

**SECURITY OF A PERSON IN PRE-TRIAL DETENTION AS A HUMAN RIGHTS
CONDITION IN THE REPUBLIC OF MOLDOVA**

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ABSTRACT

When a person gets into state custody, the security of the person is one of the most challenging issues. The poor human rights situation in the Republic of Moldova, the high number of pre-trial detention cases, and the high population rate in the penitentiary facilities increase the risk of human rights violations for an individual when in contact with the police and in state custody. This capstone project focuses on identifying the relevant recommendations, potential solutions, and best practices that could decrease the rate of pre-trial detention cases and increase the security of a person when in contact with the police and when in State custody. In this regard, the capstone project identifies and analyzes the main issues related to the security of a person in state custody, raises awareness regarding the systemic challenge and the main human rights violations admitted in state custody, and increases the legal culture of the most vulnerable population to human rights violations, people who are living in rural areas with a poor legal culture and with limited access to information.

INTRODUCTION

In Moldova, if you are suspected of committing a criminal offense, the probability of ending up in prison for an indefinite period, with huge violations of human rights is about 90%.¹ Moldova applies pre-trial detention excessively and has a high population rate in penitentiary facilities — over 25% higher than the European average.² Even though the domestic legislation overall is aligned with international human rights standards,³ many legal and procedural issues bring a significant infringement on the application of the domestic legal framework, so that it could be oriented on human rights by following international human rights standards. The emblematic cases, such as the case of *Serghei Cosovan v. Moldova*⁴ and *Andrei Braguta's case*⁵ illustrate the main issues related to the domestic penal system and its implementation in regard to the security of a person when in contact with the police and when in state custody. During the 25 years since the ECtHR examined cases brought against the Republic of Moldova, there have been 568 cases with 730 violations under the ECHR.⁶ A third of them are related to violations of Articles 3 and 5 of the ECHR regarding pre-trial detention, inhuman detention conditions, torture, and other violations.⁷ Even if pre-trial detention is an exceptional measure (ultima ratio) applied under international human rights law, Moldova applies it in about 94 % of penal cases. Both national and international human rights entities, such as Moldova's

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

² 'Annual Criminal Statistics on Prison Populations for 2020, Published by the Council of Europe', 2020, https://wp.unil.ch/space/files/2021/04/210330_FinalReport_SPACE_I_2020.pdf.

³ 'The Criminal Code of the Republic of Moldova', n.d., Article 1 (3), https://www.legis.md/cautare/getResults?doc_id=122429&lang=ro.

⁴ European Prison Litigation Network, 'Cosovan v. Moldova: ECtHR Confirms Systemic Failures in Moldovan Prison Health System', n.d., <https://www.prisonlitigation.org/cosovan/?fbclid=IwAR1V19CnnNWHBPYiGuZ8X-an8scxrOvjn8kOGBfk1VH5SiU9FfkuaBFxkQQ>.

⁵ 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody', 2017, http://ombudsman.md/wp-content/uploads/2019/06/BRAGUTA_Special_Report-engl.pdf.

⁶ Daniel Goinic and Vladislav Gribincea, 'The finding violations made by the Republic of Moldova found by ECHR', n.d., <https://crjm.org/violarile-constatate-ctedo-republicii-moldova/>.

⁷ Goinic and Gribincea.

Ombudsman Institution,⁸ the UN Committee Against Torture,⁹ and the European Committee for the Prevention of Torture,¹⁰ bring these issues to the attention of the State and ask to improve the human rights situation. In this regard, the capstone project brings its contributions by identifying and analyzing the main challenges related to the security of a person when in contact with the police and when in state custody, and by raising awareness regarding the systemic challenges and human rights violations admitted in state custody. Likewise, the capstone project links the main recommendations, the best practices, and potential solutions for improving the human rights situation related to the security of a person in state custody.

⁸ Ombudsman Moldova, 'Report on the Observance of Human Rights and Freedoms in the Republic of Moldova in 2020'.

⁹ UN Committee against Torture, 'Concluding Observations on the 3rd Periodic Report of Republic of Moldova: Committee against Torture', n.d., <https://digitallibrary.un.org/record/3843843?ln=en>.

¹⁰ Council of Europe, 'Report to the Government of the Republic of Moldova on the Visit to the Republic of Moldova Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)', 2020, 25, <https://rm.coe.int/16809f8fa8>.

INTERNATIONAL STANDARDS REGARDING FUNDAMENTAL HUMAN RIGHTS RELATED TO PRE-TRIAL DETENTION

Pre-trial detention is a legal element applied in penal systems as a legitimate extreme measure to conduct a legal investigation. However, under pre-trial detention the individual becomes highly vulnerable and is at risk of having his or her rights violated, especially in states where there is a poor human rights situation. To prevent this and ensure the guarantee of protection of fundamental human rights, the international legal framework developed complex human rights legislation.

International human rights law relates to pre-trial detention as an exceptional measure, an *ultima ratio*, and a risk-oriented one.¹¹ As happens even in the most democratic countries, the rights and freedoms of individuals are often violated in pre-trial detention.¹² This happens because individuals have an increased vulnerability and because of various challenges to legislation, the way it is applied, and many other factors. Therefore, despite Article 3 of the Universal Declaration of Human Rights, which guarantees that "Everyone *has the right to life, liberty, and security of person*"¹³ pre-trial detention is still overused, and fundamental human rights are put at risk. For instance, in Europe, one in four prisoners is a pre-trial detainee (approximately 22%).¹⁴ Specifically, Moldova has a high population rate in penitentiary facilities — over 25% higher than the European average.¹⁵ As a consequence, Moldova's citizens find the European Court of Human Rights (ECtHR) to be the main international human

¹¹ Adriano Martufi and Christina Peristeridou, 'The Purposes of Pre-Trial Detention and the Quest for Alternatives', n.d., https://brill.com/view/journals/eccl/28/2/article-p153_153.xml.

¹² Bogdan Micu, 'The Preventive Arrests of a Person in Preventive Detention Status', *Lex ET Scientia International Journal*, 2016.

¹³ 'Universal Declaration of Human Rights', n.d., <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

¹⁴ Martufi and Peristeridou, 'The Purposes of Pre-Trial Detention and the Quest for Alternatives'.

¹⁵ 'Annual Criminal Statistics on Prison Populations for 2021, Published by the Council of Europe', n.d., https://wp.unil.ch/space/files/2023/04/SPACE-I_2021_FinalReport.pdf.

rights mechanism where victims of human rights violations can seek remedies.¹⁶ Also, the domestic legal framework is shaped by the European Convention of Human Rights (ECHR), due to the fact that professionals from the legal area make amendments to improve the domestic law according to the ECHR provisions. Further, other important international human rights legislation that guarantees human rights protection is emphasized.

The Universal Declaration of Human Rights (UDHR)¹⁷ – underlines in its provisions the fundamental rights related to detention. Article 3, Article 9 underlines that “*No one shall be subjected to arbitrary arrest, detention, or exile*”. Thus, these provisions highlight the fundamental human rights protection against arbitrary detention, especially with a poor legitimate purpose.¹⁸

International Treaties: There are four international human rights treaties that contain provisions regarding the application of pre-trial detention as an *ultima ratio*, and guarantee human rights protection under pre-trial detention, such as:

- I. The International Covenant on Civil and Political Rights (ICCPR)¹⁹, entered into force in 1976.
- II. The African Charter on Human and People’s Rights²⁰, entered into force in 1986.
- III. The American Convention on Human Rights (AMHR)²¹, entered into force in 1978.

¹⁶ Goinic and Gribincea, ‘The finding violations made by the Republic of Moldova found by ECHR’.

¹⁷ ‘Universal Declaration of Human Rights’.

¹⁸ Martufi and Peristeridou, ‘The Purposes of Pre-Trial Detention and the Quest for Alternatives’.

¹⁹ ‘International Covenant on Civil and Political Rights’, n.d., <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

²⁰ ‘The African Charter on Human and People’s Rights’, n.d., https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf.

²¹ ‘The American Convention on Human Rights’, n.d., https://www.cartercenter.org/resources/pdfs/peace/democracy/des/amer_conv_human_rights.pdf.

IV. The European Convention on Human Rights (ECHR)²², entered into force in 1953.

All these instruments are legally binding upon ratification by the states. It is important to underline that only the ICCPR is open to international ratification. The other three treaties have regional coverage. However, the common ground of all these treaties is the UDHR provisions. Besides these international treaties, there are more detailed international regulations regarding the security of a person in state custody, the practices of ensuring human rights in pre-trial detention, and the treatment of prisoners, such as:

1. The UN's Standard Minimum Rules for the Treatment of Prisoners (SMR)²³
2. The European Prison Rules (EPR)²⁴
3. The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (BOP)²⁵ is the most recent standard of practice related to detention.²⁶

All these international regulations mentioned above reflect what is generally accepted as good practice regarding detention.²⁷ However, in different countries, there are various understandings of the norms and conditions in regard to pre-trial detention, and security in state custody. Moldova has a narrow approach, and applies pre-trial detention by ignoring the *ultimo ratio* principle, misinterpreting its legitimate purpose, and admitting human rights violations

²² 'The European Convention on Human Rights', n.d., https://www.echr.coe.int/documents/convention_eng.pdf.

²³ 'The United Nations Standard Minimum Rules for the Treatment of Prisoners', n.d., https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

²⁴ 'The European Prison Rules', n.d., <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

²⁵ 'The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', 1989, file:///C:/Users/unik2021/Downloads/A_RES_43_173-EN.pdf.

²⁶ Stanislaw Frankowski, Dinah Shelton, and Cook, Helena, 'Preventive Detention -International Standards and the Protection of the Individual', in *Preventive Detention. A Comparative and International Law Perspective*, vol. 2 (Martinus Nijhoff Publishers, n.d.), 4.

²⁷ Frankowski, Shelton, and Cook, Helena, 4.

that will be underlined by analyzing below two cases: A. Braguta's case,²⁸ and the case of Serghei Cosovan v. Moldova.²⁹

In sum, international human rights law guarantees fundamental rights protection related to pre-trial detention. Most of these treaties have as their background the UDHR provisions. The international human rights law places pre-trial detention as an ultima ratio measure and leaves room for interpretation of its legitimate purpose. The applicability of some international human rights legislation is more accessible than others, and provisions of international human rights law are often interpreted and applied differently by States. Therefore, even though we have one common international human rights legislation, when it comes to transferring it into domestic law, a matter of interpretation occurs and can differently impact its outcomes.

DOMESTIC LEGAL FRAMEWORK REGARDING SECURITY OF A PERSON IN PRE-TRIAL DETENTION

This section will analyze the domestic legal framework related to pre-trial detention, the security of people in state custody, and the human rights violations related to it.

The criminal and procedural laws of Moldova have generally aligned with international human rights legislation.³⁰ There are three main domestic pieces of legislation that regulate the principles, conditions, and procedures regarding the investigation of crimes, and the conditions related to state custody over an individual in a criminal context.

²⁸ 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody'.

²⁹ European Prison Litigation Network, 'Cosovan v. Moldova: ECtHR Confirms Systemic Failures in Moldovan Prison Health System'.

³⁰ 'The Criminal Code of the Republic of Moldova', Article 1 (3).

Firstly, the Constitution of the Republic of Moldova³¹ guarantees the fundamental rights and freedoms of individuals, such as free access to justice, equality, the presumption of innocence, the right to life and physical and mental integrity, and the right to individual freedom and security.

Secondly, the Code of Criminal Law³² and the Code of Criminal Procedure,³³ have as their base Moldova's Constitution, and generally, they comply with international human rights treaties and standards.³⁴ According to the Code of Criminal Law, in the case of some inconsistencies, international human rights law is applied.³⁵ However, many legal issues pose a significant infringement on the application of the above-mentioned domestic laws correctly and oriented on human rights. Below in this section will be addressed some of the most important of them.

Moldova applies pre-trial detention in 94% of penal cases, an increase of more than 20 percent since 2013.³⁶ According to the law, the maximum term for pre-trial detention is 30 days, but it can be extended each time for 30 days until the Court takes a final decision either to convict or to release the person.³⁷ Thus, an individual can be in pre-trial detention for an uncertain period.³⁸ As a consequence, Moldova has a high population rate in penitentiary facilities, over 25% higher than the European average, according to the Annual Criminal Statistics on Prison

³¹ 'The Constitution of the Republic of Moldova', n.d., https://www.constcourt.md/public/files/file/Actele%20Curtii/acte_en/MDA_Constitution_EN.pdf.

³² 'The Criminal Code of the Republic of Moldova', n.d., https://www.legis.md/cautare/getResults?doc_id=122429&lang=ro.

³³ 'The Criminal Procedure Code', n.d., https://www.legis.md/cautare/getResults?doc_id=113967&lang=ro.

³⁴ Council of Europe, 'Republic of Moldova and the Council of Europe', n.d., <https://www.coe.int/en/web/chisinau/republic-of-moldova-and-the-council-of-europe>.

³⁵ 'The Criminal Code of the Republic of Moldova', Article 1 (3).

³⁶ 'Respecting the Rights of the Person in Preventive Detention [Translation from Romanian]', n.d., <https://moldova.europalibera.org/a/respectarea-drepturilor-persoanei-aflate-in-arestul-preventiv/28717835.html>.

³⁷ 'The Criminal Procedure Code'.

³⁸ Nadejda Coptu, 'Justice's game with the death [Translation from Romanian]', n.d., <https://newsmaker.md/ro/jocurile-justitiei-cu-moartea-istoria-lui-serghei-cosovan/>.

Populations for 2021, published by the Council of Europe.³⁹ There are no public policies to address the overcrowding problem, and the State hesitates to approach this issue.⁴⁰

Regarding the reasoning of the Court's decisions in regard to the application of pre-trial detention, the majority of them are superficially motivated, and the tendency is that the Court is asking to be convinced by the lawyers who represent their clients why pre-trial detention should not be applied.⁴¹ For instance, in the case of *Serghei Cosovan v. Moldova*,⁴² the judges argued their motivation regarding applying and maintaining pre-trial detention by stating that 'the court did not identify corroborative evidence that the accused cannot be put in pre-trial detention',⁴³ even if Serghei had a confirmed bad health condition and, according to the doctors, he was in deadly danger.

Moreover, as is described below, in a third of cases,⁴⁴ Moldova was found guilty by the ECtHR regarding violations of Articles 3 and 5 of the ECHR, related to pre-trial detention and the security of people in state custody.⁴⁵

The over-application of pre-trial detention brings collateral violations of human rights, such as overpopulation of the penitentiary facilities,⁴⁶ torture and ill-treatment cases,⁴⁷ conflicts and

³⁹ 'Annual Criminal Statistics on Prison Populations for 2021, Published by the Council of Europe'.

⁴⁰ 'Analytical Note: Implementation of Policies to Reduce Overcrowding in Prisons in the Republic of Moldova in the Context of the COVID-19 Pandemic', 2022, 6, <https://promolex.md/wp-content/uploads/2022/07/Analytical-note-Implementation-of-policies-to-reduce-overcrowding-in-prisons-in-the-Republic-of-Moldova-in-the-context-of-the-of-the-COVID-19-pandemic.pdf>.

⁴¹ Nadejda Coptu, 'Justice's game with the death [Translation from Romanian]'.

⁴² European Prison Litigation Network, 'Cosovan v. Moldova: ECtHR Confirms Systemic Failures in Moldovan Prison Health System'.

⁴³ Nadejda Coptu, 'Justice's game with the death [Translation from Romanian]'.

⁴⁴ Daniel Goinic and Vladislav Gribincea, 'Synthesis - the Found Violations by European Court of Human Rights against the Republic of Moldova', 2022, <https://crjm.org/wp-content/uploads/2022/09/Sinteza-Violarilor-CEDO-de-catre-RM.pdf>.

⁴⁵ 'Respecting the Rights of the Person in Preventive Detention [Translation from Romanian]'.

⁴⁶ 'Evaluation of the Mechanism for Preventing and Combating Ill-Treatment in the Penitentiary System of the Republic of Moldova', 2022, 35, <https://promolex.md/wp-content/uploads/2022/11/Report-Evaluation-of-the-mechanism-for-preventing-and-combating-ill-treatment-in-the-penitentiary-system-of-the-Republic-of-Moldova-.pdf>.

⁴⁷ <http://old.ombudsman.md/>, 'Alternative Report of the People's Advocate (Ombudsman) of the Republic of Moldova', n.d., http://old.ombudsman.md/sites/default/files/document/attachments/int_cat_nhs_mda_29210_e_1.pdf.

violence between detainees,⁴⁸ poor material conditions of the penitentiary facilities, including life-threatening conditions with the presence of insects and rodents,⁴⁹ the lack of proper medical services and medical staff,⁵⁰ the lack of an effective mechanism for examining the detainees' complaints related to acts of torture,⁵¹ the numerous suicides and self-mutilation attempts (in 2021, self-mutilation cases increased by 18%, and suicide attempts increased by 42% compared to the previous year).⁵²

Certainly, these consequences are caused by domestic legal and procedural issues, such as poor understanding of the international human rights standards by key specialists of the legal system, unclear methodology and procedures, and other issues related to the domestic legal framework and its application, as are further described:

Firstly, regarding training in human rights, methodology, and procedures - according to the Ombudsman's report, there is poor knowledge among persecutors and judges in the application of human rights standards or their applicability in concrete cases, especially when applying preventive measures.⁵³ Additionally, police officers are not trained, and the General Inspectorate of Police (GIP) and National Inspectorate of Patrol (NIP) do not have clear methodologies and regulations on the intervention in cases of detention of people with mental disorders, disabilities, or those who are drunk in order to prevent abuses against them.⁵⁴ The GIP does not have solutions regarding the food and water supply of the detained persons, during

⁴⁸ 'Analytical Note: Implementation of Policies to Reduce Overcrowding in Prisons in the Republic of Moldova in the Context of the COVID-19 Pandemic', 14.

⁴⁹ UN Committee against Torture, 'Concluding Observations on the 3rd Periodic Report of Republic of Moldova: Committee against Torture', 6.

⁵⁰ UN Committee against Torture, 7.

⁵¹ 'Republic of Moldova, 3rd Cycle of Universal Periodic Review', 2021, 4, https://www.omct.org/site-resources/legacy/Torture_UPR-Report_Republic_of_Moldova_2021-56.pdf.

⁵² 'Analytical Note: Implementation of Policies to Reduce Overcrowding in Prisons in the Republic of Moldova in the Context of the COVID-19 Pandemic'.

⁵³ 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody', 33.

⁵⁴ 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody', 17.

the record of their case or until their placement in the preventive detention center (for instance, Andrei Braguta was in police custody for 10 hours without food and water).⁵⁵ The GIP does not have clear mechanisms regarding the involvement of psychiatrists, psychologists, or other specialists in the process of detention of vulnerable people.⁵⁶

Secondly, regarding the prohibition of torture - the legal framework does not define the notions of "inhumane treatment" and "degrading treatment".⁵⁷ This makes room for selective interpretation in applying the law to cases that imply torture.⁵⁸

Thirdly, regarding the health care system and disability issues - the medical system in penitentiary facilities is disastrous.⁵⁹ There is no authorization for medical units located in penitentiary facilities because they are under the authority of the Department of Penitentiary Institutions and not the Minister of Health.⁶⁰ The case of *Serghei Cosovan v. Moldova*⁶¹ brought to light the huge issues with the medical system in prison facilities. Lack of separation of prisoners affected by tuberculosis from the rest of the inmates is another problem.⁶² Additionally, a lack of specialized services and environmental accommodations for prisoners with disabilities is another additional issue.⁶³

⁵⁵ 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody', 19.

⁵⁶ 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody', 17.

⁵⁷ Ombudsman Moldova, 'Report regarding the Human Rights Situation in the Republic of Moldova on the 3rd cycle of Universal Periodical Review [translated from Romanian]', 2021, <http://ombudsman.md/wp-content/uploads/2021/10/raportUPR2021.pdf>.

⁵⁸ Ombudsman Moldova, 'Report regarding the Human Rights Situation in the Republic of Moldova on the 3rd cycle of Universal Periodical Review [translated from Romanian]', 2021, 3, <http://ombudsman.md/wp-content/uploads/2021/10/raportUPR2021.pdf>.

⁵⁹ European Prison Litigation Network, 'Cosovan v. Moldova: ECtHR Confirms Systemic Failures in Moldovan Prison Health System'.

⁶⁰ UN Committee against Torture, 'Concluding Observations on the 3rd Periodic Report of Republic of Moldova: Committee against Torture', 7.

⁶¹ 'Case of Cosovan v. The Republic of Moldova', <https://hudoc.echr.coe.int/>, n.d., <https://hudoc.echr.coe.int/fre#%7B%22tabview%22%3A%22document%22%2C%22itemid%22%3A%22001-216352%22%7D>.

⁶² UN Committee against Torture, 'Concluding Observations on the 3rd Periodic Report of Republic of Moldova: Committee against Torture', 7.

⁶³ UN Committee against Torture, 7.

Important domestic and international human rights institutions, such as Moldova's Ombudsman,⁶⁴ the UN Committee Against Torture,⁶⁵ and the European Committee for the Prevention of Torture,⁶⁶ repeatedly alerted the authorities in regard to decreasing the application of pre-trial detention that is put in an arbitrarily way by giving priority to other alternative forms of prevention and increasing the human rights situation in State custody, but the improvements are still delayed.

In sum, even if domestic law is overall in accordance with international human rights standards, there are elements of principle, methodology, and procedures missing in application the law that make room for serious human rights violations in State custody. The national and international human rights entities are aware of these issues and periodically bring their recommendations to the Moldovan authorities in order to adapt the domestic mechanisms and regulations and improve the human rights situation. Cases of resonance with serious human rights violations that come to public attention are one more reason for these organizations to emphasize their recommendations for improving the human rights situation. However, the State is not aware enough of the existent issues and still does not have a long-term strategy to approach and overcome them.

⁶⁴ Ombudsman Moldova, 'Report on the Observance of Human Rights and Freedoms in the Republic of Moldova in 2020', 23.

⁶⁵ UN Committee against Torture, 'Concluding Observations on the 3rd Periodic Report of Republic of Moldova: Committee against Torture'.

⁶⁶ Council of Europe, 'Report to the Government of the Republic of Moldova on the Visit to the Republic of Moldova Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)', 25.

EMBLEMATIC CASES THAT ILLUSTRATE THE SYSTEMIC ISSUES OF THE MOLDOVAN PENAL SYSTEM AND ITS CONSEQUENCES

This section will analyze two emblematic cases that emphasize the main issues regarding pre-trial detention and the security of a person in state custody: the case of Serghei Cosovan v. Moldova⁶⁷ and Andrei Brăguță's case.⁶⁸

The case of Serghei Cosovan v. Moldova

In 2017, Seghei Cosovan was put in pre-trial detention after being suspected of fraud. Serghei was in pre-trial detention for about two years, with the pre-trial detention being extended 11 times, even though he suffered from cirrhosis and needed a specific treatment that could get him ready for a liver transplant — a treatment that was not available in prison. Medical units in prison facilities have no functioning authorization. Additionally, it is not foreseen for these units to have specialized doctors, such as hepatologists, that could provide specialized medical services for detainees. Therefore, Serghei did not have access to proper health care. Even though Serghei's lawyers continually asked the Court to change the preventive measure, the Court maintained the same reason: *"The Court did not identify any evidence that pre-trial detention cannot be applied"*.⁶⁹ Serghei was transferred to a hospital outside prison for two surgeries, and the hospital confirmed two times for the Court that Serghei's life is in real danger without following the specific treatment under the monitoring of a hepatologist and a vascular doctor. The hospital confirmations did not influence the Court's decisions regarding the applied preventive measure. Serghei's criminal persecution was stopped in 2021 because of his death.⁷⁰

⁶⁷ 'Case of Cosovan v. The Republic of Moldova'.

⁶⁸ 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody'.

⁶⁹ 'Case of Cosovan v. The Republic of Moldova'.

⁷⁰ 'Case of Cosovan v. The Republic of Moldova'.

From the international and national human rights law perspective, this case emphasizes the serious violation of rights. The ECtHR stated two main issues regarding the legal system when in contact with the police and when in state custody: abusive application of pre-trial detention, and a poor medical system in penitentiary facilities.⁷¹ Overall, the ECtHR stated there were violations of Articles 2, 3, and 5 of the ECHR.

Firstly, regarding the abusive application of pre-trial detention, the ECtHR stated the violation of Article 5 of the ECHR, and emphasized that there were not sufficient grounds and evidence that could justify and demonstrate the extended detention application.⁷² Additionally, the ECtHR stated that the domestic courts did not indicate on what evidence they based their conclusions concerning the seriousness of the risks involved and keeping the applicant in pre-trial detention for a non-reasonable time,⁷³ despite his health condition.

Secondly, when it comes to the medical system in penitentiary facilities, the ECtHR mentioned that the state failed to ensure protection under Article 2 of the ECHR, the "*Right to Life*", which, according to the ECtHR, is one of the most fundamental provisions in the ECHR, and that the State should take appropriate steps to safeguard the lives of those within its jurisdiction.⁷⁴ Moreover, Moldova failed to comply with Recommendation No. R(98) 7 of the Committee of Ministers to member states concerning the ethical and organizational aspects of health care in prison,⁷⁵ and with recommendations of the United Nations Committee Against Torture⁷⁶ received in the concluding observations on the third periodic report regarding the

⁷¹ European Prison Litigation Network, 'Cosovan v. Moldova: ECtHR Confirms Systemic Failures in Moldovan Prison Health System'.

⁷² European Prison Litigation Network.

⁷³ European Prison Litigation Network.

⁷⁴ 'Case of Cosovan v. The Republic of Moldova'.

⁷⁵ Council of Europe, 'Recommendation No. R (98) 7 of the Committee of Ministers to Member States Concerning the Ethical and Organizational Aspects of Health Care in Prison', n.d., <https://pubmed.ncbi.nlm.nih.gov/11803930/>.

⁷⁶ UN Committee against Torture, 'Concluding Observations on the 3rd Periodic Report of Republic of Moldova: Committee against Torture', n.d.

provisions of health care in the penitentiary facilities.⁷⁷ Additionally, the ECtHR interpreted the lack of access to effective medical services as a form of ill-treatment.⁷⁸ However, the lack of an efficient mechanism for investigating ill-treatment and torture by Moldovan penal system is another core problem and source of human rights violations. This issue is quite common in the second case that is analyzed below - A. Braguta's case.⁷⁹

Andrei Braguta's case

Andrei, a 32-year-old young man, was stopped by the police on one national road for exceeding the speed limits, and was taken into state custody on August 15, 2017, for "allegedly using non-dangerous violence towards an official".⁸⁰ Andrei passed away in pre-trial detention after ten days of being imprisoned in Penitentiary No. 16 Pruncul - a prison-hospital in Chisinau.⁸¹ He had some mental issues and was beaten with severity by penitentiary guardians and his inmates.

After six years, the case is still in domestic court. The Ombudsman stated the main violations admitted in this case by authorities and some recommendations for improving the human rights situation and increasing the security of a person when in contact with the police and when in state custody.⁸²

⁷⁷ UN Committee against Torture.

⁷⁸ European Prison Litigation Network, 'Cosovan v. Moldova: ECtHR Confirms Systemic Failures in Moldovan Prison Health System'.

⁷⁹ 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody'.

⁸⁰ 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody', 6.

⁸¹ 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody'.

⁸² 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody'.

Firstly, as the Ombudsman Institution⁸³ stated in its Special Report⁸⁴ related to this case, "the authorities failed to identify, record, report, and document the case in accordance with the provisions of the Regulation on the procedure for the identification, registration, and reporting of alleged cases of torture, inhuman, or degrading treatment".⁸⁵ In this regard, the Ombudsman institution brought some recommendations regarding the activity of the General Inspectorate of Police (GIP) and the Department of Penitentiary Institutions (DPI), such as enhancing and streamlining the processes for reporting alleged cases of torture and other cruel, inhumane, or degrading treatment to comply with the relevant national and international laws, and the Istanbul Protocol.⁸⁶ Another recommendation is related to the importance of empowering state officials with more authority in this area by providing more information on mistreatment, events, abuses, or deaths in state custody to the prosecutor and Ombudsman within 24 hours.⁸⁷ Sadly, so far the recommendations have not been implemented, and these issues have not been overcome.⁸⁸

Secondly, related to Andrei's case, both the Ombudsman⁸⁹ and the UN Committee Against Torture highlighted another two important issues: preventive arrest and pre-trial detention are applied excessively even when the crime committed does not qualify for such measures.⁹⁰ Additionally, the number of people held in pre-trial detention has increased by more than 20

⁸³ {Citation}

⁸⁴ 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody'.

⁸⁵ 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody', 13.

⁸⁶ Office of the High Commissioner for Human Rights, 'Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002 Edition)', n.d., <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0..>

⁸⁷ 'Special Report on Investigation's Results from Office about the Case of Death of the National Andrei Braguta into State Custody', 13.

⁸⁸ 'Evaluation of the Mechanism for Preventing and Combating Ill-Treatment in the Penitentiary System of the Republic of Moldova', 28.

⁸⁹ Ombudsman Moldova, 'Report on the Observance of Human Rights and Freedoms in the Republic of Moldova in 2020', n.d., 23.

⁹⁰ Ombudsman Moldova, 23.

percent since 2013, and alternatives to detention are rarely used.⁹¹ In this regard, the Ombudsman reiterated his recommendation to the Superior Council of Magistracy⁹² to issue circulars to the Courts for the warning in regard to the application of pre-trial detention in accordance with international standards.

These two emblematic cases illustrate the main issues regarding domestic law and its implementation regarding the security of a person when in contact with the police and when in state custody. Unfortunately, many other cases emphasize the gravity of the situation.⁹³ During the 25 years the ECtHR has been examining cases put against the Republic of Moldova. In a total of 568 cases, 730 violations under the ECHR were found. Below can be found 213 of the most relevant cases regarding violations of fundamental rights related to the security of persons in state custody. In these cases, as can be seen in the following table, the ECtHR stated violations of Articles 3 and 5 related to pre-trial detention, inhuman detention conditions, torture, and other violations.⁹⁴

	ECHR	Number and type of violations found under the ECHR	Cases against Moldova
1.	Article 3 ECHR Prohibition of torture	39 cases Torture and inhuman or degrading treatment	2006 – Corsacov and Boicenco 2007 – Colibaba , Pruneanu 2008 – Levința

⁹¹ UN Committee against Torture, ‘Concluding Observations on the 3rd Periodic Report of Republic of Moldova: Committee against Torture’, 4.

⁹² Minister of Justice, ‘Superior Council of Magistracy’, n.d., <https://www.justice.gov.md/en/advanced-page-type/consiliul-superior-al-magistraturii>.

⁹³ Goinic and Gribincea, ‘Synthesis - the Found Violations by European Court of Human Rights against the Republic of Moldova’.

⁹⁴ Daniel Goinic and Vladislav Gribincea, ‘Synthesis - the Found Violations by European Court of Human Rights against the Republic of Moldova’, 2022, <https://crjm.org/wp-content/uploads/2022/09/Sinteza-Violarilor-CEDO-de-catre-RM.pdf>.

			<p>2009 – Breabin; Gurgurov; Buzilov</p> <p>2010 – Parnov, I.D</p> <p>2011 – Bisir and Tulus; Ipate; Taraburca; Pascari</p> <p>2012 – Sochichiu; Struc</p> <p>2013 – Ipati; Iurcu; Gorea</p> <p>2014 – Buhaniuc; Bulgaru; Ciorap no.4</p> <p>2015 – Doroseva</p> <p>2016 – Morgoci; Cazanbaev; Caracet Ciorap nr.5</p> <p>2019 – Prepelita</p> <p>2020 – Cantaragiu; Mițu; D.</p> <p>2021 – Trocin; Maier; Armeanu and Vacarciuc</p> <p>2022 – Mătășaru; Crețu, Canuda; Străisteanu and Agachi</p>
2.	Article 3 ECHR Prohibition of torture	45 cases Lack of effective investigation of cases of torture and inhuman or degrading treatment	<p>2006 – Corsacov; Boicenco</p> <p>2007 – Pruneanu; Colibaba; Stepuleac</p> <p>2008 – Victor Savițchi</p> <p>2009 – Breabin; Gurgurov; Petru Roșca; Valeriu și Nicolae Roșca</p>

			<p>2010 – Pădureț; Parnov; Popa; Mătășaru and Savițchi</p> <p>2011 – Lipencov; Ipate; Taraburca; Pascari</p> <p>2012 – Buzilo; Gasarov</p> <p>2013 – Ipati; Iurcu; Gorea</p> <p>2014 – Buhaniuc; Tcaci</p> <p>2015 – Doroseva</p> <p>2016 – Cazanbaev; Caracet; Ciorap nr.5</p> <p>2018 – Mereuță; Dornean; O.R and L.R.</p> <p>2019 – Prepelita</p> <p>2020 – Cantaragiu; Mîtu</p> <p>2021 – Muradu; Trocin; Maier; Evghenii Duca; Armeanu and Vacarciuc</p> <p>2022 – Mătășaru; Povestca; Crețu; Canuda; Apopii</p>
3.	Article 3 ECHR Prohibition of torture	47 Inhuman detention conditions	<p>2005 – Ostrovar; Becciev</p> <p>2007 – Istratii and others; Ciorap; Stepuleac; Popovici; Turcan</p> <p>2008 – Malai</p>

			<p>2009 – Străisteanu and others; Valeriu and Nicolae Roșca; Gavrilovici</p> <p>2010 – Brega; I.D.</p> <p>2011 – Rotaru; Haritonov; Taraburca</p> <p>2012 – Feraru; Hadji; Arseniev; Culev; Plotnicova; Constantin Modarca; Ciorap (nr. 3)</p> <p>2013 – Mitrofan; Ipati; Segheti</p> <p>2015 – Silvestru; Pisaroglu; Shishanov</p> <p>2016 – Morgoci; Mescereacov; Savca; Okolisan; Cristioglo; Baștovoi; Galaida and Coposciu</p> <p>2017 – Braga; Valentin Baștovoi</p> <p>2018 – Pocasovschi and Mihailă; Botnari; Miron; Coteț; Secrieru</p> <p>2019 – Botnari</p> <p>2021 – Muradu; Talambuța and Iășcinina</p>
4.	Article 3 ECHR	17	2005 – Șarban

	Prohibition of torture	Failure to provide effective medical aid	2006 – Boicenco ; Holomiov 2007 – Istratii and others ; Stepuleac 2008 – Levința 2009 – Paladi 2010 – Brega ; Oprea 2011 – Lipencov ; Pascari 2015 – Veretco 2018 – Botnari ; Ceaicovschi 2019 – Botnari 2021 – Talambuța and Iașcinina 2022 – Povestca ; Cosovan
5.	Article 3 ECHR Prohibition of torture	1 Forced feeding	2007 – Ciorap
6.	Article 3 ECHR Prohibition of torture	1 Illegal application of forced treatment	2011 – Gorobet
7.	Article 3 ECHR Prohibition of torture	1 Failure to protect inmate violations	2020 – I.E.
8.	Article 5 (1) ECHR Right to liberty and security	28 The illegal deprivation of liberty	2006 – Boicenco ; Holomiov 2007 – Modârcă ; Guțu ; Gorea ; Stici ; David ; Turcan ; Ursu

			<p>2009 – Paladi; Străisteanu and others</p> <p>2011 – Lipencov; Gorobet</p> <p>2012 – Levința (No. 2); Brega and others</p> <p>2013 – Danalachi</p> <p>2014 – Gavrilita</p> <p>2015 – Sara</p> <p>2016 – Savca</p> <p>2017 – Gumeniuc</p> <p>2017 – Ialamov</p> <p>2018 – Pașa; Goremîchin; Miron; Dogotar; Mătăsar and Savițchi, Cucu and others</p> <p>2020 – I.E.</p>
9.	Article 5 (1) ECHR Right to liberty and security	1 Arbitrary arrest and pre-trial detention with the purpose of extradition	2019 – Ozdil and others
10.	Article 5 (3) ECHR Right to liberty and security	30 Lack of sufficient reasons for pre-trial detention	<p>2005 – Becciev; Șarban</p> <p>2006 – Boicenco</p> <p>2007 – Castravet; Istratii and others; Modârcă; Stici; Țurcan and Țurcan; Mușuc; Popovici; Ursu</p>

			2008 – Malai 2009 – Străisteanu and others 2010 – Oprea 2011 – Ignatenco 2012 – Feraru 2014 – Ninescu 2015 – Rimschi 2016 – Balakin ; Caracet ; Buzadji 2018 – Ceaicovschi ; Coteț ; Secrieru 2019 – Sirencu ; Cașu ; Moscalciuc 2021 – Muradu 2022 – Cosovan ; Canuda
11.	Article 5 (4) ECHR Right to liberty and security	3 Excessive term of examination of the appeal	2005 – Șarban 2018 – Coteț 2021 – O.P.

NORWAY CASE STUDY AND ITS BEST PRACTICES

This section will analyze the good practices of the Norwegian penal system concerning the security of a person in state custody. To understand why the Norwegian penal system is so

successful and what is done differently, it is first necessary to underline that it has a long-term strategy and principles oriented toward safety, transparency, and innovation.⁹⁵

Contrary to the Moldovan penal system, the Norwegian one is quite oriented on the rehabilitation of detainees by using various adapted and innovative methods, such as dynamic security, normalization theory (a comparable life in prison to the outside life of prison facilities),⁹⁶ and the "opened jails" concept (aimed to reduce recidivism and prepare the inmates for life beyond the jail).⁹⁷ Prisons built with a focus on rehabilitation make inmates concentrate on the effects of crime on victims and take control of their actions regarding the rehabilitation process, by using various prison services regarding rehabilitation, such as mediation, conferencing, and participation in peacekeeping groups.⁹⁸ The most important characteristic of Norway's penal system is the high social inclusion of inmates after leaving the jails, through an increased level of employment and attendance in academic activities. These are due to the use of the open prison concept, where inmates have a considerable level of freedom, as a rehabilitation approach.⁹⁹ Contrary to Moldova's penal system, Norway's system is not oriented to put detainees in terrible prisons to make them suffer as a punishment package.

Secondly, regarding pre-trial measures, Norway is known for using pre-trial detention as an exception. Therefore, Norway's penal system puts suspects under pre-trial detention only in cases where there is concrete proof of a 30-40% probability that the suspect will dodge or indisputable proof that the individual committed a serious crime.¹⁰⁰ This approach has a

⁹⁵ 'About the Norwegian Correctional Service', n.d., <https://www.kriminalomsorgen.no/informasjon-paa-engelsk.536003.no.html>.

⁹⁶ International Journal of, Offender Therapy and, and Comparative Criminology, 'From Punishment to Rehabilitation: Can India Implement Norway's Prison Model?', 2023, 1, <https://doi.org/10.1177/0306624X23117263>.

⁹⁷ International Journal of, Offender Therapy and, and Comparative Criminology, 2.

⁹⁸ International Journal of, Offender Therapy and, and Comparative Criminology, 1.

⁹⁹ International Journal of, Offender Therapy and, and Comparative Criminology, 2.

¹⁰⁰ *Pre-trial Arrest in the Republic of Moldova and in European Countries*, n.d., 48, https://soros.md/wp-content/uploads/2022/07/Arestarea_preventiva.pdf.

positive impact on the prison population rate. To better understand the situation regarding the rate of incarceration related to the country's population size, below are some comparative data from Norway and Moldova for the period 2016 – 2020:¹⁰¹

Country/ population size	2016			2018			2020		
	Total	Reported to 1 million population	Prison population rate	Total	Reported to 1 million population	Prison population rate	Total	Reported to 1 million population	Prison population rate
Norway/ 5 million	3850	770	73	3425	685	65	2932	586	54
Moldova/ 2.6 million	8054	3097	227	7635	2936	215	6716	2583	191

As can be seen, the data reflects the differences in the penal systems approach and strategy that have a direct effect on the rate of incarceration. Norway has a lower number of detainees reported per capita and one of the lowest recidivism rates in the world, about 20%, while in Moldova the rate of recidivism is about 70%.¹⁰²

Thirdly, regarding the Norway prison's facilities – because the penal system is oriented on the concept of detainees' rehabilitation, its aim is "to repair the harm caused by crime rather than punish people".¹⁰³ The system's management is aware that every detainee is going to return to society, and every citizen wants rehabilitated people around them and not angry ones. Another

¹⁰¹ 'World Prison Brief Data', n.d., <https://www.prisonstudies.org/country/norway>.

¹⁰² 'Why Norway's Prison System Is so Successful', n.d., <https://www.businessinsider.com/why-norways-prison-system-is-so-successful-2014-12>.

¹⁰³ 'Why Norway's Prison System Is so Successful'.

tool used in increasing the efficiency of Norway's penal system is technology. It helps the system implement innovative detention options, such as detention in the community, that have a high contribution to keeping detainees in touch with their families, communities, jobs, and responsibilities.¹⁰⁴

In sum, Norway's penal system is described by scholars as the most innovative and efficient one, which is oriented toward human rights, individual rehabilitation, and successful social inclusion. Compared with Moldova's penal system, when it comes to being applied as a preventive measure, pre-trial detention is the ultima ratio, and it is applied only in exceptional circumstances. As a result, the rate of prison population is the lowest in the world. This has a huge impact on the quality of life, rehabilitation, and social inclusion of inmates. Altogether, this put in focus the repair of the harm caused by crime rather than the punishing of people, through understanding the effects of crime on victims and taking active control of actions regarding the rehabilitation process by inmates themselves.

RECOMMENDATIONS AND POTENTIAL SOLUTIONS FOR IMPROVEMENT OF THE HUMAN RIGHTS SITUATION IN STATE CUSTODY IN MOLDOVA

This section will emphasize the most relevant and specific recommendations regarding decreasing the number of pre-trial detention cases and increasing the security of a person when in contact with the police and when in state custody. The recommendations are focused on the above-mentioned issues of Moldova's penal system, regarding the security of a person in State custody as a human right condition.

Firstly, regarding the application in excess of pre-trial detention, the state should:

¹⁰⁴ 'Why Norway's Prison System Is so Successful'.

- Adapt the Code of Criminal and Procedural Laws and take all necessary steps to apply alternative preventive measures, and to apply pre-trial detention only as a measure of last resort. To reduce the duration of pre-trial detention following international standards.¹⁰⁵
- Ensure that "police isolators" and other facilities for preventive arrests include trained police officers and staff to interact with vulnerable people who have mental or intellectual issues¹⁰⁶
- -Ensure that every detained person on suspicion of a crime is brought before a judge within 48 hours and that no one is held in pre-trial detention for longer than is allowed by law, for offenses for which pre-trial detention is not allowed by law, or in detention facilities that have been deemed unfit for use. Victims of unjustified prolonged pre-trial detention should be provided with compensation¹⁰⁷

Secondly, regarding ensuring the fundamental legal safeguards in state custody, the state should ensure:

- the right of detainees to get quick and private access to an experienced, impartial lawyer following the arrest and throughout all phases of incarceration, including hearings¹⁰⁸
- the right of detainees to demand and obtain a confidential medical checkup from an impartial doctor within 24 hours of arriving at a detention facility¹⁰⁹
- make sure that any official who does not ensure the fundamental legal safeguards will face disciplinary action or other suitable sanctions¹¹⁰

Thirdly, regarding the prevention of torture and ill-treatment cases, the state should:

¹⁰⁵ UN Committee against Torture, 'Concluding Observations on the 3rd Periodic Report of Republic of Moldova: Committee against Torture', 4.

¹⁰⁶ UN Committee against Torture, 4.

¹⁰⁷ UN Committee against Torture, 4.

¹⁰⁸ UN Committee against Torture, 3.

¹⁰⁹ UN Committee against Torture, 3.

¹¹⁰ UN Committee against Torture, 3.

- Make sure that everyone has access to a free and efficient complaint mechanism for torture and other forms of ill-treatment, both in theory and in practice¹¹¹
- Ensure that authorities who refuse to cooperate in an investigation into allegations of torture or other ill-treatment or who fail to investigate such allegations properly, will face disciplinary actions. Ensure that individuals under investigation for torturing or mistreating others are suspended immediately throughout the investigation¹¹²
- Preventing torture and other ill-treatment more efficiently, - the Ministry of Internal Affairs should hand over management of temporary detention facilities to the Ministry of Justice¹¹³

Additionally, regarding the increasing condition of detention, the state should:

- Following the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules),¹¹⁴ reduce overcrowding in all prisons, including by applying non-custody measures¹¹⁵
- Intensify its efforts to ensure that detainees are provided with adequate material and hygienic conditions, including enough natural and artificial light; adequate sewage systems and sanitary installations, including toilets and showers; an adequate quality and quantity of food, bedding, blankets, and items for personal hygiene; health care; outdoor activities; and family visits; and compliance with international standards, such

¹¹¹ UN Committee against Torture, 5.

¹¹² UN Committee against Torture, 5.

¹¹³ UN Committee against Torture, 5.

¹¹⁴ General Assembly, 'United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)', n.d., <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/tokyorules.pdf>.

¹¹⁵ UN Committee against Torture, 'Concluding Observations on the 3rd Periodic Report of Republic of Moldova: Committee against Torture', 6.

as the United Nations Standard Minimum Rules for the Treatment of Prisoners¹¹⁶ (the Nelson Mandela Rules)¹¹⁷

- Increase its efforts to improve health services in prison facilities by recruiting an adequate number of skilled medical staff and training them on the Istanbul Protocol¹¹⁸

Finlay, regarding rising awareness related to the issues that a person could confront when in contact with the police and when in state custody, the state and civil society (human rights advocates, human rights NGOs), should:

- increase the legal culture of society, by informing them about their rights when in contact with the police and when in state custody.
- To legally empower women and men and local activists to raise community leadership. This could increase community support for increasing legal culture and promoting human rights.
- Consolidate the common efforts to adapt the domestic legal framework regarding the penal system in accordance with international human rights standards.

The practical component of the capstone thesis is designed to bring a contribution regarding the fulfillment of the final recommendations mentioned above.

¹¹⁶ General Assembly, 'United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)', n.d., <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/41/PDF/N1544341.pdf?OpenElement>.

¹¹⁷ UN Committee against Torture, 'Concluding Observations on the 3rd Periodic Report of Republic of Moldova: Committee against Torture', 6.

¹¹⁸ UN Committee against Torture, 7.

CONCLUSION

While the legal tools are designed to protect the security of individuals in state custody, Moldova fails to ensure fundamental human rights protection. Because of all the factors that Moldova's penal system implies, the risk of human rights violations when in contact with the police and when in state custody is increased. The high rate of pre-trial detention cases and the high population rate in prison facilities are the most visible effects of this system. However, many other factors contribute to the poor human rights situation in state custody. Firstly, the Court's reasoning regarding the application of pre-trial detention is superficially motivated, and the tendency is that the Court is asking to be convinced by the lawyers of the suspects why pre-trial detention should not be applied.

Secondly, the overapplication of pre-trial detention brings other collateral violations of human rights, such as overpopulation of penitentiary facilities, torture and ill-treatment cases, conflicts and violence between detainees, and poor material conditions of the penitentiary facilities. Applying alternative non-custodial preventive measures could decrease these issues.

Thirdly, the lack of a proper medical system in penitentiary facilities is another source of human rights violations in state custody. Lack of the Minister of Health authorization for medical units located in penitentiary facilities, lack of 40% of the necessary medical staff, lack of adequate medical equipment, and other challenges highlighted by the case of *Serghei Cosovan v. Moldova* should be brought to the state's attention so that these issues could be overcome as soon as possible. Otherwise, Moldova will continue to be found guilty of violations of Articles 3 and 5 of the ECHR by the ECtHR in other cases, besides that about 200 existent cases.

All these issues can be addressed and positively impacted by the recommendations and potential solutions emphasized in the capstone project. Moreover, the best practices related to the Norwegian penal system highlighted in this paper could be adopted by Moldova's penal system in re-designing its strategy so that it could increase the human rights situation in state custody.

Besides these, increasing the legal culture of society by informing people about their rights when in contact with the police and when in state custody and consolidating the common efforts in order to adapt the domestic framework regarding the penal system in accordance with international human rights standards is a common and accessible tool both for the state and civil society to increase the human rights situation and prevent further violations.

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THE PRACTICAL COMPONENT OF THE CAPSTONE THESIS AND ITS OUTCOMES

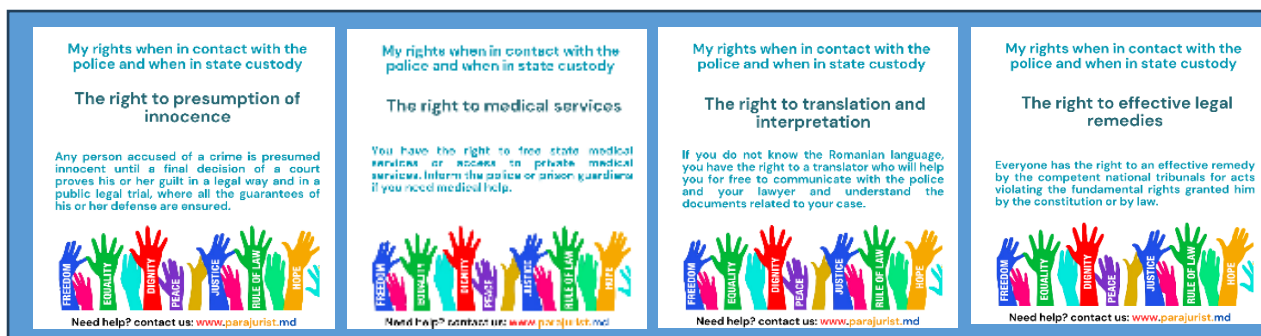
The practical component is composed of three elements: an online awareness campaign, an online public lecture, and an article that emphasizes the main aspects of the capstone project.

1. An online awareness campaign

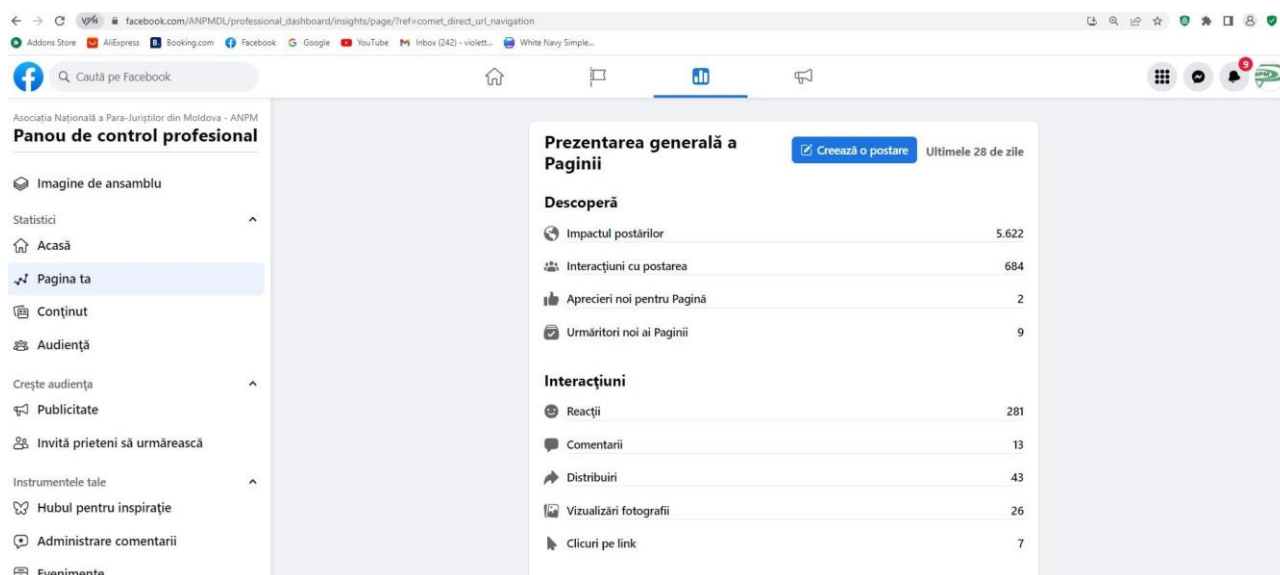
There was an organized an online awareness campaign that took place on two platforms: www.parajurist.md and the Facebook page of the National Paralegal Association of Moldova: <https://www.facebook.com/ANPMDL/>. The campaign consisted of elaborating and posting, within ten days, ten online banners with information regarding the rights of a person when in contact with the police and when in state custody. The goal of the campaign was to raise awareness regarding issues related to the penal system and human rights violations admitted in state custody and increasw the legal culture of society.

The target group was Romanian-speaking adults. The banners can be found below:





Regarding the impact of the awareness campaign, it has to be mentioned that on the Facebook page, the impact of the posted banners was 5.622, and the interactions with the posted banners were 684.



2. An online public lecture

The online public lecture was organized via Zoom. The target group were 15 – 17-year-old teenagers from Hîncești district and Logănești village in Moldova. The online public lecture was attended by 42 teenagers and three of their teachers. The goal of the campaign was to raise awareness regarding issues related to the penal system and human rights violations admitted in state custody and to increase the legal culture of society.

The agenda of the event was consulted in advance with the teenagers' teachers and designed so that it could meet the teenagers' informational needs. The agenda can be found below:



Central European University
Austria, Vienna
Department of Legal Studies
MA in Human Rights
Violetta Odagiu

03.05.2023, 14:20

Hingești district, Logănești village

Time: 1.5 h

Audience: Teenagers

Public Lecture

How do we protect our rights when in contact with the police and when in state custody?

Agenda

1.	Context: human rights and the penal system of the Republic of Moldova	Violetta Odagiu
2.	Human rights when in contact with the police and when in state custody	
3.	Which are the mechanisms and human rights institutions we could use to protect our rights?	

ZOOM login details:

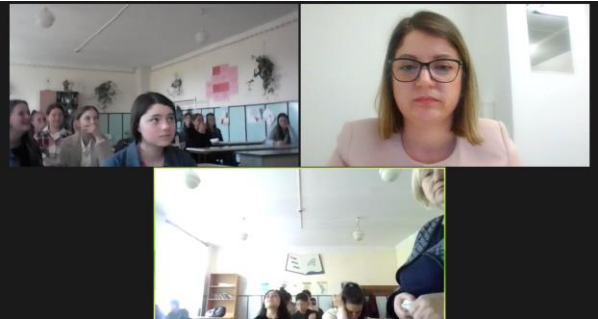
<https://us06web.zoom.us/j/84113302358?pwd=MmdDdWsyYVZSWW00VlhEdUROZmFvdz09>

Meeting ID: 841 1330 2358

Passcode: 788006

As it can be seen, during the event, teenagers were informed about their rights, about the national mechanism for protection human rights, and about the institutions that could be


allerted regardig human rights violations. Further, there are the main slides (in Romanian) of the presentation used during the public lecture:



Cum ne protejăm drepturile fiind în contact cu poliția și/sau în custodia statului?

CEU Department of Legal Studies
CENTRAL EUROPEAN UNIVERSITY

Violetta Odagiu



DREPTURILE OMULUI?

Ce presupun, cînd au fost definite, de ce ne sunt importante și cum le folosim?

История прав человека

<https://www.youtube.com/watch?v=pbBXur-kMTg>

CONTEXT:

În Moldova, dacă ești suspect de o infracțiune penală, probabilitatea ca să ajungi în custodia statului (în închisoare) pentru o perioadă de timp nedeterminată, cu încălcări grave a drepturilor omului, este de 90%! A se vedea cazul A. Brăgăușă, S. Cosovan

Particularitățile sistemului penal de justiție (avem și alte domenii ale justiției, cum ar fi civil, contravențional)

- Constituția Republicii Moldova
- Tratatul Internațional pe care Moldova le-a ratificat (Declarația Universală a Drepturilor Omului, Convenția Internațională cu privire la Drepturi Civile și Politice, etc)
- Codul Penal
- Codul de Procedură Penală
- Protocoale interne de lucru
- Fișă de Post

care ne sunt drepturile fiind în contact cu poliția sau alți agenți de constatare?

Asistență din partea unui avocat	Accesul la documente	Interpretare și traducere
Informații privind motivele reținerii și drepturile D-stră	Înștiințarea rudelor sau altor persoane	Durata privării de libertate
Dreptul de a păstra tăcerea	Asistență medicală	și multe alte drepturi... de a nu fi torturat, discriminat, de a nu fi supus unei justiții selective, de a nu fi pedepsit pentru aceeași faptă de două ori...

Cum pot arăta abuzurile comise de autorități?

Încalcări ce pot fi comise de către agentul constator la reținerea persoanei


- reținere fără a se respecta procedura legală (lipsa motivului legal, interpretarea eronată a legislației, etc)
- documentarea incorectă a timpului în care reținerea s-a produs
- Neinformarea cu privire la motivul reținerii
- Refuzul de a solicita un apărător, de a oferi acces la telefon
- Aplicarea torturii în scopul obținerii mărturiei
- Tratamente inumane sau degradante (deumanizarea persoanei, umilirea, discriminarea acesteia)

Încalcări ce pot fi comise de către instanța de judecată

- rețineri aplicarea arestului preventiv în 90% din cazuri
- lipsa măsurilor legale de a atinge la răspundere judecătoria - intima convingere

Încalcări comise în penitenciare

- tortură
- tratament inuman sau degradant
- penitenciare supra-aglomerate
- violență aplicată de alți deținuți precum și de către angajații penitenciarelor
- lipsa mecanismului de raportare a abuzurilor
- lipsa serviciilor medicale adecvate și a personalului medical



Important!

- Reținerea se face numai în cazurile în care există motive evidente d comiterea unui delict
- adulți pînă la 72 h, minori pînă la 24 h, minori pînă la 6h dacă scopul reținerii a fost identificarea acesteia.
- În cel mai scurt timp sau pînă la expirarea acestui timp, persoana reținută trebuie adusă în fața unui judecător de instrucție care decide privind eliberarea sau aplicarea detenției preventive (30 zile)
- În termen de pînă la o oră, organul de urmărire penală trebuie să contacteze un avocat din cadrul CNAJGS, sau un avocat privat pentru asigurarea apărării
- În termende pînă la 3h organul de urmărire penală întocmește procesul verbal cu specificarea tuturor drepturilor pe care le are persoana reținută

Care sunt mecanismele de apărare a drepturilor omului și cum le putem folosi?

- Ne folosim drepturile- cerem să fie respectate
- Documentăm abuzurile
- Scriem petiții
- Cerem ajutor - CNAJGS, Avocatul Poporului, ONGuri, mass-media
- Ne informăm în permanență și îi informăm și pe alții
- Nu suntem indiferenți la abuzurile la care alții sunt supuși
- Folosim mijloacele democratice de apărarea a drepturilor noastre
- Nu tolerăm abuzurile
- Ne implicăm în activități de voluntariat - ne dezvoltăm personal. Ne ocupăm timpul cu activități ce ne aduc plus valoare.
- ...

Teenagers really oppend to know more about their rights, and recognized that they had no acces to this kind of information. Moreover, teenagers mentioned that public lectures or any kind of

other informal events are the tools through which they can learn more practical and useful things that are applied in real life.

1. An article that summarizes the main aspects of the capstone project

The article was published on <http://parajurist.md/media-library>

The goal is to raise awareness regarding the systemic issues of the penal system and highlight the main recommendations and potential in this regard.

Security of a Person in Pre-trial Detention as a Human Right Condition in the Republic of Moldova

by Violetta Odagiu

Pre-trial detention is an important element used in penal systems as a legitimate extreme measure to conduct a legal investigation. It is known that under pre-trial detention, the individual becomes extremely vulnerable and is at risk of having his rights violated, especially in states where there is poor human rights protection. To prevent this and to ensure the guarantee of fundamental rights protection, the international legal framework developed complex human rights legislation, such as the [International Covenant on Civil and Political Rights](#), the [African Charter on Human and People's Rights](#), the [American Convention on Human Rights](#), and the [European Convention on Human Rights](#), which guarantees fundamental rights protection related to pre-trial detention and state custody. Most of these treaties have as their background the provisions of the [Universal Declaration of Human Rights](#) provisions.

International human rights law puts pre-trial detention as the [ultima ratio](#) measure. However, some states use it as a norm rather than an exception, and the Republic of Moldova is one of the states where, in 94 % of penal cases, the courts apply pre-trial detention.

Even if Moldova's domestic penal law overall is in accordance with international human rights legislation, there are issues with some elements of principle, methodology, and procedures that overthrow the human rights principles and standards in the application of the law. The national and international human rights entities are aware of these issues and periodically bring their recommendations to the Moldova's authorities in order to improve the human rights situation. Cases of resonance with obvious human rights violations that come to public attention, such as [Serghei Cosovan v. Moldova](#) and [Andrei Braguta's case](#), are one more reason for authorities to implement recommendations of national and international human rights institutions, such as [Ombudsman](#), and [Committee Against Torture](#) for improving the human rights situation. Besides these, many other cases highlight the gravity of the situation. [During 25 years as ECtHR examines cases put against the Republic of Moldova, there were found 568 cases with 730 violations under](#)

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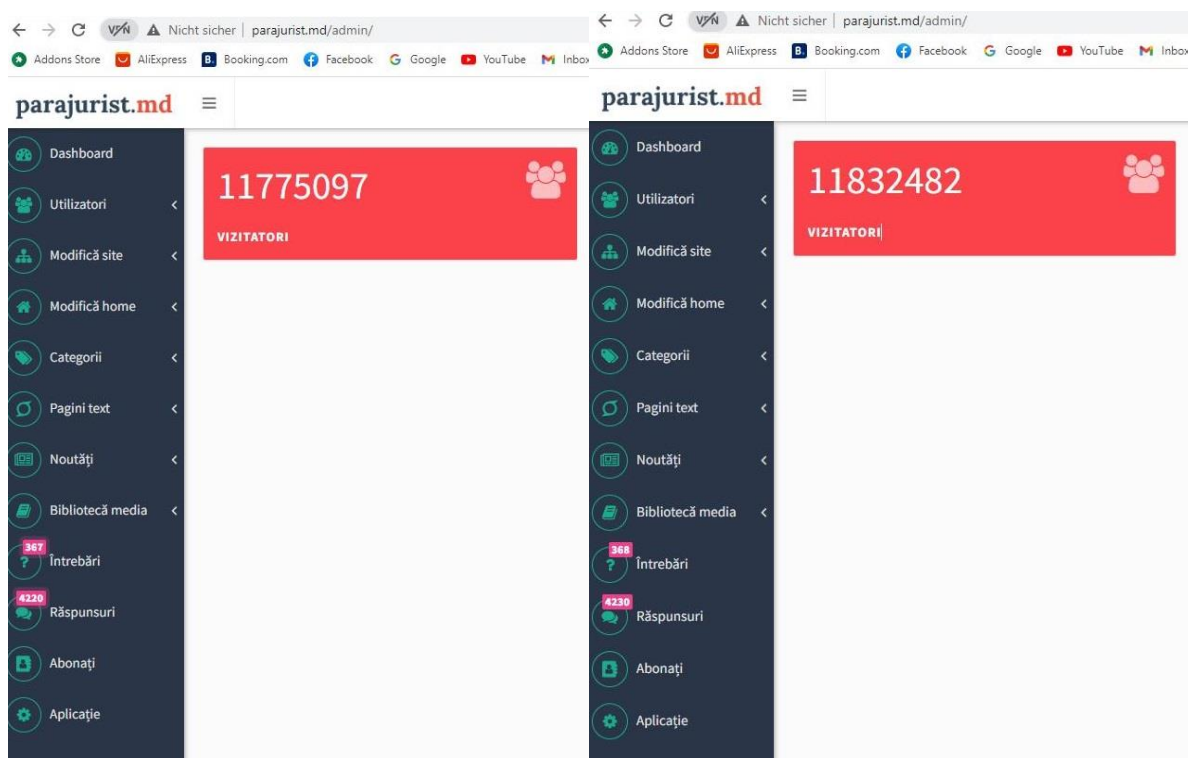
[ECHR - 211](#) of them are relevant to security of person in state custody when in contact with police and when in state custody - violations under [Article 3 and 5](#).

Moreover, many legal and procedural issues, such as the lack of training in human rights for judges, persecutors, and police officers, vague penal methodology and procedures, selective interpretation in applying the law related to cases that imply torture, ill-treatment, and degradation cases, and the improvement of the health care system in prison facilities, are yet to be overcome. Likewise, Moldova's penal system should be reoriented more toward rehabilitation than punishment. A good example in this regard is [the Norwegian penal system](#), which is described by scholars as the most innovative and efficient one, and is oriented on human rights, individual's rehabilitation, and successful social inclusion. The Norwegian penal system concept was the main subject even in many movies and documentaries, which contributed to spreading this concept all over the world. Comparing with Moldova's penal system, when it comes to being applied as a pre-trial measure, pre-trial detention is the ultima ratio, and it is applied only in exceptional circumstances, in strict accordance with international human rights law. As a result, [the rate of prison population is the lowest in the world](#). This brings a huge contribution to the quality of life, rehabilitation, and social inclusion of inmates. Additionally, the Norwegian system put in focus the repair of the harm caused by crime rather than the punishment, by understanding the effects of crime on victims and taking active control of actions regarding the rehabilitation process by inmates themselves.

Returning to Moldova's penal system issues, it should be mentioned that a good contribution to overcoming them could be brought by human rights activists and civil society through increasing the legal culture of society, [because one of the most vital requirements of guaranteeing the rule of law and strengthening the rule of law is increasing legal awareness and legal culture in society](#). People who are legally empowered and know their rights would ask for their protection both in an individual and collective way. Increasing legal awareness and legal culture in society is a long-term objective that requires constant actions and perseverance. [Online campaigns, articles that highlight specific legal issues, public lectures, and the collective actions of human rights activists](#) could have a sizeable contribution to improving the human rights situation.

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Further are the statistical data related to the impact of all three elements of the practical component of the capstone project, published on www.parajurist.md:



The impact of the posted information related to the practical component of the capstone project consist of 57.385 more unique visitors on the web site www.parajurist.md. This statistic is related to the period (about 1.5 months) when the practical component of the capstone project was published on the web site.