁵.

6.2. Normative Framework Regarding Vulnerable Suspects and Compliance with ECHR Standards

National legislation contains special provisions regarding apprehension of minors. Likewise, according to the ECHR standards, detention of minors shall be distinguished from that of adults and carried out in different conditions, taking into account the measures that may be applied to juvenile offenders.

The Criminal Procedure Code contains a separate chapter on the apprehension procedure in case of minors. Nevertheless, criminal investigation and judicial trial of cases regarding minors, as well as enforcement of court decisions concerning minors, are done on the basis of a regular procedure. Minors are apprehended for a limited period of time, which shall not exceed 24 hours, while apprehension may be applied only in exceptional cases for serious crimes accompanied by violence, especially serious crimes and exceptionally serious crimes⁴⁸⁶.

6.2.1. Establishing Vulnerability

According to the Criminal Procedure Code in art. 6, p. (47), a minor is a person below the age of 18. Moreover, suspect/accused below 18 years of age has a limited legal capacity, having a limited possibility to independently exercise his/her rights. Legal capacity is established as of the time of criminal proceedings⁴⁸⁷.

⁴⁸⁴ Case study 3C.

⁴⁸⁵ Interview IA7.

⁴⁸⁶ Art. 477, p. (3).

⁴⁸⁷ Art. 75, p. (4), (5), CPC.

The age of the minor (day, month, year of birth), as well as his/her living conditions and upbringing, level of intellectual, volitional and psychological development, traits of character and temperament, interests and needs; influence by adults or other minors; causes and conditions which contributed to the commitment of the crime shall be established in the course of criminal investigation. In order to establish these circumstances, the criminal investigation authority orders drawing up a pre-sentence report on the psycho-social assessment of the minor⁴⁸⁸. Thus, the pre-sentence report is mandatory in cases involving minors.

The Supreme Court of Justice of the Republic of Moldova has explained that it is considered that a person has reached a certain age not on the day of birth, but on the immediately following day. When establishing the age by medical forensic expertise, the defendant's day of birth shall be considered to be the last day of the year established by the experts, but if the age is established to be between a minimal and a maximal number of years, the court shall consider the minimal age of the respective person, suggested by the expertise⁴⁸⁹.

6.2.2. Procedural Safeguards for Vulnerable Suspects

A minor shall enjoy the same rights as an adult, thus, the provisions on the rights of the apprehended are fully applicable to minors⁴⁹⁰. At the same time, the national legislation contains some special provisions.

Firstly, if a minor is apprehended, the person carrying out criminal investigation is obliged to immediately inform the prosecutor and the parents of the minor or persons who replace parents, which shall be recorded in the apprehension minutes⁴⁹¹.

Secondly, the legal representative of the minor shall be admitted into criminal proceedings from the moment of apprehension or pre-trial detention, or as of the first interrogation of the minor who has not been apprehended or arrested. Once the legal representative of the minor is admitted into the

⁴⁸⁸ Art. 475, CPC.

⁴⁸⁹ The Decision of the Plenum of the Supreme Court of Justice on Criminal Cases Regarding Minors, No. 39, dated 22.11.2004, p. 2 // <http://cj.md/uploads/privind-minorii.pdf>

⁴⁹⁰ Criminal investigation and judicial trial in cases regarding minors, as well as the enforcement of court decisions regarding minors, shall take place according to regular procedure, subject to particularities and deviations provided for in Title III, Chapter I, CPC.

⁴⁹¹ Art. 167, para. 3, CPC.

proceedings, he/she shall receive written information about the rights and obligations provided for in art. 78, CPC, and this is reflected in the order.

Thirdly, when interrogating a minor the participation of a defender and a pedagogue or psychologist is mandatory. A minor cannot be interrogated for more than 2 hours without a break, and the total duration of interrogation cannot exceed 4 hours per day. The defender, legal representative of the minor, pedagogue or psychologist has the right, upon the consent of the criminal investigation body, to address questions to the minor, and at the end of the interrogation - to familiarize himself/herself with the minutes or, as the case may be, the written statements of the minor and to make written observations regarding the completeness and accuracy of the records⁴⁹².

What is more, upon the finalization of the criminal investigation regarding a minor, the criminal investigation authority, by its reasoned order, may withhold from the minor certain materials of criminal investigation which, in its opinion, may negatively affect the minor, but such materials are presented to the legal representative of the minor⁴⁹³.

At the same time, the realization of these provisions, alike other provisions referring to the rights of an apprehended person, sometimes has a rather formal character. Although, during monitoring there was no case involving minors, the interviewed police officers mentioned that „*the interrogation of minors was done by a prosecutor with mandatory participation of the legal representative and defence lawyer*”. Some of the interviewed lawyers mentioned that *often the participation of the pedagogue/psychologist was very formal*.

In a study on criminal apprehension, carried out in 2011, the interviewed criminal investigation officers and prosecutors expressed their concern regarding the provisions of the Criminal Procedure Code, which allow apprehension of minors only in case of serious crimes accompanied by violence, especially serious crimes and exceptionally serious crimes. Often, minors who are caught in the act or shortly after the commission of the alleged offence are the ones coming from families that do not have a permanent residence or those are children who were left without the parent's oversight. These categories of children commit crimes due to poverty or at the indication of adults and are then left in the streets again, without care⁴⁹⁴.

⁴⁹² Art. 480.

⁴⁹³ Art. 482, CPC.

⁴⁹⁴ Study on the Institute of Apprehension in the Republic of Moldova, Soros Moldova-Foundation, 2011, p. 7.

Another problem established in the practice of CIO is the apprehension of persons in the state of alcoholic intoxication. If there is a suspicion that such person has committed a crime, all the relevant legal provisions are applicable, although in some of the monitored situations drunk persons were not duly informed about their rights. Neither the lawyer, nor the police officer acted responsibly in order to ensure that the apprehended person understand what was happening, due to an advanced stage of intoxication. Moreover, the lawyer also signed the apprehension minutes, thus confirming the „legality” of the procedural actions.

Sometimes, apprehended drunk persons are involved in procedural actions, even if it is obvious that the state of their intoxication is advanced, and the apprehended person immediately falls asleep on the chair. In one of the monitored cases, the lawyer who had arrived to the commissariat tried to communicate with the apprehended person, and since that was impossible, he signed the minutes and left. The apprehended person was transported to the hospital for medical care, as state by the CIO⁴⁹⁵.

There are situations when drunken persons are brought to a police commissariat, without being suspected of a crime, but rather only due to the state in which they are. In one of the monitored cases, a drunken person was placed in a barred cage, and three hours later (during which the person slept) he was free to leave, while his stay in the commissariat was undocumented. Sometimes, policemen do not know how to behave with drunken persons. In one of the monitored situations, two drunk persons were brought into the commissariat and it took the policemen more than 20 minutes to decide what they had to do and how to proceed.

When it comes to persons without a place to stay, based on the discussions with the guards, we established that such persons are apprehended because they are found on the street, and, usually, they are released after an interrogation.

In the course of monitoring, it was also established that police officers have difficulties when apprehended persons have an aggressive behavior in the premises of the police commissariat. In several of the monitored cases police officers could hardly cope with such situations, not knowing how to behave and what legal measures to take. It was noticed that, in such situations, CIO were reluctant to allow the researches to be present in criminal investigation actions. The same was observed in another case when the apprehended person was threatening the police that he would cut himself with a lamp which he dismantled through the bars⁴⁹⁶.

⁴⁹⁵ Case study 1P.

⁴⁹⁶ Case study 28P.

7. The Right to Interpreter and Translator

7.1. Legal Provisions Regarding the Right to Interpreter and Translator and the Compliance with ECHR Standards

National legislation provides for the right to an interpreter and translator. The aim of these provisions is to secure that persons can exercise their right to defence and the right to a fair trial, although they are not sufficient. The ECtHR case-law established that interpretation shall be ensured not only for the one who does not know the language, but also for the ones with speaking or hearing deficiencies, as well as the fact that this right is free of charge⁴⁹⁷.

The Directive on the right to interpretation and translation in criminal proceedings⁴⁹⁸ sets the basic conditions for securing the right to an interpreter and translator, as follows:

1. suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative authorities, including during police questioning;
2. where necessary, interpretation is available for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications;
3. a procedure or mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter;
4. translation/interpretation provided shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring

⁴⁹⁷ ECtHR, Luedicke, Belkacem and Koc v. Germany, 28.11.1978, para. 46.

⁴⁹⁸ Directive 2010/64/UE of the European Parliament and of the Council dated 20 October 2010 // <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0064&from=EN>

that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence. It shall be possible to claim that the interpretation is not of a quality sufficient to safeguard the fairness of the proceedings;

5. suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all essential documents:
 - a. essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment (as well as other documents at the decision of authorities);
 - b. there is no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them;
 - c. oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings;
6. state authorities shall meet the costs of interpretation and translation;
7. state authorities shall establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities;
8. interpreters and translators shall observe confidentiality regarding provided interpretation and translation.

Thus, according to the Criminal Procedure Code, those who do not know or do not speak the state language, have the right to familiarize themselves with all the acts and materials of the case file, and to speak in court via an interpreter. At the same time, court proceedings may take place in a language which is acceptable for the majority of the persons participating in the proceedings. In this case, procedural decisions are also mandatorily drawn up in the state language. Procedural acts of the criminal investigation authority and those of the court shall be handed to the suspect, accused, defendant, being translated into his/her mother tongue or into a language known to him/her⁴⁹⁹. The participation of a lawyer in criminal proceedings is mandatory if the suspect does not possess or insufficiently possesses the language of the proceedings⁵⁰⁰.

⁴⁹⁹ Art. 118, para. (2), p. (3) Constitution of RM, art. 16, CPC.

⁵⁰⁰ Art. 69, para. (1), p. (3), CPC.

Moreover, the information obtained through violation of the right to an interpreter or translator cannot be accepted as evidence and, therefore, shall be excluded from the case file, cannot be presented in court and cannot be used as grounds for the sentence or other court decisions.⁵⁰¹

National legislation provides for the obligation of the interpreter/translator to observe the confidentiality of the obtained information. Thus, the following cannot be disclosed: the circumstances and data which became known as a result of procedural actions, including the circumstances regarding inviolability of private and family life, as well as information which represents state secret, commercial secret or other official information with limited accessibility.⁵⁰²

Although the national legislation does not directly refer to the quality of translation, both the Criminal Procedure Code and the Law on Authorization and Payment for the Interpreters/Translators provide that translation shall be complete, exact, accurate and timely, while for intentionally incorrect translation/interpretation the translator may be held criminally liable. What is more, prior to commencing a procedural action, the criminal investigation authority shall establish the competence of the interpreter/translator.

At the same time, national legislation does not contain a mechanism for verification if the suspects or accused speak and understand the language of criminal proceedings and if they are in need of an interpreter, although it does provide for the fact that the interpreter/translator is appointed in this capacity by the criminal investigation body.

7.2. Measures Taken in Practice by the Police for Ensuring Interpretation

7.2.1. The Level of Requesting Interpretation

Due to a reduced number of monitored cases during June-September 2014 involving persons who did not know the state language, it is difficult to make

⁵⁰¹ Art. 94, para. (1), p. (3), CPC.

⁵⁰² Art. 85, para. (4), p. (9), CPC; art. 3, lit. (e), art. 7, para. (10), lit. (c) of the Law on Authorization and Payment for the Interpreters and Translators Employed by the Superior Council of Magistracy, the Ministry of Justice, Prosecution Authorities, Criminal Investigation Authorities, Courts, Notaries, Lawyers and Bailiffs, No. 264 of 11.12.2008, published in the „Monitorul Oficial”, No. 57-58 of 20.03.2009.

any conclusions regarding the number of requests for interpretation services. Nevertheless, one of the interviewed layers has mentioned that, as a rule, interpreter is invited at the request of either lawyer or client, even if the criminal investigation body knows that the suspect does not possess the state language. In practice, given the consent of the suspect, he/she is interrogated by the criminal investigation offices or prosecutor in a language known to the suspect, the statements being recorded in the state language. Later on, a translator is invited, or even a functionary working in the respective authority, who reads out and translates the statements into the language spoken by the suspect⁵⁰³.

7.2.2. Interpretation at the Initial Stages of Apprehension

According to the national legislation, the interpreter/translator is appointed by the criminal investigation body and may be selected from the persons suggested by the participants. What is more, the person carrying out criminal investigation, defender, legal representative, clerk, expert, witness are not allowed to act as interpreter/translator, even if they possess the languages and signs necessary for translation⁵⁰⁴. This legal provision is not duly applied in practice due to various reasons.

Interpretation, both at the initial stage of apprehension, and at later stages, is carried out with great difficulties. The majority of police officers mentioned that *there were no translators within the police inspectorate, CIO personally has to find a translator. They usually address the embassies accredited in the Republic of Moldova, Migration and Asylum Bureau, parties or even interpreters/translators who are their friends or acquaintances (who agree to translate free of charge)*. Most of the police officers stated that *there was no mechanism which would form a basis for ensuring translation in police inspectorates and that it was difficult for them to have the costs covered by the state*.

This was also confirmed by lawyers. All the interviewed lawyers mentioned that, *in the majority of cases where the person did not know the state language, CIO drew up documents both in the state language and in the Russian language*. At the same time, some of the lawyers have said that, *in the majority of cases, the criminal investigation officer undertakes to translate to the suspect or accused the documents with which he/she is familiarized, and the lawyer confirms what has been translated*.

⁵⁰³ Interview IA4.

⁵⁰⁴ Art. 85, para. (1)-(2), CPC.

Even so, the lack of knowledge of the state language by the apprehended person is sometimes neglected in practice. In several monitored cases, involving Russian speaking persons, CIO would discuss with the apprehended persons in Russian, and the procedural acts would then be drawn up both in the state language and in Russian. Nevertheless, in two of the monitored cases, the apprehended persons mentioned that, although they were Russian speakers, they had signed some of the documents drawn up in Romanian.

7.2.3. Interpretation During Lawyer - Client Consultations

The majority of the interviewed lawyers mentioned that *in PIs there were very few interpreters/translators employed, and in the majority of PIs there were none. What is more, it is very difficult to ensure translation during nighttime or during days off, because it is almost impossible to find an interpreter/translator.* This was also confirmed by some CIO during interviews. Due to these reasons, the lawyer during consultations speaks to the client in the state language or in Russian (if the client is a Russian speaker).

7.2.4. Interpretation During Interrogation

During interrogations interpretation is also carried out by CIO with the help of the lawyer or by the lawyer, sometimes with participation of other persons present. Thus, in the monitored cases involving persons who did not speak the state language, there was not a single interpreter present. This fact was confirmed by police officers and lawyers during interviews. Some lawyers have mentioned that *in practice upon the suspect's consent he/she is heard by the criminal investigation officer or prosecutor in the language known to the suspect, and the statements are recorded in the state language. Later on a translator is invited or a functionary working in that authority who reads out and translates the statements in the language spoken by the suspect.*

On the other hand, it is often impossible to ensure the right to an interpreter. One of the lawyers mentioned that *„in a case where the suspect was of Bulgarian nationality, he had no translator whatsoever, due to the fact that the authority did not have translators speaking Bulgarian. In these conditions, the suspect had to speak Russian, which he knew rather poorly”⁵⁰⁵.*

⁵⁰⁵ Interview IA4.

7.3. **Establishing the Need for Interpretation/Translation**

7.3.1. **Establishing the Need by the Police**

CIOs do not have clear criteria to establish the need for translation. Some interviewed police officers have stated that *the need for translation is established if the person is a foreign citizen, is of another nationality or when police officers notice that the person does not know the state language*. Others have said that *CIO decides on the need for translation when there is a request from the suspect or defender*. This was also confirmed by some lawyers during interviews, who said that, *as a rule, interpretation was ensured at the request of the lawyer or client, even if the criminal investigation body knows that the suspect does not speak the state language*.

7.3.2. **Establishing the Need by Lawyers**

The majority of interviewed lawyers have said that *they establish the need for translation based on the discussion with the client and request the CIO to appoint an interpreter/translator, who is not provided because PI neither has such employees, nor any mechanism to that end*.

7.3.3. **Establishing the Appropriate Language**

Currently, there are no clear criteria for establishing the language spoken by the apprehended person. Most often, CIO or the lawyer rely on their own knowledge or use the citizenship or nationality of the apprehended a relevant indicator.

7.3.4. **Understanding of Conditions Regarding Interpretation by the Police and Lawyers**

Both police officers and lawyers know that the apprehended person has the right to interpretation/translation. Moreover, they understand that the duty to secure this right is vested with state authorities, which shall pay for the services of interpretation/translation. Nevertheless, police officers do not know where they can look for an interpreter/translator if the institution where they work does not have such a person.

Authorized interpreters/translators are not contacted by the CIO in order to be involved in procedural actions, although the registry with their names is available on the web-page of the Ministry of Justice of the Republic of Moldova. Most often, the concern of the police officers is that they cannot

ensure payment for the services of the interpreter/translator because they cannot properly claim these amounts from the state budget. At least, this was the motivation used by the police officers in the interviews. Due to this reason, they approach people they know or their friends who are willing to help free of charge, not being concerned with the quality of translation and consequences of an incorrect or inefficient translation.

On the other hand, some lawyers understand the effects of breaching the right to interpretation/translation. During the interviews, they have mentioned that, sometimes, they challenge the evidence obtained with violation of the right to interpreter, yet due to the deplorable situation in this domain, this is not taken into account by the court.

7.4. Quality of Interpretation

- Use of Accredited Interpreters

National legislation provides for the manner of authorizing interpreters and translators. Thus, the activity of interpreter and translator is practiced by the persons accredited for the profession and authorized by the Ministry of Justice (MJ), and who, based on a contract on provision of services, works with the following authorities: the Superior Council of Magistracy, the Ministry of Justice, prosecution authorities, criminal investigation authorities, courts, notaries, lawyers and bailiffs. The Ministry of Justice holds the State Registry of Authorized Interpreters and Translators, both in an electronic and manual form. What is more, the Law on Authorization and Payment for Interpreters/Translators provides for the amount and manner of payment for the services of interpreters⁵⁰⁶ and translators⁵⁰⁷.

⁵⁰⁶ According to art. 18, payment for interpreters of the languages of national minorities who live in the Republic of Moldova and for the languages of international circulation is made based on the tariff of 85 lei/hour or for fractions of an hour, the fee being set, as the case may be, by the decision on appointing the interpreter. Payment for interpreters who translate simultaneously using headphones is made based on the tariff of 90 lei/hour or for fractions of an hour, or, as the case may be, based on the contract on rendering of services. For interpretation of the signs of the numb, deaf or deaf-and-numb, the established tariff is raised by 150%.

⁵⁰⁷ Translators are paid as follows: (a) for translations from a language of a national minority who live in the Republic of Moldova or from a language of international circulation into the state language and vice versa, payment is made based on the tariff of 85 lei/page, of the A4 format, typed with two intervals; (b) for translations from or into one of the oriental or rarely used languages (Japanese, Chinese, Turkish, Arab etc.), the tariff is increased by 150%; (c) for urgent translations (24–48 hours), the payment is made based on tariffs provided for in (a) and (b), increased by 50%.

Although, at the legislative level, there is a mechanism for authorizing interpreters/translators, both interviews and monitoring confirmed the fact that it is not functional. CIOs and lawyers do not request the services of the interpreters authorized by the MJ because it is very difficult to ensure the payment for their services by state authorities. None of the interviewed persons mentioned the use services of the authorized interpreters/translators.

- Professional Level of Interpreters

National legislation sets forth the manner of authorizing of interpreters and translators by MJ, through establishing an Accreditation Commission and organizing an accreditation examination⁵⁰⁸. After having been authorized by MJ, interpreters/translators are obliged to continue self-education, and to participate in continuous training courses, at least, once a year (both in the country and abroad) and to report about it to the MJ on an annual basis. Continuous training is done by the relevant higher education institutions of the Republic of Moldova. Moreover, during the training, the need of specialization in the interpretation/translation techniques and national and international legal terminology must be taken into account.

Within this research it was not possible to establish the level of professionalism of interpreters/translators during monitoring, because none of the monitored cases was attended by an interpreter. At the same time, some lawyers mentioned during interviews that besides the fact that there were too few interpreters, the quality of interpretation/translation was very weak, and the manner of interpretation/translation was inefficient, without making it clear whether or not the services had been provided by authorized interpreters/translators.

7.5. Measures Taken for Translation of Documents

Currently, CIOs do not have a mechanism which would ensure translation of documents, although according to both the ECHR standards and those

⁵⁰⁸ The Regulation on the Organization of Activity of Interpreters and Translators engaged by the Superior Council of Magistracy, the Ministry of Justice, Prosecution Authorities, Criminal Investigation Authorities, Courts, Notaries, Lawyers and Bailiffs, approved by the Decision of the Government RM No. 459 of 05.08.2009.

of the EU the right to an interpreter/translator is free of charge and the apprehended person cannot be obliged to pay for the translation services. Due to these reasons, the apprehended person and his/her lawyer have to find solutions for securing the translation, when it is necessary. Although, in most situations, if the person is a Russian speaker, some of the procedural acts are drawn up also in this language in order to ensure, to some extent, the right to translation. But even in this situation, the quality of the translation or the manner of drawing up of the document depends on the level of the knowledge of the Russian language by the CIO, who may not possess it sufficiently well to translate legal acts. Thus, practically no measures are taken in order to secure the translation of documents. This was also confirmed during interviews with lawyers. One of the interviewed lawyers mentioned that, most often, CIOs inform the apprehended persons that there are no translators and that the lawyer can explain to them all that they need to know or, in the worst case, the apprehended persons are told that they can address translation companies on their own in order to have procedural documents translated.

8. Conclusions and Recommendations

Conclusions

This research was designed to observe and measure the practical operation of the rights of suspects arrested and detained by the police. Using a unique set of tools to gather empirical data about what really happens in practice, the research sought to understand the constraints that operate on the daily routines of police and lawyers, as well as the factors that influence behaviour in the delivery of rights – be they organisational, cultural or professional.

We conducted approximately 200 hours of direct observational research in a police station over the course of 29 days. We also conducted apprehension minutes reviews and interviewed police officers and lawyers. Although our observations were limited to one police station we identified the major legal and practical issues related to respect for suspects' rights in Moldova

In this context, the Moldovan legal framework contains sufficient detailed provisions on the requirements, conditions and legal grounds for apprehension proceedings in criminal and contravention cases. The Criminal Procedure Code adequately provides for suspects' rights at the pre-trial stage and regulates the authorities of criminal investigation bodies. Moreover, in 2012, additional guarantees for suspects were introduced into criminal proceedings such as the right to independent medical assistance, the obligation of the criminal investigation bodies to inform the suspects about the absence of negative consequences of remaining silent, as well as criminal liability for false denunciation of other persons. In this sense, the national law on suspects' rights complies with the requirements of art. 5 of the ECHR and contains the main elements established by EU Directives.

However, the way in which the legal provisions are put into practice is, in a number of respects, insufficient to ensure the fair and adequate protection of procedural rights. Even though, overall, the legal provisions are in line with international standards, there is a need to clarify the role of police officers

during apprehension and in respect of their main obligations and duties to suspects. The research established that police officers frequently do not know how to proceed in particular situations due to lack of guidance or that they choose to follow deficient procedures that are unofficially established. In addition, we observed that police officers face difficulties in dealing with aggressive suspects and do not know how to behave in a troubling situation. Moreover, violation of the term of apprehension is a common practice in the activity of the police.

Additionally when it comes to verifying the legality of apprehension by the investigative judge, the unstable and incoherent judicial practice makes this control method ineffective.

We set out below our major conclusions and recommendations.

The role of the Investigative Officer

One of the major issues identified during this research refers to the legal status of the investigative officers and their legal authority during apprehension and first interrogation. It is still unclear how they interact with the suspects and whether their involvement is indeed necessary, as often some of them are allegedly involved in illegal acts (such as use of physical or psychological violence).

We noticed as well that suspects were informed about their rights usually after the first so-called „discussion” with the investigative officers, although the law requires prompt notification about the right to silence. These „discussions” are not properly documented and even though they are not qualified as such by the authorities, they do represent an initial interrogation. However, the involvement of the investigative officer is not limited to this situation. We observed that in the interrogations conducted by the criminal investigators, they interfered by making inappropriate comments and addressing questions to the suspects although they have no right to be present during the interrogation.

Legal Aid and the Role of Lawyers

The Moldovan legal aid system has developed positively in recent years and addresses the most important issues of pre-trial legal assistance. However, during the research we had the opportunity to observe the performance of legal aid lawyers along with private lawyers. The attitude and approach of some lawyers during the apprehension was contrary to their clients’ interests

and jeopardized their right to receive professional advice. We established that some lawyers had a passive approach to defending their clients and sometimes shortened the lawyer/client consultation even though they faced no pressure from the police to do so. In the majority of cases the advice provided by lawyers was standardized and lacked an individual approach towards the case. This may be for a range of reasons, such as limited access to the case file and the lack of any special facility or room available for consultations. Often the lawyer conducted the consultation with their client in the hallways of the police station, and police could interfere and listen in.

Whilst lawyers attended interrogations in the majority of the cases observed, many of them were very passive even when the interventions in the interest of their client were obviously needed. Lawyers did not intervene to challenge the inappropriate questions addressed to the suspect or to insist on including in the interrogation record the violations of the law, their objections or other significant aspects. Some lawyers lack knowledge and skills on how to behave during interrogations and have no guidelines to follow.

The right to silence

Even though we did not interview suspects during this research to determine the level of understanding of the right to silence, we observed that in very few cases criminal investigator or even lawyer explained to the suspect the meaning of the right to silence and the consequences of remaining silent. We did not notice suspects who would rely on their right to remain silent and even their lawyers did not encourage them to do so in the observed situations.

The right to medical assistance

We noticed that lawyers are more engaged when it comes to client's need for emergency medical care. Usually, the suspect or his lawyer request the render of medical assistance provided in the majority of cases at the police station by the emergency medical service. Moreover, we established that the apprehension protocol contains a separate section related to the health condition of the suspect that should be filled out by the criminal investigator and signed by the suspect. Even so the behavior of the police officers in this respect is more reactive than proactive as only involvement we noticed from their part was calling the ambulance in emergency cases.

Notification of Rights

Although the Moldovan CPC establishes the obligation for the police to provide information to the suspect about his/her rights, the way in which this information is provided needs further improvement. Usually this information consists of an extract from the CPC regarding the rights of the suspect/accused as an appendix to the apprehension protocol. Even though the extract contains all the required information it is expressed in a very technical language and the notification has a formal character.

We determined that police officers, or even lawyers, routinely do not provide further explanations or clarifications regarding the list of rights and do not check whether the suspect understands the rights of which they are being informed. In this regard, Moldovan legislation does not contain the concept of a „Letter of Rights” designed in a simple and accessible language as prescribed by the EU Directive 2012/13/EU on the Right to Information in Criminal Proceedings.

The timing of notification is also an issue. Although, according to the law, it should be given immediately after apprehension police officers usually choose to provide it as late as possible, and sometimes after the first interrogation.

Access to Documents

In relation to the access to the case documents, lawyers’ requests are usually rejected on the grounds of the confidentiality of the criminal investigation. However, following recent amendments to the law, defence lawyers do have access to the documents justifying the application of arrest.

Interpretation and Translation

There is no mechanism in place to ensure the enforcement of the right to translation and interpretation. Although Moldovan legislation regulates the authorization process of the translators and interpreters available for the law enforcement bodies we found that these individuals are not involved in apprehension proceedings when needed. The authorities do not have a clear procedure on how to manage this process and are not able to afford the cost of engagement of authorized translators or interpreters. As a result, they prefer to ask for the assistance of their friends or acquaintances or to translate by themselves even though the law prohibits this.

Furthermore, there are no criteria or procedures in place to determine the need for translation or interpretation, for identification of the relevant language, or regarding the quality of translation or interpretation. Although we were not able to obtain data about the quality of translation and interpretation, some of the lawyers stated that translation during pre-trial stage is poor and inefficient. We also noted that criminal investigators usually switch to Russian when this is the language spoken/understood by the suspect without requiring the assistance of an authorized translator. In addition, we found that responsibility for translation of the case materials is placed on the suspects' shoulders; no assistance is provided by the police in this respect.

Recommendations

The proper enforcement of suspects' rights is negatively affected by the lack of detailed guidelines designed for police officers, the deficient practices followed by them during apprehension, and the passive role played by defence lawyers together with a lack of appropriate skills.

On the basis of our research findings we make the following recommendations:

1. Govern and Parliament

- To amend the Criminal Procedure Code in order to extend the term of apprehension to the time of carrying out procedural measures immediately preceding the drawing up of the apprehension document, where the person's freedom of movement is effectively constrained during such measures. The procedural norms on challenging the legality of apprehension should be also clarified.
- To amend the Criminal Procedure Code in order to clarify the role and the authority of the investigative officer during apprehension.

2. Ministry of Internal Affairs

- To draft and approve guidelines (instructions) to facilitate the daily work of the police and to explain step-by-step their role during apprehension proceedings. Moreover, the guidelines should contain clear instructions on how to ensure that suspects' rights are respected during apprehension, and on how to proceed in difficult situations.

- To review the existing list of rights and to draft it in an accessible and simple language according to the requirements of the EU Directive on the Right to Information in Criminal Proceedings regarding the „Letters of Rights”. Furthermore, instructions should be issued by the Ministry of Internal Affairs on when and how the information must be provided.
- To equip all police stations with available rooms for consultations between suspects and lawyers to ensure appropriate conditions for confidential meetings of lawyers with the apprehended person.
- To create an efficient mechanism to ensuring translation and interpretation Criteria to determine the need for translation and interpretation, identification of the relevant language, and the quality of translation and interpretation should be developed.
- To develop detailed instruction on ensuring medical assistance during apprehension.
- To develop and implement training programs on suspects’ rights for criminal investigators.

3. *Union of Lawyers and National Legal Aid Council*

- To develop guidelines on tactics and techniques used by lawyers during police interrogation.
- To draft and enforce quality standards governing legal assistance provided during the pre-trial stage. Monitoring mechanisms should be created in order to ensure that quality standards are maintained.
- To develop and implement training programs on suspects’ rights for defence attorneys.

Annexes

Annex 1

Time, number of apprehensions and other monitored actions

No. of observation days	Duration	No. of monitored apprehensions ⁵⁰⁹ and observed actions
1	8 hours: 10 ⁰⁰ - 18 ⁰⁰	0
2	8 hours: 13 ⁰⁰ - 21 ⁰⁰	1P
3	5 hours: 10 ³⁰ - 12 ⁰⁰ ; 16 ⁰⁰ - 19 ³⁰	2Pn ; hearing the suspect in the absence of the lawyer (1).
4	5 hours: 10 ⁰⁰ - 15 ⁰⁰	0
5	9 hours and 20 min.: 10 ⁰⁰ - 13 ⁰⁰ ; 17 ⁰⁰ - 23 ²⁰	3C-6C ; hearing the suspect in the absence of the lawyer (4).
6	6 hours: 16 ⁰⁰ - 22 ⁰⁰	0
7	7 hours: 16 ⁰⁰ - 23 ⁰⁰	7C, 8C , hearing the suspect in the absence of the lawyer (2), 9n .
8	4 hours: 16 ⁰⁰ - 20 ⁰⁰	0
9	5 hours: 17 ⁰⁰ - 22 ⁰⁰	10P, 11P, 12C hearing the suspect in the absence of the lawyer (2).
10	4 hours: 15 ⁰⁰ - 19 ⁰⁰	0
11	6 hours: 18 ³⁰ - 00 ³⁰	13P , hearing the suspect in the presence of the lawyer (1).
12	5 hours: 17 ³⁰ - 22 ³⁰	0
13	7 hours: 12 ⁰⁰ - 16 ⁰⁰ ; 18 ³⁰ - 21 ³⁰	0
14	8 hours and 30 min.: 10 ⁰⁰ - 18 ³⁰	14P hearing the suspect in the presence of the lawyer (1); being present in counseling the client (1).

⁵⁰⁹ This number indicates the order number of the apprehension in the order in which it was documented; P – criminal apprehension; C – contraventional apprehension; n – deprivation of liberty not documented as apprehension.

15	8 hours and 30 min.: 10 ⁰⁰ - 18 ³⁰	15Pn, 16P
16	8 hours and 30 min.: 10 ⁰⁰ - 18 ³⁰	17n
17	7 hours: 10 ⁰⁰ - 17 ⁰⁰	0
18	8 hours and 30 min.: 10 ⁰⁰ - 18 ³⁰	18n
19	8 hours: 11 ⁰⁰ - 19 ⁰⁰	19P hearing the suspect in the presence of the lawyer (1).
20	10 hours: 12 ⁰⁰ - 22 ⁰⁰	0
21	10 hours: 12 ⁰⁰ - 22 ⁰⁰	0
22	10 hours: 12 ⁰⁰ - 22 ⁰⁰	20P, 21P, 22n hearing the suspect in the presence of the lawyer (2); being present in counseling the client (2).
23	8 hours: 11 ⁰⁰ - 13 ⁰⁰ ; 15 ⁰⁰ - 21 ⁰⁰	23P hearing the suspect in the absence of the lawyer (1); hearing the suspect in the presence of the lawyer (1); being present in counseling the client (1).
24	10 hours: 11 ⁰⁰ - 21 ⁰⁰	0
25	11 hours: 10 ⁰⁰ - 12 ⁰⁰ ; 16 ⁰⁰ - 01 ³⁰	24P, 25P hearing the suspect in the absence of the lawyer (1).
26	5 hours: 15 ³⁰ - 20 ³⁰	26P, 27P hearing the suspect in the absence of the lawyer (1).
27	4 hours: 12 ⁰⁰ - 16 ⁰⁰	0
28	4 hours: 10 ⁰⁰ - 14 ⁰⁰	0
29	2 hours: 10 ⁰⁰ - 12 ³⁰	28P (documenting an exceptional case <i>the imminent danger for the life and health of the apprehended</i> generated by an apprehended person).
Total	200 hours	Observations were carried out on: 28 apprehensions, out of which: 16 criminal; 7 contraventional; 5 undocumented. 18 hearings of the suspect, out of which: 12 hearings of the suspect in the absence of the lawyer; 6 hearings of the suspect in the presence of the lawyer. 4 consultation of the lawyer with the apprehended client

Annex 2

Excerpt from a field diary

Case 2Pn (undocumented) – the third day of observations

At 17:46, three persons entered the Inspectorate, two policemen, and the third one dressed in civil clothes. The person brought in by them started, in a loud voice, to express his discontent regarding his apprehension and refused to sign the registry of civil persons who are brought into the Inspectorate or come to the police due to other reasons. His reasoning was that he could neither read, nor write and he did not understand what he should sign for. All three headed to the stairs and I followed them. The policemen said that I should not be present because they simply wanted to discuss with the suspect PI and that he was not apprehended.

Later on I found out that the policeman dressed in civil clothes was a district inspector from an Inspectorate from up north (D) (approximately, 200 km away from Chişinău), who had come to the capital to attend some professional training courses. The colleagues from the Inspectorate where he worked asked him to assist an apprehended person in the Inspectorate C in Chişinău, before the service car would come in 2-3 hours and the policemen from the Inspectorate D. The apprehended person was accompanied to the fifth floor, to one of the offices of investigative officers. In total, there were five policemen in that office (including the two who had apprehended PI, the latter being of Roma origin). There were also persons dressed in civil clothes in that office. After I introduced myself, I was denied access to that office, because PI was not apprehended, and the officers were to conduct some special investigative measures. I insisted saying that PI is not free to leave and, therefore, apprehended. Another policeman entered and heard this discussion, then he left and came back in 5 minutes, saying that I could remain.

None of the policemen introduced themselves, but started posing questions to the apprehended person in Russian which the latter understood. The policeman dressed in uniform told me that he had apprehended PI on the central market in the capital city, because he had recognized him by a photo provided by the Inspectorate D. in relation to suspicion of a robbery. The policemen addressed many questions to PI regarding his participation in the commission of the crime in the D rayon. PI replied that he did not know where the D rayon was, and then he said that, possibly, he had been to the regional center, but it was only during nighttime. Practically, initially he denied any involvement in criminal activities and said that he had never been to the rayon and town D, where one of the crimes about which the officers were asking had been committed. After, at some point in time, he went to the bathroom, being accompanied by an investigative officer, who also offered him a cigarette, the suspect, after he had returned, admitted that, actually, he had been to the rayon and town D in the north of the country, but only during nighttime and, therefore, he was not sure in the very beginning and could not offer more details. He also spoke about some persons from his social environment, including some relatives. During the interrogation, the officers verified and determined that the apprehended person could not read the language in which he was speaking, asking him to read something in the Criminal Code in the Russian language. He repeatedly asked to be allowed to call some people he knew, because he had the right to call. The policemen said that this right was only for the apprehended persons, while he was not apprehended. They also explained that this right to call is applicable only three hours later after apprehension. None of the policemen explained any rights to him. Finally, the policemen gave up and allowed PI to phone several numbers that he indicated, one of the numbers being a Ukrainian number, but he did not manage to talk to anyone. During, approximately, two hours, while the apprehended was in the office with the policemen, he went out twice to smoke, each time for 5-10 minutes, being accompanied by a policeman. Finally, at 19:30, PI was taken to the first floor and conveyed to two policemen from the Inspectorate D, who took him in the police car. They also received a report drawn up by the policemen who had apprehended him. No apprehension minutes were drawn up. I was told that the apprehension minutes would be drawn up once they arrived to the Inspectorate D⁵¹⁰.

⁵¹⁰ It takes from 4 to 5 hours by car to get from Chişinău to the Inspectorate D.

Case 23P – the 23rd day of observations

At 11:00, when I entered the inspectorate, I checked whether there were any apprehended persons in the specially arranged premises. There were 4 persons, who had already been arrested and brought to the Inspectorate in order to participate in various criminal investigation actions. When I went back to the corridor, I noticed how an investigative officer, dressed in civil clothes, brought in a person of 18 years of age, saying that the latter was apprehended. It was the same criminal investigation officer who had told me a day earlier that he would call me on that day in the morning at 6:00 so that we could attend a planned apprehension at a place of residence (but he had not called). I managed to find out from the apprehended person that he had been told about the grounds of apprehension approximately half an hour ago when he was apprehended at home. No violence had been applied. The apprehended person asked me if the policemen would beat him. Having noticed me, the investigative officer took the apprehended person and went to the stairs. I followed them and then the investigative officer told me that I was hindering the process of catching criminals. The apprehended M.G. was taken to an office on the fourth floor where there were two criminal investigation officers. One of them immediately started asking him questions regarding a theft of a mobile phone and photographed him with his own mobile phone. The investigative officer, who brought him in, also stayed in that office and addressed several questions to the apprehended. He looked in my notebook where I was taking notes and told me to write that he had no working conditions, he had gone to the apprehension with his own car and that he had to do the job of the escort, i.e. to escort the apprehended into the temporary detention isolator which was located one block away from the Inspectorate. After he left, a colleague of his entered who also addressed questions to the suspect and then left.

In the office where the apprehended person had been brought in there was another criminal investigation officer working at another table who was interrogating a person dressed in civil clothes. In the only armchair in that office, there was another person dressed in civil clothes (I could not find out who that was; he talked to the criminal investigation officer who was not documenting apprehension, but was interrogating a person in the capacity of an offended party in another case; he left in about 20 minutes).

CIO told the suspect to sign a statement drawn up by him because he had no financial means to contract a lawyer and, therefore, he would be offered an *ex officio* lawyer. The suspect signed.

CIO asked the suspect several questions regarding some mobile phone. The suspect answered that he knew nothing.

CIO who was documenting the apprehension left the office several times for 5-10 minutes.

Finally, he announced that he would call an *ex officio* lawyer. He established some identification data from what the suspect told him and reproached him with not having identification documents with him. CIO asked him if he would make statements. The apprehended person, M.G., said he would not. Then he received from the CIO a template titled *Explanations*, where he wrote his identification data and personally wrote that he refused to make statements and signed that document.

CIO suggested to him to make statements, otherwise he would be apprehended. If he agreed, the prosecutor would apply the ban to leave the area and he would be released.

CIO asked him to take out all he had in his pockets. The apprehended took out some money. CIO gave him another template for explanations and destroyed the first one where the refusal had been confirmed. The apprehended wrote several lines and said he was confused. Then CIO started to ask him questions, and the apprehended was answering them practically acknowledging that he had gained a mobile phone as a result of a robbery committed by him together with a friend of his, i.e. had committed the deed of which he was suspected.

CIO asked the offended party who was being heard by his colleague at another desk, to speak quieter.

An officer in uniform came in, armed with a pistol and asked the apprehended person why he had not met at the police with a threatening voice, and then immediately left after the criminal investigation officer had made a sign pointing in my direction.

CIO handed to the suspect a minutes of informing him about his rights, where there were written the rights of a suspect in proceedings.

An investigative officer came in and said that the apprehended could be released, because it was his birthday on the 30th of August, 2014. CIO said that the apprehended person had admitted that he had committed the deed of

which he was suspected. Then the investigative officer said that, in such case, he had to be arrested for 30 days and left the office.

At 12:06, the *ex officio* lawyer C.C. entered the room and presented his mandate. CIO gave him the order on recognizing M.G. in the capacity of suspect and read it. CIO told the apprehended to take off his belt because he would be subjected to bodily search and drew up the minutes of bodily search.

The lawyer asked if the rights were clear. The suspect responded positively. CIO said about the right to silence. The lawyer added that the refusal to make statements would in no way influence the case.

CIO handed the minutes of apprehension, which was read by the lawyer and signed by all three. CIO told the apprehended that he had the right to make a call. The apprehended said that his mother was at work and that she did not have a mobile phone. Thus, no call was made to inform anyone about the apprehension. The lawyer said that he wanted to discuss separately with his client and went out to corridor with him. I followed them. The lawyer did not object, because he had been informed by NCSGLA about my mission at the Inspectorate. He told the suspect that it would be good to admit to the committed offence and not to confuse the CIO. After this interrogation, there will be a confrontation with another accomplice in that crime. If he acknowledged his guilt, a reconciliation agreement would be concluded and the case would be ceased.

Upon his return to the office of CIO, the apprehended made statements in which he acknowledged his guilt in a very detailed manner, which was recorded by the CIO in the minutes of interrogation.

The interrogation was over by 12:50.

P.S.: I had noticed that apprehended person in the room with metal bars at 18:00. He told me that he had been brought to the temporary detention isolator and then back to the Inspectorate C, because he had no identification documents. He also told me that he had not eaten anything that day. At 19:00 I again checked that room and the apprehended person was no longer there.

Annex 3

CASE FILE REGISTER FOR POLICE

Researcher:	Case ref No:	Country:
1. GENERAL		
<i>Note: If any of the requested information is not available to you, please leave the respective field(s) blank</i>		
Town:	2. Police station:	
3. Suspect:	4. Local reference no.:	
5. Nationality:	6. Age:	7. Gender:
8. Special vulnerability ¹	a. YES / NO / NA ²	b. Which:
9. Medical condition: ³	a. YES / NO / NA	b. Which:
10. Suspect speaks/understands local language: YES / NO / Partial / NA		
11. Suspect may:	a. Read: YES / NO / NA	b. Write: YES / NO / NA
12. Suspect was previously apprehended / arrested before: NEVER / RARELY / OFTEN / NA		
2. ARREST		
13. Arrest: ⁴	Date:	Time:

-
- ¹ A child is a suspect who is or appears to be younger than 18 years. A vulnerable suspect is the suspect *who is or may be*–
- Mentally ill
 - Mentally unstable or suffering from difficulties in understanding/learning
 - Suffers from physical or sensory disabilities, for example, deaf or with hearing deficiencies, blind or with weak eyesight
 - Unable to read or speak or who has severe speech disabilities
- ² NK = do not know.
- ³ In other words, they have or may have a health condition that prevents them to understand and effectively participate and/or due to which they need medical care or medicine while in police custody.
- ⁴ In other words, apprehended by the police in connection with the suspicion of an offence, regardless of whether or not it falls in the category of arrest.

14. Reasons for arrest: (apprehension):		
15. Brought to the station:	Date:	Time:
16. Arrest authorized in the station:	Date:	Time:
17. Change in suspect status: ⁵	a. YES / NO / NA	b. Which:
3. PROCEDURAL RIGHTS		
A. Right to information		
18. Procedural rights given:	a. Orally: YES / NO / NA	b. Written: YES / NO / NA
19. Procedural rights given: <i>UPON ARREST / DURING POLICE CUSTODY / UPON INTERROGATION / OTHER TIME / WERE NOT PROVIDED / NA</i>		
20. The person was informed about grounds for arrest: YES / NO / NA ⁶ / NK		
21. The person was informed about the suspected offence: YES / NO / NK		
22. The person was informed about the right to access a lawyer: YES / NO / NA		
23. The person was informed about the availability of state guaranteed legal aid: YES / NO / NA ⁷ / NK		
24. The person was informed about the right to ask for an interpreter: YES / NO / NA ⁸ / NK		
25. The person was informed about the right to silence: YES / NO / NA		
26. The person was informed about the right to contact a third person: YES / NO / NK		
27. The person was informed about the right to access relevant documents: ⁹ YES / NO / NA		
B. Right of access to a lawyer		
28. Was legal assistance mandatory:	a. YES / NO / NK	b. If YES, provide details:
29. Did the suspect ask for legal aid:	a. YES / NO / NA	b. Reason: ¹⁰
30. Was this decision recorded: YES / NO / NA		

⁵ For example, initially was questioned as a witness prior to being considered a suspect, or initially treated as cooperating before being arrested.

⁶ For example, because the suspect has not been arrested.

⁷ For example, because the suspect does not have the right to state guaranteed legal aid.

⁸ Because he/she does not need an interpreter.

⁹ In other words, relevant information for determining the lawfulness of arrest or detention.

¹⁰ Recording any provided reasons for requesting legal aid or refusing this aid.

Whether legal aid was requested or was state guaranteed			
31. Lawyer contacted:	a. YES / NO / NA	b. By whom:	
32. Delay in contacting lawyer:	a. YES / NO	b. How long:	c. Reason:
33. Did the suspect consult the lawyer: YES (in person) / YES (by telephone) / YES (in person and by telephone) / NO / NK			
34. Consultation with the lawyer: a. Lawyer was: PUBLIC DEFENDER / SELECTED LAWYER / NK b. Lawyer was: PRIVATE LAWYER AND PAID BY THE SUSPECT ¹¹ / PRIVATE LAWYER PAID FROM STATE GUARANTEED LEGAL AID (UPON REQUEST) / PUBLIC DEFENDER / OTHER OPTION / NK			
35. Consultation before first interrogation: YES / NO / NK / NA ¹²			
36. Lawyer present at interrogation: AT ALL INTERROGATIONS / AT SOME INTERROGATIONS (when more than one) / AT NO INTERROGATION / NK / NA ¹³			
C. Right to medical assistance – if the suspect had adequate health (See question 9)			
37. Medical assistance provided: BY A DOCTOR CHOSEN BY THE SUSPECT / BY A DOCTOR CHOSEN BY THE POLICE / BA ANOTHER DOCTOR / NO MEDICAL ASSISTANCE PROVIDED / NK			
38. Delays in contacting a doctor:	a. YES / NO	b. Duration:	c. Reason:
D. Special protection for children and other vulnerable suspects – If the suspect was a child or another vulnerable person (See question 8)			
39. Which special arrangements were undertaken: AN INDEPENDENT ADULT OR A PARENT WAS PRESENT / A DOCTOR PARTICIPATED / OTHER ACTIONS WERE UNDERTAKEN (mention above) / NO ACTIONS WERE UNDERTAKEN / NK			
E. Interpretation and translation – if the suspect did not speak or understand the local language or understood it partially (See question 10)			
40. The suspect was informed about his/her procedural rights in an appropriate language: YES / NO / NA			
41. Interpreter provided translation during interrogations: YES (in person) / YES (by telephone) / NO / NA ¹⁴ / NK			

¹¹ By the suspect or a family member, friend etc.

¹² NA (not applicable) if there were no interrogations.

¹³ NA if there were no interrogations.

¹⁴ NA if there were no interrogations.

4. INTERROGATION	
42. Was the suspect interrogated:	a. <i>YES / NO</i> b. If YES, how many times:
43. Interrogation was recorded: <i>IN WRITTEN (text) / IN WRITTEN (summary) / ELECTRONICALLY¹⁵ / NOT RECORDED / NK / NA¹⁶</i>	
44. The suspect was informed of the right to silence: <i>YES / NO / NK / NA¹⁷</i>	
45.	a. Did the suspect appear to understand the caution: ¹⁸ <i>YES / NO / NK / NA¹⁹</i> b. If NO, did the officer explain the content of the right: <i>YES / NO</i>
46. Suspect: <i>ANSWERED ALL QUESTIONS / ANSWERED SOME QUESTIONS / DID NOT ANSWER TO QUESTIONS / MADE AN ORAL STATEMENT / MADE A WRITTEN STATEMENT / NA²⁰</i>	
5. PROGRESS/CASE RESULTS	
47. Outcome of police arrest: <i>SUSPECT WAS RELEASED WITHOUT FORMAL CHARGES / SANCTION APPLIED OUTSIDE COURT / CRIMINAL CASE INITIATED (suspect in arrest) / CRIMINAL CASE INITIATED (suspect was released awaiting examination of the case in court) / NK</i>	
48. Overall time in police custody before formal initiation of criminal investigation: <i>NK</i>	

¹⁵ Electronic = audio or audio-video recordings.

¹⁶ NA if there were no interrogations.

¹⁷ NA if there were no interrogations.

¹⁸ Notification = notification of the right not to testify.

¹⁹ NA if there were no interrogations.

²⁰ NA if there were no interrogations.

Annex 4

CASE FILE REGISTRY FOR LAWYERS

Researcher:	Case ref. no.	Country:
1. GENERAL INFORMATION		
1. Name of the lawyer:		
2. Lawyer:	a. individual	b. on duty
		c. other option: ¹
3. Ref. no. of the suspect:		4. Nationality:
5. Age:		6. Gender :
7. Special vulnerability: ²	a. YES / NO / NK ³	b. Which:
8. Medical condition: ⁴	a. YES / NO / NK	b. Which:
9. Suspect speaks/understands local language: YES / NO / Partially / NK		
10. Suspect can:	a. Read: YES / NO / NK	b. Write: YES / NO / NK
11. Suspect previously apprehended / arrested: NEVER / RARELY / OFTEN / NK		
12. Case payment:	a. privately	b. public sources (state guaranteed legal aid)

¹ Indicate „private lawyer” if the client has chosen that lawyer or lawyers office (although the lawyer who delivers aid is another lawyer of the same office). Indicate „lawyer on duty” if the lawyer has been contracted through a mechanism of duty lawyer, a mechanism organized by the bar association or by other means by the state/public authorities.

² A child is a suspect who is or appears to be younger than 18 years. A vulnerable suspect is the suspect *who is or may be*–
 - Mentally ill
 - Mentally unstable or suffering from difficulties in understanding/learning
 - Suffers from physical or sensory disabilities, for example, deaf or with hearing deficiencies, blind or with weak eyesight
 - Unable to read or speak or who has severe speech disabilities.

³ NK = do not know.

⁴ In other words, they have or may have a health condition that prevents them to understand and effectively participate and/or due to which they need medical care or medicine while in police custody.

13. Client is:	a. new	b. existing	c. former
14. Client is:	a. apprehended	b. attending voluntarily as suspect	d. other option (specify which)
15. Suspected offence(s):			
2. INITIAL CONTACT			
16. Notification by:	a. police	b. state guaranteed legal aid agency/public defender	f. other:
	c. client	d. third party	e. prior arrangement
17. Lawyer contacted by:	a. telephone	b. fax	c. in person
			d. other option
18. Information given about case on initial contact:	a. YES/NO		b. If YES, specify
19. Delays between notification and first contact with the client:	a. YES/NO	b. Length:	c. Reason:
20. First contact with the suspect:	a. telephone	b. in person	c. other option
21: Lawyer visited the client at police station:	a. YES/NO/NA/NK		b. If NO, specify
<i>Section III and VII are applicable only if the lawyer visited the client at police station.</i>			
3. VISITED AT POLICE STATION			
22. Delay in attending police station:	a. YES/NO	b. Length:	c. Reason:
23. Lawyer consulted written records:	a. YES/NO	b. If NO, why:	
24. Lawyer verified clients: ⁵	a. special vulnerability YES/NO/NA⁶/NK⁷		
	b. medical condition YES/NO/NA/NK		
	c. language difficulty YES/NO/NA/NK		
	d. literacy difficulties YES/NO/NA/NK		
25. Did lawyer ask for ground(s) of arrest/detention:	YES/NO/NA/NK		
26. Did lawyer ask information about suspected offence(s):	YES/NO/NA/NK		
27. Was lawyer given information about suspected offence(s):	YES/NO/NA/NK		
4. FIRST CONSULTATION WITH CLIENT			
28. Consultation before first interrogation:	a. YES/NO	b. If NO, specify:	

⁵ Choose YES only if the lawyer does more than simply check the information from the apprehension minutes/other documents, for example when he/she asks the police more questions.

⁶ NA = not applicable, for example, if it is clear that the client does not suffer from any special vulnerabilities.

⁷ NK = do not know.

29. Consultation took place: a. in private: <i>YES/NO/NA⁸/NK</i> b. duration:
30. Did lawyer check with the client: a. minor or special vulnerability ⁹ <i>YES/NO/NA¹⁰/NK</i> b. medical condition <i>YES/NO/NA/NK</i> c. language difficulties <i>YES/NO/NA/NK</i> d. literacy <i>YES/NO/NA/NK</i> e. knowledge of reasons for arrest <i>YES/NO/NA/NK</i> f. whether informed about his/her rights <i>YES/NO/NA/NK</i> g. whether understood his/her rights <i>YES/NO/NA/NK</i>
31. If the client is vulnerable or is a child, the lawyer ensured that the police undertake necessary measures: <i>YES/NO/Not necessary¹¹/NA¹²/NK</i>
32. Did lawyer explain his/her role: <i>YES/NO/NA/NK</i>
33. Did lawyer follow client's instructions: ¹³ <i>YES/NO/NA/NK</i>
34. Did lawyer advice on client's legal position: <i>YES/NO/NA/NK</i>
35. Did lawyer explain options for conduct in interrogation: <i>YES/NO/NA/NK</i>
36. Did lawyer make a written record of consultation: <i>YES/NO/NA/NK</i>
5. RIGHT TO LEGAL AID AND STATE GUARANTEED LEGAL AID
37. Did lawyer provide consultation on state guaranteed legal aid: <i>YES/NO/NA¹⁴/NK</i>
38. Did lawyer assist in applying for state guaranteed legal aid: <i>YES/NO/NA/NK</i>
39. Did lawyer advise on the right to legal assistance during interrogation: <i>YES/NO/NA¹⁵/NK</i>

⁸ For example, because there was no consultation before the first police interrogation.

⁹ A child is a suspect who is or appears to be younger than 18 years. A vulnerable suspect is the suspect *who is or may be*–
- Mentally ill
- Mentally unstable or suffering from difficulties in understanding/learning
- Suffers from physical or sensory disabilities, for example, deaf or with hearing deficiencies, blind or with weak eyesight
- Unable to read or speak or who has severe speech disabilities.

¹⁰ For example, it is clear that the client is not minor and does not suffer from a special vulnerability.

¹¹ For example, because the police undertook necessary measures.

¹² For example, because the client is not minor and does not suffer from a special vulnerability.

¹³ In other words, the version of the events from the client's perspective.

¹⁴ For example, NA is applied when the client is certainly not eligible for state guaranteed legal aid.

¹⁵ For example, because the client does not have the right to have a lawyer present during interrogation.

6. RIGHT TO SILENCE
40. Did lawyer explain implications of remaining silent: <i>YES / NO / NA / NK</i>
41. Did client choose to remain silent: <i>YES / NO / NK</i>
42. Did lawyer advise client regarding the conduct during the interrogation: a. <i>YES / NO</i> b. If YES, what advice:
7. RIGHT TO INTERPRETATION / TRANSLATION
43. Did lawyer explain the right to interpretation / translation: <i>YES / NO / NA</i> ¹⁶
44. Was an interpreter provided: <i>YES / NO / NA</i>
45. Were client-lawyer communication interpreted: <i>YES / NO / NA</i>
46. Did lawyer make representations on interpretation / translation: a. <i>YES / NO / NA</i> If YES b. describe the nature of representation and outcome
8. INTERROGATIONS
47. Was the lawyer present in the first police interrogation: <i>YES / NO / NA</i> If NO, why:
48. If there was more than one interrogation, was the lawyer present in: a. <i>ALL / SOME / NONE</i> b. If SOME or NONE, why:
49. Did client answer police questions: <i>YES (some) / YES (ALL) / NO</i>
50. Did lawyer take record of interrogation: a. <i>YES / NO</i> b. If YES: IN WRITTEN / AUDIO EQUIPMENT
51. Did lawyer intervene in interrogation: ¹⁷ a. <i>YES / NO</i> b. Was the intervention requested/initiated by the: CLIENT / LAWYER
9. PROGRESS/CASE RESULT
52. Outcome of police arrest: <i>SUSPECT WAS RELEASED WITHOUT FORMAL CHARGES / SANCTION APPLIED OUTSIDE COURT / CRIMINAL CASE INITIATED (suspect in arrest) / CRIMINAL CASE INITIATED (suspect was released awaiting examination of the case in court) / NK</i>
53. Lawyer delivered representation services for the client (negotiated with the police) regarding the outcome: a. <i>YES / NO / NA</i> ¹⁸ b. If YES, specify: ¹⁹

¹⁶ For example, because it was obvious that the client did not need interpretation/translation.

¹⁷ For example, by addressing questions to the police, by asking that the interrogation is stopped etc.

¹⁸ For example, if there is certainly no need for the lawyer to deliver representation, because, for example, they reached an outcome agreed by the client, or because the final result obviously derived from the circumstances of the case.

¹⁹ For example, the lawyer tried to convince the police that the case was adequate for a sanction from the police/prosecutor or that the lawyer reasoned that his/her client is to be released etc.

Annex 5

Interview with police officer: **IP8**

1. Thinking about suspects (i.e. persons apprehended at police stations on suspicion of having committed a criminal offence), what major changes have taken place in the past year or two? What do you think about those changes?

Before, during apprehension, according to article 166, CPC, suspects of a criminal offense were not transported for medical examination. Currently, at the moment of apprehension, the suspect benefits from medical care, which improved the establishing of the time of occurrence and the degree of the injury.

Right to information

2. Do you think that generally suspects know what their rights are? How do they get to know about them?

Few suspects know their rights. In the moment of apprehension copies of the rights of the suspect are issued in the presence of the defender.

3. Do you ever provide a suspect or their lawyer with information from the case-file (evidential material obtained by the police)? How do you decide what information to give and when to give it?

Materials of the case are presented to the parties upon termination of criminal investigation by the prosecutor. Evidence of the case-file are not disclosed to any of the parties, due to the secrecy of the criminal investigation. I have informed the suspect only about those decisions which affect his/her interests.

Right to interpretation and translation (if relevant)

4. How do you decide whether a suspect *needs* interpretation or translation?

CPC provides for the right to translator and interpreter. PI Centru does not have a translator or interpreter. This creates difficulties in daily work.

5. What do you think about the current arrangements for *providing* interpretation or translation in the police?

There are no such arrangements. The CIO intervenes personally in finding and ensuring the presence of an interpreter when carrying out criminal investigation.

Rights to legal assistance

6. The European Court of Human Rights has held that a suspect has a right to consult a lawyer before being interviewed by police, and during the police interview. In your experience, are suspects always informed of this right?

This right is ensured in every case.

7. What is your opinion about the arrangements for providing access to a lawyer?

Depending on each particular case.

8. What is your opinion about the role played by defence lawyers during the police detention stage?

If it is about ex officio lawyers, then there are big problems. When requesting a defender during night in an apprehension case, I personally confronted with failure to show up or answer the telephone, which leads to expiry of the apprehension term.

Right to silence

9. What is your opinion about the right to silence? How do you respond if a suspect indicates that they do not wish to answer questions in police interviews?

Many of the suspects at the time of being notified about the motion of recognizing them as suspects disagree with the alleged offense, but during the criminal investigation change their opinion, based on the confrontations, reconstructions on the scene of crime, forensic reports.

Children and vulnerable suspects

10. What arrangements are there for children and vulnerable subjects (for example, mentally ill persons), and how do they work in practice?

Apprehension of minors is in the competence of prosecutors. Mentally ill persons are not apprehended.

11. Do you think that (a) children and (b) vulnerable suspects are capable of taking an informed decision on using or not their right to a defender and/or other rights?

In the majority of cases, these are represented by a legal representative.

Suspects who require medical care

12. Do you consider that suspects who need medical care during their apprehension in police stations can access adequate medical assistance?

In such cases, I think they can.

13. Do you think that suspects should be informed of their rights? What do you think about the rights that suspects now have?

They have this right under the CPC, suspects have too many rights.

14. What are the issues of interest for you in the field of observing the rights of the person apprehended by the police for a potential training course on this topic:

- *timely ensuring the lawyer;*
- *technical equipment and access to Internet;*
- *ensuring the translator and, if necessary, the interpreter.*

Information about interviewee:

15. How would you describe your status and role?

IPC II

16. How many years experience do you have as a police officer?

7 years

Date of interview: 19.06.2014

Interviewee reference number: 08

Name of the person who conducted the interview: O.T.

Annex 6

Interview with lawyer IA1

1. Thinking about suspects (i.e. persons apprehended at police stations on suspicion of having committed a criminal offence), what major changes have taken place in the past year or two? What do you think about those changes?

The criminal procedure legislation was amended regarding the preventive measure of pre-trial detention, providing that pre-trial detention can now be applied in respect of persons suspected of serious and not light or less serious crimes as it was previously. Thus, persons suspected of offenses for which the maximum penalty is up to 5 years cannot be arrested only because there is reasonable suspicion that they had committed such a crime. Similarly, in respect of persons who are simply suspected of having committed a crime the preventive measure of pre-trial detention cannot be applied for a period exceeding 10 days.

Right to information

2. Do you think that generally suspects know what their rights are? How do they get to know about them?

Generally, suspects do not know what their rights are. They find out about their rights from criminal investigation officer or prosecutor who have the obligation to inform them about their rights and obligations, by handing the respective information in writing, and from the defender who has the obligation to explain these rights and how these can be used in concrete situations.

3. In your experience, do the police generally provide sufficient information to you a) about the reason(s) you're your clients arrest and b) about the evidential materials that they have?

Usually police do not provide sufficient data on the grounds for arrest, limiting themselves only to the information that the person will be apprehended, so that later pre-trial detention is requested as a method of influencing the suspect, scaring him/her and determining him/her to acknowledge the suspicion, make statements and point out to all co-participants in committing the offense.

As to the evidence they have, which would constitute grounds for pre-trial detention, these are rarely, only as an exception, presented to the arrested person and the defence counsel, but not in the volume presented to the judge. The latter, almost never examines in court the evidence that constituted the basis of the motion for the application or prolongation of pre-trial detention and does not reason the ruling on applying pre-trial detention on the basis of concrete evidence examined in court and to which parties had equal access to.

Right to interpretation and translation (if relevant)

4. In your experience, how do the arrangements for identifying a suspect's need for interpretation or translation work in practice? Have you ever had a situation where you think a client at the police station needs interpretation or translation, but this has not been identified by the police? If so, how have you dealt with this?

Establishing the need for an interpreter or translation occurs when a suspect says that he/she does not understand the representative of the authority, because they do not understand the state language. In this case, either the officer or the prosecutor speaks and draws up procedural documents directly in the Russian language, or requests an interpreter. We have not had cases where suspects know a foreign language other than Russian. Moreover, I had no cases where the police could not determine whether or not my client needed an interpreter.

5. What is your opinion about the arrangements for providing access to a lawyer to suspects detained at police stations?

The legal provisions that set the need of providing interpreter are welcomed and strictly necessary at any stage of criminal investigation, including in the police inspectorates. The truth is that, usually, there a single interpreter in every inspectorate and in some inspectorates there is none. Therefore, it is necessary that inspectorates have a contract concluded with individual interpreters or an authorized agency in the field which would provide interpreters for any requested language and in the required number.

Rights to legal assistance

6. The European Court of Human Rights has held that a suspect has a right to consult a lawyer before being interviewed by police, and during the police interview. In your experience, are suspects always informed of this right?

Usually the interrogated persons are informed about the right to be consulted by a lawyer in the moment of being recognized as suspects when the information about their rights and obligations is provided to them in writing. However, before this procedural action, until the arrival of the defence counsel, the suspect is interrogated, pressured, intimidated by different police officers, without, first, ensuring consultation with a lawyer, thus, breaching the right to legal assistance. Police authorities think they can do it because there is no officially drawn up procedural act, and the fact that they exerted pressure on the person is, usually, difficult to demonstrate.

7. What is your opinion about the arrangements for providing access to a lawyer?

Suspects in custody are usually not held in police inspectorates, but in special isolators or Penitentiary no. 13. Lawyers' access to arrested suspects while kept in police inspectorates, generally, takes place smoothly, but without the certainty of having a private meeting with the client for several reasons.

8. How do you decide whether to: (a) attend on a client in person at the police station, and (b) whether to attend at the police interview?

The decision to personally visit the client in the police inspectorate is dictated by the need to know why he/she was brought to the inspectorate, to find out whether there was physical or psychological force applied to him/her, and to consult this person on the conduct during concrete procedural measures, which are to take place.

The decision on whether or not to participate in the police interrogation is dictated by the provisions of criminal procedure, which stipulates the cases where participation of defence counsel is mandatory, the fact that the officer informs about the need to participate in interrogation of the client and drafting the respective document. As to the questionings where no official acts are drawn up, usually these are known only to the police officer who conducts them and the defender finds out about them later, from the client, after they have taken place.

9. Could you tell me what difference you think your presence makes at the police station?

Showing up at the police inspectorate is a signal to the police that the suspect has a lawyer who stands to watch on the observance of his/her rights, is not left alone and that the police have to observe his/her rights, otherwise they may be held liable.

10. In your experience, what is the police opinion of the role of the defence lawyer during the police detention stage?

I think that the police consider the role of the defender during the police custody as a formal one and, as a rule, the defender cannot exactly influence the course of this procedure.

Right to silence

11. In your experience, do suspects understand what is meant by the right to silence? How do you decide whether to advise a client to remain silent during a police interview?

Although it happens that some of the suspects may not initially understand the meaning of the right to silence, it is not difficult to explain the content of this right and with minimum effort they very quickly understand the meaning of this right.

If the client does not plead guilty or partially admits his/her guilt and the position of the defence is still not very well-shaped and the versions need yet to be further processed and defined, I conclude that it is appropriate to advise not to answer the questions during interrogation or use the right to refuse to testify until we could know what incriminating evidence the criminal investigation body has.

Children and vulnerable suspects

12. What arrangements are there for children and vulnerable subjects (for example, mentally ill persons), and how do they work in practice?

With some small exceptions the conditions for minors and other vulnerable suspects are virtually identical to the others. And, although, theoretically they should enjoy different conditions, in practice, there is no difference in this regard.

13. Do you think that (a) children and (b) vulnerable suspects are capable of taking an informed decision on using or not their right to a defender and/or other rights?

They usually are not able to take balanced decisions regarding their rights, and, therefore, it is a prerogative that depends largely on the people conducting criminal investigation and on the professionalism of the defender, teacher / psychologist and legal representative.

Suspects who need medical care

14. Do you consider that suspects who need medical care during their apprehension in police stations can access adequate medical assistance?

Suspects who need medical care while in police custody have no possibility to receive appropriate medical care, because there is no doctor in police inspectorates. If necessary, healthcare is provided by emergency medical service, which is called upon only in extreme cases. However, when being placed in custody, the person is not subject to a medical examination, usually there is no recording of his/her diseases and the need to take medicine, risks that may arise as a result of not taking medicine, etc. However, the attitude of the medical staff towards arrested persons is quite poor and differs a lot from the attitude towards persons which are not arrested.

Information about the interviewee:

15. How would you describe your status and role?

Lawyer

16. How many years experience do you have as a lawyer/legal adviser?

7 years

Date of interview: 26.06.2014

Interviewee reference number:

Name of the person who carried out the interview: O.T.

Annex 7

Copy

MINUTES OF APPREHENSION

mun. Chişinău 10.08.2014

the criminal investigation body represented by the criminal investigation officer SUP of PI of PD mun. Chişinău, police lieutenant Gh. N. in the office 315 of the PI, mun. Chişinău, according to the provisions of art. 166, 167, 173, 260, 261, CPC has drawn up the present minutes on the *de facto* apprehension, on xxx August 2014, at 10:30 and *de jure* on 10.08.2014, at 11:55, on the basis of the criminal case No. xxx,

PI xxx, mun. Chişinău

Name, surname:	M.L.
Date, month, year of birth:	xxx
Place of birth:	c. C
Citizenship:	Moldovan
Education:	secondary incomplete
Military status:	not liable for military service
Family situation:	single
Persons provided for:	
Residence:	c. C, str. N
Occupation:	unemployed
Identification document:	A xxx, issued xxx
Criminal record	none

Circumstances: on 10.08.2014, approximately at 10:05, an unknown male, aiming at obtaining the property of another person, being at the intersection of str. C and str. B., mun. Chişinău, openly took from the neck of D.M. a golden chain and cross, of the total value of 3500 lei.

Grounds and reasons for apprehension:

1. He was caught in the act.
2. The victim, witnesses directly point to this person as the one who committed the crime.
3. There are reasonable grounds to believe that he will abscond from criminal investigation, impede the establishing of the truth or commit other crimes.

The results of bodily search carried out according to the provisions of art. 130, CPC:

The following were found: mobile phone „Samsung”, GT E 1200, IMEI xxxxxxxxxxxxxx and SIM card xxxxxxxxxxxxxx, black lighter, black case in which there was a personal photo, pawnshop receipt series NN No. xxxxxxxx, pawnshop receipt series AC No. xxxxxxxx, pawnshop receipt series AC No. xxxxxxxx, pawnshop receipt series AC No. xxxxxxxx, money in the amount of 2 lei.

The apprehended person was informed about and explained his rights and obligations provided for in art. 63, 64, CPC, including the right to remain silent, not to self-incriminate, to give explanations which are included in the minutes, to have a lawyer present and to make statements in his presence.

The apprehended person M.L. was transferred to the preventive detention isolator of the PD of mun. Chişinău.

The following persons were informed about the apprehension: Sister M.B. and mother M.E.

A copy of the present minutes has been handed to me on 10.08.2014, at 11:40.

Apprehended person
Signature

Defender
Signature

Criminal investigation officer
Signature

VERSO

Apprehended person	Signature
Defender	Signature
Translator	

Criminal investigation officer Of the SUP PI xxx of the PD mun. Chişinău Police lieutenant	Signature
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The minutes was read out by the criminal investigation officer.

Note: the apprehended person does not have claims towards police officers regarding application of force and does not have bodily injuries.

The person is dressed in blue shorts and white and red t-shirt.

„COORDINATED”

Head of SUP PI xxx, mun. Chişinău
Lieutenant colonel of police

Signature N.Z.

NOTE: The apprehension of M.L. was communicated to the deputy prosecutor V.M. sect. C. on xx August 2014, at 11:00.