



EUROPEAN UNION BORDER ASSISTANCE MISSION TO MOLDOVA AND UKRAINE

Evaluation of respect for human dignity and fundamental human rights by the Partner Services in border control at the border between the Republic of Moldova and Ukraine

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ABBREVIATIONS

- BCP Border Crossing Point
- EU European Union
- EUBAM European Union Border Assistance Mission to Moldova and Ukraine
- MoI Ministry of Internal Affairs
- THB Trafficking of human beings

1. EXECUTIVE SUMMARY

EUBAM carried out an Evaluation of current situation on protection of human rights and dignity at the common border between the Republic of Moldova and Ukraine, in the second half of 2011. The Evaluation reviews the activities of the Border Guard and Customs units of both states at the local level in relation to safeguarding human rights while performing their duties in border control as envisaged in the respective legally binding documents.

Based on the data received during the Evaluation, it was established that no cases of disrespect of human rights and fundamental freedoms were detected while carrying out border control procedures.

The legal basis for protection of human rights and fundamental freedoms in both countries is in general sound and meets international standards. Specific legislation that regulates the activities of the Partner Services also requires observation of the human rights and sets mechanisms for prevention, investigation and prosecution of possible violations in this domain.

The main recommendations to the Partners, based on the findings of the Evaluation, are in the area of awareness and training, on performing personal search, protection of life of the injured person, and on communication with the aliens at the border.

2. OBJECTIVES AND AIMS OF EVALUATION, EXPECTED RESULTS

Evaluation of the current situation on protection of human rights at local level at the border between the Republic of Moldova and Ukraine included both BCP and “green border” areas. Objectives of the Evaluation include:

- Providing the impartial and diligent review of the overall measures applied by the Partner Services directed towards human rights observation and protection while carrying out border control;
- Evaluating the awareness of the Partner Services’ personnel on human rights protection in border control as per national legislation and internal regulations;
- Assessment of the control mechanisms implemented by the Partner Services to investigate internally possible human rights violations.

As this Evaluation is the first endeavor of EUBAM to approach such a topic, the expected outcome was aiming to depict the current situation, and to detect gaps in the measures applied by the Partner Services in the field of human rights protection.

3. METHODOLOGY APPLIED

In order to collect reliable and up to date information for the needs of the Evaluation, Partner Services were required to provide supporting references from the national legislation and internal regulations which build a legal framework of the Partner Services’ activities related to the human rights protection.

Another tool utilized in the process of collection of information was an observation of the routine activities of the Partner Services, in order to access to what extent they respect human rights.

Based on the collected information by means of a questionnaire, observations and national legislation and regulations, collected data was compiled. The main objective of this evaluation report was to describe both positive and potential negative examples observed, on which basis the list of subsequent recommendations to the Partner Services was to be established.

4. EUBAM ASSESSMENT

The current report addresses those human rights which potentially could be violated while carrying out border control. Recommendations for Partners were drawn up on the basis of the findings.

- a. **Use of force** – The sheer nature of this law enforcement right highlights its importance among the rest of the topics reviewed. As an extraordinary prerogative which brings upon risks to the life of the individual it requires all cases where Partners are allowed to use force to be strictly regulated. Such regulations do exist in the Moldovan and Ukrainian Customs Codes and the special laws on the rights and obligations of the Border Guards of both states. Additionally, in the special internal regulations this right is prescribed in detail, by including a mechanism of internal control and investigation of the cases when non-proportional use of force was applied.

The Evaluation established that awareness of units regarding the right to use force is apparent. Generally, such cases are extremely rare and based on the probability level the readiness of the units reviewed is assessed as appropriate.

- b. **Detention** is an act in which by limiting the liberty of the person state authority exercises its duties associated with protection of the public interest or security. It brings also one of the most serious limitation of fundamental human rights, one of freedom and personal security, therefore requires detailed description in the legal norms and special attention for the needs of the current review. Partner Services are empowered to use detention in the circumstance prescribed by the law¹ in cases of violations of border or customs regime.

Based on the EUBAM data in the first 9 months of 2011 Partner service detained at the Moldovan-Ukrainian border approximately 1500 persons, while total number of persons that crossed the border was almost 11,800,000, or detained persons represented 0,0001 percent of all. This detention level is decreasing if compared with previous year and does not expose extensive usage of this coercive measure by the Partners.

Detention facilities are not available in the majority of reviewed BCPs. Detainees are brought either to police facilities or the ones of the BG detachments that are better prepared to host detainees, thus it does not pose a risk of violation of the human rights. The escort to such facilities is carried out by police or specially trained personnel and the use of special restrictive measures (handcuffs) seldom occur and only when necessary. Nevertheless, it is advisable at the BCPs, on the basis of the detected threats and patterns, to have gender separated facilities that could provide all that is necessary for humane treatment of the detainees.

At the reviewed locations Partners showed good awareness of the rules applicable in cases of detention. When a detained person is an alien and does not speak the language, efforts are made to use an interpreter/translator to facilitate communication with the violator, due to the fact that all the necessary documentation is done in the national language. It was reported that at the BCPs there is no available list of translators either internal, from the service or external ones. Usually, support in this regard is expected from the superior level of command in BG Detachment or Customs House. Although, the cases when aliens only speak their native language occur seldom, in order to avoid cases of miscommunication and as a consequence the limitation of the rights of defence and appeal, Partners should address this matter by providing information with the available translators at least at the regional/detachment level.

- c. **Protection of the vulnerable persons** is very much associated with the notion of human solidarity and the obligation of the state to render supplementary assistance where it is most needed. An expression of this principle could be found in the Art. 318 of MDCC that forbids usage of force against minors, women or persons with disabilities, unless they pose a threat for the life

¹ For UASBGS text is stipulated in the Code of Ukraine of Administrative Offences Art. 262, UASCS – Art. 583, p.1 of Ukrainian Customs Code and for MDBGS and MDCCS – Art. 433 -435 of Contravention Code of Republic of Moldova

of the officer or a third person. Border management services should be able to render assistance and protect the life and health of the persons, whose status indicates that they need additional support. In most of the reviewed locations Partner Services showed readiness to render such support, but there is a room for improvement. It is advisable that training in providing first medical aid should be held regularly and include newly appointed personnel.

The right to asylum is a fundamental human right. Border guards have a key role in protecting that right because they are often the first person to whom the wish to claim asylum is expressed. Partners received templates of asylum applications in several languages and training in the matter. Generally, they are instructed to approach the superior level for detailed instructions in case of asylum seekers. Such cases are rare and no infringements of the applicable procedure were reported.

Children are vulnerable to exploitation and they also have rights and obligations that differ from those of adults. For these reasons border guards should take special care with them. The issue of unaccompanied minors crossing the borders illegally is a visible problem in the EU. Some of the migrant routes cross the territories of Ukraine and the Republic of Moldova, therefore this issue is considered important. At reviewed locations Partners were familiar with the proceedings applicable in such cases and had experience in providing assistance to minors, including communicating with the units of the MoIA and assuring psychological aid.

- d. **Awareness and training** - All Partner Services provide basic training on the international human rights law to their personnel, mostly using its initial training for the newcomers. Additionally, they have included the subject in the obligatory annual training but the consistency and quality of such training is unknown. The Codes of ethics (Code of conduct) that all Partner Services have also state the obligations for protection of human rights and are among the topics included in the regular training. It is recommended to devote more efforts to such training sessions at the local level and especially for the personnel on the green border.
- e. **Protection of victims of trafficking** – Trafficking of human beings and particularly identification of victims is apparently not covered in the programmes of training and not considered as priority task of the border guard services, main reason being that THB is a subject of investigation of the MoIA. The main role of the BGs on the matter is perceived as an intelligence provider, which collect information and feeds the services responsible for investigation of these crimes. Nevertheless, border guards have been assigned with the task to fight organized crime², including THB. Particular attention should be paid to the identification of victims of trafficking as described in EU Schengen Catalogue³ and in other relevant legal acts describing measures meant to facilitate development of skills in identifying trafficked persons. Border Guards should address this issue by preparing their servicemen to identify victims of trafficking of human beings by training, targeted risk analysis, profiling and operational instructions.

Overall attitude of the Partner Services towards border crossers was assessed as professional and neutral. During the Evaluation it was noted that the few complains that were recorded by passengers were related to the temporary delay in processing the traffic flow and communication on the reasons for such delay.

Although, it has no direct impact on the human rights, indirectly the lack of normal sanitation facilities and running water at some of the BCPs has a negative influence on the human dignity and well-being. Even if the location of the BCPs is such that brings considerable engineering or financial challenges towards building or maintaining of such facilities, still solutions exist and should be implemented by responsible authorities where needed.

² Art. 2 of Law on State Border Guard Service of UA and Art. 6 of newly adopted Law on Border Police in MD.

³ “Border control is a core element when combating illegal immigration and trafficking of human beings...” Introduction 2.1;

6.5 Respect of dignity and privacy - Personal search is an essential tool of the customs control that helps revealing customs violations and smuggling. It was reported that Partners do not have proper conditions for conducting these searches due to the lack of specially designed facility at some BCPs and as a result they are reluctant to conduct such activities. Therefore, on the basis of the analysis of the volume of traffic and specifics of the border related crimes, BCPs should be equipped with special premises for such purposes.

In the process of conducting customs checks of the passengers in buses and trains, experts noticed that the common practice of randomly selecting several pieces of personal luggage and performing a check in front of other passengers is violating the right of personal privacy and should be avoided. A similar approach is applicable in the checks in the train cars, where in some cases there is no separate compartment for conducting searches. Partners should conduct the check of personal luggage of passengers in the separate compartment or in such a manner as to limit violation of the privacy.

5. CONCLUSIONS

The main conclusion of the Evaluation is that no violations of the human rights and human dignity by the Partner Services were detected. Based on the information gathered, the Evaluation confirms that Partner Services are following the requirements of the national legislation and have established sufficient mechanisms for internal control over potential violations.

However, in the process of the Evaluation, EUBAM experts detected certain gaps in the training in respect of the human rights and some organizational weaknesses that might have a negative impact on the overall level of performance of the Partner services. The efforts needed to treat the detected issues are not extensive and do not pose a significant burden for the Partners. As an outcome of the Evaluation a list of recommendations is proposed, which suggests solutions to the identified shortcomings.

6. RECOMENDATONS

- a. Partners need to enhance human rights training and conduct regular updates, especially for the personnel in the field. Such training should be conducted at least on an annual basis due to the importance of the subject.
- b. Detention must be used cautiously, and for the shortest period necessary to process violations of the border regime or customs violation.
- c. Personal search shall be used in a way that does not violate human dignity. Therefore, BCPs should be equipped with special premises for such a purpose.
- d. Customs control of the passengers in buses and trains shall not violate their right of privacy. Checks of the passenger's luggage should be done in a manner limiting the possibility of violation of personal privacy.
- e. Protection of the life of the human beings is of paramount importance. Border management services have to be able to protect the life of the injured person and help him/her by providing first medical aid. Suitable regular training in this regard should be held.
- f. Communication with aliens at the border, particularly when he/she is a possible irregular migrant or an asylum seeker requires protection of his/her right of being provided translation, therefore BCPs have to have a list a of interpreters.

- g. THB has not been particularly addressed by border guard services. This approach is in sharp contrast with the requirements of the international law and EU standards. Therefore, services should prepare their servicemen to identify victims of trafficking of human beings thus effectively counteract this crime.

EUBAM

Odessa, 15 March 2012