

REPORT

MARCH

2015

Execution of judgments of the European Court of Human Rights by the Republic of Moldova: 2013-2014

Vladislav GRIBINCEA

Pavel GRECU

Nadejda HRIPTIEVSCHI

Sorina MACRINICI



LRCM

LEGAL
RESOURCES CENTRE
FROM MOLDOVA

REPORT

EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS BY THE REPUBLIC OF MOLDOVA: 2013-2014

Authors:

Vladislav GRIBINCEA

Pavel GRECU

Nadejda HRIPTIEVSCHI

Sorina MACRINICI



Development and launch of the report were done with the support by a grant from the Foundation Open Society Institute in cooperation with the Human Rights Initiative of the Open Society Foundation and with the support of the East Europe Foundation, from funds provided by the Swedish Government through the Swedish International Development Cooperation Agency (SIDA) and the Ministry of Foreign Affairs of Denmark/DANIDA.

Chişinău, 2015

Table of contents

Abbreviations	7
Introduction	9
1. Context and scope of the Study	9
2. Methodology of the Study	10
Summary	13
Chapter I	
Republic of Moldova and the European Convention on Human Rights	21
1.1 The status of the European Convention on Human Rights in the legal system of the Republic of Moldova	21
1.2 Republic of Moldova at the European Court of Human Rights	24
Chapter II	
Payment of awarded compensations and reopening of the domestic proceedings	33
2.1 Payment of compensations	33
2.2 Reopening of domestic proceedings	35
Chapter III	
Raising awareness about the ECHR	49
3.1 Training on ECHR	49
3.2 Translation of ECtHR judgments and providing information to the specialists	52
Chapter IV	
Measures taken in order to prevent violations found by the ECtHR	55
4.1 Ill-treatment and deaths	55
4.2 Poor conditions of detention	64
4.3 Insufficient reasoning of arrests	70
4.4 Excessive length of judicial proceedings	75
4.5 Improper quashing of final civil judgments	80
4.6 Conviction based on evidence obtained from entrapment	94
4.7 Phone tapping	95

Chapter V

Contribution to reducing of the number of applications to the ECtHR	103
5.1 The compensatory remedy for the violation of the reasonable time requirement	103
5.2 The constitutional remedy and the Ombudsman	112
5.3 Regress action	114

Chapter VI

National mechanism for execution of judgments and decisions of the European Court of Human Rights in the Republic of Moldova	121
---	------------

Abbreviations

Applicant – The applicant in the procedures at the European Court of Human Rights

CFECC – Centre for Fighting Economic Crimes and Corruption

CM – Committee of Ministers of the Council of Europe

CoE – Council of Europe

CiPC – Civil Procedure Code of the Republic of Moldova

Constitution – Constitution of the Republic of Moldova

Const.Court – Constitutional Court of the Republic of Moldova

CrPC – Criminal Procedure Code of the Republic of Moldova

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

GA – Governmental Agent of the Republic of Moldova at the European Court of Human Rights

IDP – Police Detention Centre

JSRS – Justice Sector Reform Strategy for 2011-2016

Law on GA – Law no. 353 of 28 October 2004 on Governmental Agent

Law no. 87 – Law no. 87 on the compensation of damages for the violation of the right to examination of the case and execution of the judgment in reasonable time

MF – Ministry of Finance of the Republic of Moldova

MIA – Ministry of Internal Affairs of the Republic of Moldova

NIJ – National Institute of Justice of the Republic of Moldova

NHRAP – National Human Rights Action Plan for 2011-2014

Report of the LRCM of 2012 – Report “Execution of judgments of the ECtHR by the Republic of Moldova 1997–2012”

SCOC – Section for Combating Organized Crime of the Ministry of Internal Affairs

SCJ – Supreme Court of Justice of the Republic of Moldova

SCM – Supreme Council of Magistracy from the Republic of Moldova

SCP – Supreme Council of Prosecutors from the Republic of Moldova

Introduction

1. Context and scope of the Study

With about 1,000 applications submitted every year, the Republic of Moldova is among the “leading” countries in respect of the number of applications submitted to the European Court of Human Rights (ECtHR). Out of 10,800 Moldovan applications registered between 1998 and 2014, by 31 December 2014, ECtHR had completed to examine 89% of them. Nevertheless, more than 1,000 of applications with increased chances of success submitted against Moldova are still pending before the ECtHR. Although the number of pending Moldovan applications significantly decreased in 2012, the ECtHR annually receives about 1,000 applications against Moldova. According to the number of submitted applications compared to the population of the country, in 2013 and 2014, Moldova was ranked fourth among the 47 member states of the Council of Europe.

The study puts an emphasis on facts. For this reason, and given the limited amount of resources and time, we avoided to turn the result of our research in an academic document. Although we tried to be as accurate as possible, the information contained in the study may not be exhaustive or sufficiently detailed. Since the report was written during a longer period of time, some information from the report might not be the most updated.

Until the end of 2014, ECtHR has delivered 297 judgments in Moldovan cases. Comparing to other countries with a high number of ECtHR judgments and where most of the judgments refer to one or two systemic problems, the 297 Moldovan judgments refer to more than 50 types of ECHR violations. These figures suggest that there are many problems in the Republic of Moldova related to ensuring the observance of human rights and the functioning of justice.

The high number of ECHR violations found by the ECtHR in Moldovan cases and the nature of those violations raised questions concerning the observance of the ECHR and the execution of ECtHR judgments by the Republic of Moldova. The need for this study was determined both by the high number of Moldovan applications submitted to the ECtHR, as well as by the overload of the ECtHR and constant appeals made at the level of the Council of Europe (CoE) to ensure better application of the ECHR at the domestic level. Deficient executions of ECtHR judgments and insufficient observance of the ECHR at the domestic level is one of the main reasons of the high number of applications pending before the ECtHR. The need to adequately apply the ECHR at the domestic level was also reiterated in the Interlaken, Izmir and Brighton declarations on the future of the ECtHR.

The Moldovan Government has announced several ambitious reforms, including a new mechanism of executing ECtHR judgments. Without an adequate evaluation of the situation, any reform is in danger of becoming less efficient. This study aims to respond to the question – what the Republic of Moldova has done so far in order to ensure executions of ECtHR judgments, and what was the impact of these measures. The study represents the first comprehensive evaluation of the level of execution of the main groups of ECtHR judgments by the Republic of Moldova. The main purpose of the study is to contribute to the adequate execution of ECtHR judgments by the Republic of Moldova.

The study was conceived as an instrument for analysis of the measures taken in order to remedy ECHR violations and avoid similar violations in the future, as well as of the existing mechanism for executing ECtHR judgments in the Republic of Moldova. The study does not assess whether one or another judgment of the ECtHR was executed, that being the task of the Committee of Ministers of the Council of Europe (CM). The study analyses only if the measures undertaken to execute the ECtHR judgments were in the spirit of ECtHR judgments and if they were sufficient to exclude the causes which led to violations of the ECHR. The authors of the study made recommendations to remedy the identified deficiencies. The study was also conceived to be a useful instrument for the Committee of Ministers of the Council of Europe (CM) in the process of monitoring the execution of ECtHR judgments in the Republic of Moldova.

In the study we tried to identify the main reasons that determined the violation of the ECHR and the measures undertaken to overcome them. The study makes reference to both successes and failures. Because we wanted the study to be useful for improving the execution of ECtHR judgments, we preferred to pay more attention to “the empty part of the glass”. LRCM hopes that the recommendations formulated in this study will be accepted and is ready to assist, to the extent possible, the Moldovan authorities in implementing these recommendations.

The information from the study might be of interest for the authorities of the Republic of Moldova, particularly in order to discharge its obligations towards the CoE and implementation of the 2011-2016 Strategy Plan to reform the justice sector. We hope that the study will also be of interest to the CM in the process of monitoring the execution of ECtHR judgments. We expect that judges, prosecutors, advocates and other professionals in the justice system will use information from this study in order to improve the level of observance of the ECHR in the Republic of Moldova. We hope that the study can also be of interest to the European institutions and other international organizations that monitor the situation of justice sector and human rights in Moldova, as well as for donor institutions that are providing financial support to the Republic of Moldova in the field of justice and human rights.

2. Methodology of the Study

The methodology of the study has been developed by the designated team of the Legal Resources Centre from Moldova (LRCM). The methodology is based on the main issues that emerge from the obligations of the countries to observe the ECHR and to comply with the ECtHR judgments. Both general measures imposed by the ECHR were analyzed,

such as enhancing the level of knowledge of the ECHR, as well as specific aspects that follow from the main ECtHR judgments in Moldovan cases delivered since the Republic of Moldova ratified the ECHR and until 31 December 2013.

The study begins with the presentation of national provisions related to the direct application of the ECHR. Chapter 1 also includes a synthesis of statistical data related to Moldovan applications submitted to the ECtHR and an analysis of the main case-law of the ECtHR in Moldovan cases. Payment of just satisfaction and reopening of domestic proceedings based on ECtHR proceedings are analyzed in chapter 2. Chapter 3 refers to the level of knowledge of the ECHR amongst legal professionals. Chapter 4 refers to the measures undertaken in order to prevent violations found by the ECtHR. Chapter 5 evaluates domestic mechanism related to the execution of ECtHR judgments. The last chapter refers to the measures undertaken by the Moldovan authorities in order to reduce the number of applications submitted to the ECtHR. All recommendations of the analysis are presented at the end of the Study.

Within the research conducted for the study, an analysis of all ECtHR judgments delivered in Moldovan cases until 31 December 2014 was carried out in order to identify the main types of violations of the ECHR found in these judgments; data on payment of just satisfaction and reopening of domestic proceedings were collected, domestic legislation and domestic practices were analyzed, official statistical data concerning the activity of the judicial system was collected and analysed. Interviews with judges and advocates were also conducted.

Data concerning individual and general measures were collected by the LRCM team, based on the analysis of ECtHR judgments. These data were made available by the General Prosecutor's Office, the Department of judicial administration of the Ministry of Justice, the Ministry of Finance and other public authorities. The caselaw of the Supreme Court of Justice which is published on its web page was also analyzed.

The study also aimed at evaluating the measures taken for executing the main types of violations found in the judgments delivered by the ECtHR in Moldovan cases by 31 December 2013. The study was conducted between June 2014 and March 2015, and information from the study reflects the situation by the end of 2014.

Summary

In accordance with art. 4 of the Constitution, the direct application of the ECHR represents an obligation and not a right of the judge. However, direct application of an international treaty or caselaw of an international tribunal has never been a simple exercise. In the period 2012-2014, the SCJ has taken significant measures to ensure proper application of the ECtHR standards. Nevertheless, there is still a long way to go until ECtHR standards are properly implemented in the Republic of Moldova.

Annually, more than 1,000 applications are submitted against Moldova to the ECtHR. It is true that in 2014 ECtHR received by 18.5% fewer applications against Moldova than in 2013. However, this does not necessarily represent an indicator that the observance of ECtHR standards in Moldova has improved. It seems that the decrease in the number of applications allocated to a decision-making body in 2014 could also be explained by the reluctance of lawyers to address the ECtHR after several thousands of applications were declared inadmissible in 2012-2014, and by the change in 2014 of the way the applications are registered by the ECtHR. On the other hand, the total number of applications submitted to the ECtHR in 2014 decreased by 15%. Even if the number of applications submitted to the ECtHR against Moldova in 2014 is lower than in 2013, it still remains very high. In 2014, for example, the ECtHR received more applications against Moldova than in 2010, 2011 or 2012. In relation to the number of population in the country in 2013 and 2014 the Republic of Moldova was the fourth of the 47 member states of the Council of Europe by the number of complete applications submitted to the ECtHR. In 2014, for example, Moldovans submitted by 14 times more applications to the ECtHR than Georgians, by six times more applications than Armenians and twice more applications than Latvians or Slovenians.

The number of pending applications submitted against Moldova decreased from 4,261 on 31 December 2010 to 1,159 on 31 December 2014. This change is also not explained by improvement of the situation in terms of observance of human rights in the country. This phenomenon can be explained by the increase in the number of lawyers at the ECtHR Registry who are examining Moldovan cases and by concentrating the ECtHR efforts in recent years on the examination of cases with reduced chances of success. Out of 1,159 applications pending at the end of 2014, only 165 applications had reduced chances of success. In 2011 the number of these applications constituted 3,168, which is by 19 times higher.

Until 31 December 2014, the ECtHR issued 297 judgments against Moldova, of which 24 judgments were delivered in 2014 and 19 - in 2013. By the number of judgments, Moldova is ahead of Germany, Spain, the Netherlands or Portugal, countries that ratified

the ECHR long before Moldova and have a much larger population than Moldova. The most violated rights found in 297 judgments are the right to a fair trial and the prohibition of torture. Even though the failure to execute judgments represents the most common type of violation, these convictions were found until 2009. There are still many convictions for ill-treatment, failure to investigate ill-treatment and improper quashing of final judgments. In the light of 297 ECtHR judgments delivered until 31 December 2014, the Moldovan Government was forced to pay over EUR 14,100,000, of which EUR 225,271 - based on 24 judgments delivered in 2014 and EUR 325,600 - based on 19 judgments delivered in 2013.

After the ECtHR judgments become final, they are passed to the CM for monitoring their execution. In 2013, CM monitored the execution of 239 Moldovan cases, of which 72 cases were reference cases. During the same year, the CM received 28 new cases, of which 4 cases were reference cases. In the same year, the CM suspended the procedure of monitoring the execution of 21 Moldovan cases. However, the execution of some Moldovan judgments is monitored by the CM already for more than nine years, which means that CM is not satisfied with the measures taken for their execution.

When signing the ECHR, Moldova committed to comply with the final judgments of the ECtHR. This involves paying just satisfaction awarded by the ECtHR and sometimes reopening of domestic proceedings. Usually, just satisfaction awarded by the ECtHR is paid within the time period indicated by the ECtHR.

Moldovan legislation allows reopening of domestic proceedings based on ECtHR judgments. The grounds provided by the CrPC and CiPC for reopening domestic proceedings as a result of ECtHR judgments seem to be in compliance with the CoE standards. Following the ECtHR judgments delivered until 31 December 2013, reopening of at least eight criminal cases was requested that referred to accusations brought against the applicants. The SCJ reopened all eight proceedings.

Following the ECtHR judgments delivered until 31 December 2010, the reopening of 17 criminal cases was justified. Following the ECtHR judgments, eight proceedings were reopened. Other four proceedings were pending on the day the ECtHR judgment was issued. All 12 cases are related to ill-treatment. Even though more than seven years passed after the delivery of first ECtHR judgments, until 1 September 2012, no one was convicted in either of these cases. In the autumn of 2012, seven of the 12 cases were still not finalized. In this report we tried to establish what happened during the period 2013-2014 in these seven cases and in 19 other cases of ill-treatment, rape or death where the ECtHR issued judgments in the period between 1 January 2011 and 31 December 2013.

We established that in four cases the proceedings were not reopened, in three cases criminal investigation was suspended because the torturers could not be identified, in one case the prosecutor ceased criminal investigation following the expiry of the time limit for applying criminal sanction, and in other 10 cases criminal investigation is still pending. The other six cases were submitted for examination to the court. In two cases sentences were not adopted yet, the other two cases were discontinued following the expiry of the time limit for applying criminal sanction, and in two cases the torturers were convicted. Many criminal investigations concerning ill-treatment are pending for over five years, without significant progress. It is hard

to believe that after five years these criminal investigations can be successful. In some cases, the ECtHR found clearly that applicants were ill-treated and the applicants could identify the torturers. However, these criminal cases have not yet been sent to the court, although the ECtHR judgment were delivered more than five years ago. This could indicate lack of a genuine desire among prosecutors to effectively investigate cases of torture.

Based on judgments delivered by the ECtHR in Moldovan cases until 31 December 2010, the applicants requested the revision of at least 20 civil proceedings. Requests for revision were admitted in 18 out of 20 cases. Requests for revision were rejected in the cases *Kommersant Moldova* and *Business și Investiții pentru Toți*. In 18 cases where the proceedings were reopened, solutions of the SCJ comply with the spirit of ECtHR judgments. However, in some cases that related to major financial claims against the state, the SCJ had a reserved position concerning applicants' claims. Although during January 2012 - December 2013 the ECtHR delivered more than 10 judgments where violation of the right to a fair trial in civil proceedings was found, during this research we could identify only three cases where the re-opening of civil proceedings was requested. The solutions offered by the SCJ in these three cases comply with the spirit of ECtHR judgments.

In the report from 2012, the LRCM found that the ECHR was insufficiently studied in the first cycle of the bachelor studies at the main law universities in the country. In 2013-2014, the situation has not changed significantly. The situation of master programs seems to be better. However, this does not compensate the fact that the information on the ECHR provided within bachelor programs is insufficient. Students in the master's programs represent only a small part of students from the Faculty of Law of the SUM. On the other hand, according to the current law, a person can become an advocate, prosecutor or judge without graduating a master's program. At the NIJ, the ECHR is studied within a special course conducted during initial training and numerous seminars are organized during continuous training. However, these seminars are organized by the NIJ with the support of external donors and the topics of these seminars are repetitive. The report recommends studying the ECHR at the law faculties within bachelor studies for all specialties, preferably in a separate course. We also recommend conducting assessment of the quality of how ECHR is studied within the NIJ and planning continuous training based on the preferences of judges and less on the preferences of donors.

The high number of ill-treatments found and the high number of cases concerning ill-treatment examined on an annual basis by the ECtHR confirm the fact that these cases are not unique and the abusive use of force represents a quite widespread phenomenon in the Republic of Moldova, which however has been decreasing in the last years. According to the interviewees, police resorted to torture because of several reasons: pressure exercised by performance indicators, insufficient professional training of the police, tolerance of such behaviour by police superiors, deficient documentation of ill-treatment signs, extremely rare cases of sanctioning policemen and applying mild sanctions, and easy manner of admitting evidence gathered as a result of torture by judges, even in cases when such complaints exist. Ill-treatment also exists as a result of practices deriving from the Soviet system, where persons who applied torture enjoyed virtual immunity.

In 2009 - 2014, more than 80% of ill-treatment cases have resulted in refusal to initiate criminal investigation. It is unlikely that all these causes could be invented or abusive. Under the current legal framework, a full investigation of ill-treatment without initiating criminal proceedings is virtually impossible, the fact established by the ECtHR back in 2010. However, the rate of refusals to initiate criminal proceedings has not decreased significantly. Even if a criminal investigation is initiated, the expert examination, which is mandatory in cases of ill-treatment, involves examination of victims in a psychiatric institution, and many victims refuse these examinations and the criminal case stagnates. These deficiencies must be removed.

The Section for combating torture within the Prosecutor's General Office, the main body called to combat torture, has only four prosecutors. They were conducting criminal investigation only in several cases and were overseeing the investigation of the other cases of ill-treatment, which seriously affects their efficiency. Foreign experts recommended creating an independent body for investigating all complaints against police.

Thoroughness of investigation was always criticized, and the proof of that are the 45 cases where the ECtHR has found procedural violations of Articles 2 or 3 of the ECHR. Despite considerable efforts of the General Prosecutor's Office and of the SCJ to assist methodically the prosecutors in investigation of ill-treatment cases, the quality of investigations remains insufficient. Despite the fact that orders issued by the prosecutors are lengthier now than several years ago, often the impression is that the prosecutors cannot motivate or deliberately do not take the effort to reason their orders. For this reason, many orders of the prosecutors are cancelled by investigative judges. Apparently, neither judges nor prosecutors treat cases of ill-treatment as priority cases. Duration of the criminal investigation and the examination of such cases in court continues to be a problem. For example, at least in four cases of ill-treatment reopened as a result of ECtHR proceedings, criminal investigation is still ongoing after more than four years after the reopening of the proceedings. These flaws are exclusively explained by the deficient practices of the prosecutors and must be removed. In several judgments, the ECtHR found that the victim was not sufficiently involved in the investigation proceeding, and this flaw is due to the CrPC provisions, which need to be adjusted.

In 2012 the criminal law that incriminates ill-treatment was hardened, which led to the increase of sanctions applied by judges. If during 2011 - 2014 only two persons were imprisoned for ill-treatment, only in 2014 eight persons were imprisoned. However, judges are still tempted to be indulgent towards the employees of the law enforcement bodies, which is sometimes exaggerated, and the reasoning of the judgments in the part where sanctions are individualised is generally vague. The study recommends standardization of the judicial practice regarding the individualisation of sanctions. It is also necessary to solve the problem related to the failure to apply the practice of suspension of torturers from office.

In order to prevent ill-treatment, the report also recommends transmission as soon as possible of the control over Police Detention Centres (IDP) from the MIA to the Ministry of Justice, the prohibition of the practice of detaining apprehended persons in the investigators' offices before they are brought in IDP, as well as introducing within the law enforcement bodies of a rigid system of reporting about application of force and abuses on behalf of colleagues.

During 2013 - 2014, the detention conditions in prisons have not substantially changed. At the end of 2014, the Penitentiary nr. 13 from Chisinau was overcrowded with over 20% of the norm established by the Government and by more than 40% of the norm calculated based on the standards of the Committee for the Prevention of Torture. Material conditions of the detention in this prison have not changed significantly. Moreover, even if the amount allocated by the state in 2012 for the food of the detainees was insufficient, in 2014 this amount was reduced even more. Although construction of a new prison in Chişinău was announced, the construction works have not started yet.

Despite the 18 judgments delivered by the ECtHR, no significant progress was registered in relation to the reasoning of arrest warrants, the fact also confirmed after thorough verification of the judicial practice by the Soros Foundation-Moldova. Official statistics confirmed the same conclusion. While it is well known that arrest warrants are rarely well reasoned, the admission rate of arrest warrants in 2014 (82.7%) was even higher than in 2011 (80.9%). Poor reasoning of arrest warrants could be explained by earlier practice of the courts to frequently order arrest, poor reasoning by prosecutors of the requests to authorize arrest, heavy workload of investigative judges and their professional background, limited time provided by law for the examination of the request, lack of diligence of some judges, tolerating this practice by courts of appeal, poor professional preparation of many advocates, social cliché, as well as by corruption within the judicial system. The study recommends *inter alia* balancing the workload of investigative judges, radically revising the practice of appeal the courts by providing exemplary reasoning to their judgments and annulling any arrest warrant that is insufficiently reasoned, as well as the duty of the SCJ to carefully monitor the legal practice related to arrest.

Generally, the Republic of Moldova did not have and does not have systemic problems with the length of judicial proceedings. Lengthy examination of cases represents an exception. Examination of a case of average complexity by all three levels of jurisdiction (first instance, appeal and appeal on points of law) does not last more than 18-24 months, which is below the average in the west-European countries. On the contrary, considering that special attention is drawn to the time limit for examination of cases, many judges neglect the quality of their examination. Although the length of examination of a case is overall acceptable, frequent postponing of court hearings and sending cases for retrial represent continuous problems of the Moldovan system. The report recommends establishing a judicial practice where cases are carefully prepared for the trial, the number of cases sent back for retrial needs to be reduced and the cases sent back for retrial need to be examined with priority.

Until 31 December 2014, the ECtHR issued 24 judgments concerning improper quashing of final judgments in civil cases. Although the first such convictions were delivered back in 2005, they continue also 10 years later. Analysis of the SCJ practice for 2014 confirmed the fact that the quashing of final judgments is still deficient. The provisions that allow revision of the judgment by the SCJ are interpreted extensively, and in some cases revisions are allowed without reference to a legal basis. Moreover, there is a tendency to quash final civil judgments because they contravene to the SCJ practice. Such an approach is risky, given the fact that the Code of Civil Procedure does not provide such a basis for

quashing final judgments. Moreover, even if there was an uniform practice at the SCJ, which is still not certain, this does not in itself represent a sufficient ground for quashing final judgments. SCJ should pay more attention to the process of adopting its decisions, rather than to try to correct its own mistakes by overruling a final judgment.

In the judgment *Iordachi și Alții c. Moldovei*, the ECtHR found that the Moldovan legislation concerning phone tapping did not include sufficient guarantees against arbitrariness. In 2012, the Code of Criminal Procedure (CrPC) has tightened conditions for phone tapping. It seems however that this did not solve the problem of excessive use of phone tapping. On the contrary, in 2014, by 104% more interception authorizations were issued than in 2013.

The results of the analysis of judicial practice carried out by the LRCM raised doubts regarding the effectiveness of the mechanism for compensation of the damage caused by violation of the reasonable term. There are serious problems related both to how quickly the actions initiated under the Law no. 87 are examined, and to the quality of reasoning judgments and the amount of compensations awarded for pecuniary and non-pecuniary damage. Also, the costs for legal assistance are usually entirely or mostly borne by the applicants, even if the action is entirely admitted and the involvement of the lawyer does not seem to be excessive.

On 23 April 2014, the Ministry of Justice announced on its website the launch of the process of drafting "normative framework to create a national mechanism to filter the high amount of applications" addressed to the ECtHR. We could not find out more details about this initiative. Introducing an additional mechanism to minimize the number of applications submitted to the ECtHR is way too important and these initiatives need to be developed in a transparent manner and not within only one institution. LRCM believes that in order to minimize the number of applications submitted to the ECtHR no filter should be created in Moldova. SCJ practice is not sufficiently uniform. Domestic courts, including SCJ, often disregard ECHR standards or apply them improperly. Republic of Moldova has sufficient mechanisms for protecting human rights, however their application is inadequate. It is therefore recommended to focus attention on the proper functioning of the existing mechanisms, rather than inventing new mechanisms with uncertain prospects.

In its report of 2012, the LRCM found that the mechanisms for monitoring the execution of ECtHR judgments existing in Moldova overlap and do not provide sufficient leverage to ensure their effective execution. At the end of 2013, two documents were drafted that aimed at removing the main problems which were mentioned, and streamlining the mechanism for execution of ECtHR judgments and decisions: the new draft Law on the Governmental Agent and the draft Rules on parliamentary control of execution of ECtHR judgments and decisions (draft regulation). The draft Law on GA was sent for CoE review and was favourably endorsed by the competent institutions of the Republic of Moldova. In March 2015, the draft Law on GA was still waiting its approval by the Government. The draft regulation waits to be adopted by the Parliament together with the draft Law on GA.

Our analysis allows us to conclude that, although during the period of 2013-2014 certain regulatory measures have been taken to ensure a better implementation of ECtHR

standards at the domestic level, they still have not led to practical changes or changes are limited. It is unlikely to have culminating changes in this field during a period of two years. However, many measures that had to be taken were not implemented or were only partially implemented or implemented late. It seems however that Moldovan authorities are aware of the importance to adjust its legislation and practices to the ECtHR standards.

Republic of Moldova and the European Convention on Human Rights

1.1 The status of the European Convention on Human Rights in the legal system of the Republic of Moldova

Art. 4 of the Constitution of the Republic of Moldova (further „Constitution”) provides that „constitutional provisions on human rights and freedoms shall be interpreted and enforced in accordance with the treaties to which the Republic of Moldova is a party. If inconsistencies appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations.” When interpreting these norms, the Constitutional Court (Const. Court) has mentioned that the norms of the international law can be directly applied by the law enforcement bodies when examining specific cases and that the norms of the international law take precedence over domestic laws of the country, but not over constitutional norms¹.

If norms of the international law and the norms of the Civil Procedure Code (CiPC) and the Criminal Procedure Code (CrPC) are conflicting, especially in what concerns the human rights, the norms of the international law are to be directly applied (art. 12 para. (4) of the CiPC and art. 7 para. (2) of the CrPC). At the same time, both codes provide for the obligation of judges to lift the exception of unconstitutionality if the law being applied to the case appears to be contrary to the Constitution. When interpreting art. 4 of the Constitution, the international law provisions related to the human rights are also part of the Constitution. Therefore, contradiction of a law with the norms of international law may be interpreted as contradiction with the Constitution. Thus, in case of a contradiction of a law applicable in a case with the norms of international law, the judge may directly apply the norm of international treaty or notify the Supreme Court of Justice (SCJ) in order to lift the exception of unconstitutionality before the Const. Court (art. 12¹ from the CiPC and art. 7 para. (3) of the CrPC). From 2012 until December 2014, the Const. Court issued four judgments and two decisions on the exception of unconstitutionality lifted by the SCJ. In one of the decisions² and

¹ Const. Court, Decision no. 55 of 14 October 1999, on interpreting certain provisions of art. 4 of the Constitution of the Republic of Moldova.

² Const. Court, Decision no. 8 of 25 July 2013, on cessation of the procedure on exception of unconstitutionality of some provisions included in art. 64 par. (2) point 5) of the Criminal Procedure Code, in the version of the Law no. 66 of 5 April 2012 on amendment of the Criminal Procedure Code.

one judgment³, the author of the notification complained that the provisions of domestic law contravene to the European Convention on Human Rights (ECHR).

ECtHR case-law may affect the final judgments issued by the domestic courts. In case the ECtHR finds errors of law or a fundamental flaw in a criminal proceeding that finalized with issuing a final decision or if the ECtHR communicated the submitted application to the Government, the General Prosecutor, his/her deputies, the accused or the injured party may request the reopening of this proceeding (see art. 452 and 453 of the CrPC). The reopening, within civil proceedings, may take place following the revision request submitted based on the initiation of the friendly settlement procedure between the Government and the ECtHR, or upon a finding by the ECtHR or recognition by the Government of a violation of human rights (art. 449 (g) and (h) of the CrPC). The reopening of proceedings at the national level represents a remedy for the person whose right has been violated. See Chapter 2 for more information on the practice of reopening court proceedings and the evolution of these cases.

The SCJ plays an important role in establishing case-law and in promoting application and observance of the ECtHR standards in the whole justice system. In order to unify the legal practice, SCJ adopts, among others, recommendations, advisory opinions and explanatory decisions. On 19 June 2000, the Plenary of the SCJ adopted the explanatory judgment no. 17. It refers to the practical application of the ECHR by the courts of the Republic of Moldova. The respective judgment was brief and did not explain how national courts were to directly apply ECtHR standards. On 9 June 2014, the SCJ issued a new judgment where the Plenary of the SCJ explained how the courts were to apply the ECHR and Judgment no. 17 was repealed⁴. The new judgment mentions the priority of the international treaties over the national norms and the obligation of the national courts to directly apply the provisions of the ECHR concerning compensation for moral damages, the waiver of rights under the ECHR, the applicability of the right to a fair trial, the reasonable term for examination of cases, the presumption of innocence, the principle of legal certainty, the re-opening of the proceedings following the ECtHR judgments or submitted applications, the admissibility of evidence in criminal proceedings, the reasoning of criminal judgments and the ways of executing the ECtHR judgments. Although the explanatory judgment of 2014 is lengthier than the old judgment, it does not make sufficient references to concrete cases and does not explain how the principles laid down in these cases apply in practice. Also, the SCJ failed to explain some other problematic aspects of the judicial practice, established in the recent practice of the ECtHR in Moldovan cases, such as examination of the criminal cases where provocation to committing a crime is alleged⁵ or examination of domestic violence cases⁶ etc.

³ Const. Court, Decision no. 13 of 11 June 2013, on exception of unconstitutionality of some provisions of art. 320 of the Criminal Code of the Republic of Moldova no. 985-XV of 18 Aprilie 2002, in the version of the Law no. 173 of 9 July 2010 on amending of some legislative acts.

⁴ Plenary of the SCJ, explanatory decision no. 3 of 9 June 2014, on the application by the courts of certain ECHR provisions.

⁵ For example: ECtHR, Judgment *Sandu v. Moldova*, of 11 February 2014, para. 32-39.

⁶ For example: ECtHR, Judgment *B. v. Moldova*, of 16 July 2013, para. 31-61.

Starting with December 2012, the Plenary of the SCJ also made reference to the ECHR in its explanatory judgments on compensation of moral and material damages caused to the detainees as a consequence of violation of art. 3, 5 and 8 of the ECHR⁷, on the application of the Law on freedom of expression⁸, on participation of the prosecutor in the trial of criminal case⁹, on the examination of cases on preventive arrest and house arrest¹⁰, on the trial of civil cases in appeal¹¹, on the examination of cases on deprivation of parental rights¹² and on initiating civil proceedings and preparing the case for judicial debate¹³.

From November 2012 until December 2014, the SCJ issued 72 recommendations. In some of them the SCJ explained some aspects related to the application of the ECHR. For example, in its recommendation no. 2, the SCJ explained that national courts must examine applications submitted after the time limit in accordance with the Law no. 87, provided that the delay is determined by the return of applications by the ECtHR in order to be examined at the national level¹⁴. By the recommendation no. 6, the Chairperson of the SCJ and the Governmental Agent of the Republic of Moldova explained how just satisfaction should be granted and recommended the amounts to be collected by the courts in case of violation of the rights guaranteed by the ECHR¹⁵. In its recommendation no. 16, the SCJ explained to the courts that under international treaties and the ECHR, persons who changed their sex have the right to request introducing changes related to their sex and name in the civil status documents and the civil status offices that are refusing such requests will be compelled by the courts to introduce the respective changes¹⁶. In the recommendation no. 26, the SCJ found, based on the ECtHR case-law, that diplomatic and consular representations of foreign states and diplomats and consuls of foreign states on the territory of Republic of Moldova enjoy jurisdictional immunity only in public and not in private relations¹⁷.

⁷ Plenary of the SCJ, Explanatory judgment no. 8 of 24 December 2012, on examination of disputes related to reparation of moral and material damage caused to the detainees by violation of art. 3, 5 and 8 of the ECHR.

⁸ Plenary of the SCJ, Explanatory judgment no. 7 of 24 December 2012, on the practice of application by the courts of certain provisions of the Law on freedom of expression.

⁹ Plenary of the SCJ, Explanatory judgment no. 12 of 24 December 2012, on some issues related to the participation of the prosecutor during the trial of criminal case.

¹⁰ Plenary of the SCJ, Explanatory judgment no. 1 of 15 April 2013, on application by the courts of certain provisions of the criminal procedure legislation on preventive arrest and house arrest.

¹¹ Plenary of the SCJ, Explanatory judgment no. 6 of 11 November 2013, on the procedure of examination of civil cases in appeal.

¹² Plenary of the SCJ, Explanatory judgment no. 6 of 17 November 2014, on the judicial practice of examination of civil cases related to the deprivation of parental rights.

¹³ Plenary of the SCJ, Explanatory judgment no. 5 of 17 November 2014, on the acts of the judge at the stage of initiating civil proceedings and preparing a case for judicial debate.

¹⁴ SCJ, Recommendation no. 2 on the time limit for filing an application to the court on reparation of damages caused by the violation of the right to trial within reasonable time or of the right to have the judgment executed within a reasonable time.

¹⁵ Recommendation no. 6 on just satisfaction.

¹⁶ SCJ, Recommendation no. 16 on the procedure of examination of requests related to the rectification of civil status acts as a result of change of sex.

¹⁷ SCJ, Recommendation no. 26 on the immunity of diplomatic missions.

In case there are difficulties in the correct application of the legal norms within a lawsuit, the court may ask the SCJ to issue an advisory opinion on the application of the law. Advisory opinions are binding for the SCJ and, respectively, for the lower courts (art. 12² para. (4) of the CiPC). Advisory opinions are the most specific among all explanatory documents issued by the SCJ as they refer to the application of the legal norms in a specific case. Since 2013 until December 2014, the SCJ has issued 26 advisory opinions. Only in one opinion (no. 4ac-6/13) the SCJ has noted that, according to art. 6 of the ECHR, the issuance of the court order not to examine an application submitted to the court cannot be regarded as an obstacle in the further examination of the case and, therefore, as a violation of the right to a fair trial¹⁸. Otherwise, advisory opinions issued by the SCJ usually do not make reference to the standards or provisions of the ECHR. It seems that the more detailed the recommendation is, the fewer references to the ECtHR standards are made by the SCJ. Without an application in concrete cases, the ECHR standards remain abstract.

The SCJ made considerable efforts to clarify the status of the ECHR within the legal and practical framework of the Republic of Moldova. However, based on some explanatory judgments, it appears that the SCJ pays more attention to the standards which are favourable to the justice system or to those who justify interferences with the rights guaranteed by the ECHR¹⁹. At the same time, the ECtHR standards mentioned in the explanatory or recommendation documents are short and they often do not contain references to the specific ECtHR case law.

Recommendations:

1. When recommending application of the ECtHR standards, the SCJ should explain in more details how ECtHR standards should be applied in concrete situations;
2. When national courts are citing an ECtHR standard, a reference should be also made to the specific case law of the ECtHR.

1.2 Republic of Moldova at the European Court of Human Rights

Republic of Moldova has ratified the ECHR on 24 July 1997. On 12 September 1997, the ECHR entered into force for Moldova. The first judgment against the Republic of Moldova was delivered in 2001²⁰, however only in 2004-2005 a number of judgments were delivered which elucidated the first systemic problems in the country. So far, the ECtHR has delivered over 300 judgments in Moldovan cases.

¹⁸ Plenary of the SCJ, Advisory opinion no. 4ac-6/13 of 4 March 2013 on the application of art. 171, art. 423 and art. 428 of the CiPC.

¹⁹ For example, in the Explanatory Judgment no. 3 of 9 June 2014, the SCJ has paid an increased attention to how individuals may waive their rights. The SCJ dedicated to this aspect more examples than to other procedural or material aspects (pt. 9). In pt. 4 of the judgment, the SCJ refers to the "ECHR practice" which states that "the use of the image without person's consent represents a limitation of the corresponding rights guaranteed by the Convention". The SCJ, however, does not indicate the case law from where this practice evolves. Also, in 2014 a local NGO has launched a web portal (www.magistrat.md) with information about the career of judges, where each judge has a profile with his/her picture.

²⁰ ECtHR, Judgment *Mitropolia Basarabiei and Others. v. Moldova*, 13 December 2001.

In order to draw conclusions based on the ECtHR statistics, it is necessary to be familiar with some aspects of the internal administration of applications submitted to the ECtHR. According to the rules applicable since 2014, in case an application does not meet formal requirements, it is considered invalid, it is not allocated for examination and the applicant is notified about the fact that a new application should be lodged by observing all requirements²¹. In this case, if the applicant still has time to remove deficiencies, the application is qualified as being at the *pre-trial stage*, meaning that it is not allocated to a judicial body yet. In case an application has never reached a judicial body, because the applicant has not submitted a duly prepared application within the allocated time-frame, then application is not examined by the ECtHR and the file is destroyed. The file is destroyed, which means the application is *disposed of administratively*²². In case an application is properly prepared, it is *allocated to a jurisdictional body* of the ECtHR. Applications which are manifestly inadmissible are distributed for examination to a *single judge*. In case there is doubt related to the inadmissibility of the application or in case application raises a repetitive problem, it will most likely be submitted for examination to the *Committee of three judges*. In case an application raises serious issues and is likely to be successful, it will be sent for examination of a *Chamber of seven judges*. In case an application raises complex issues that could lead to changes of the ECtHR case law, the application may be examined by the *Grand Chamber* composed of 17 judges.

Pending applications against Moldova

Over 1,000 applications are annually submitted to the ECtHR against Moldova. The pace of examination of these applications largely depends on the number of lawyers who process applications for a specific country. Until summer 2012, applications submitted against Moldova were processed by four lawyers, employed by the ECtHR for an indefinite period of time or for a period of four years. It seems that this number of lawyers was not sufficient to process all Moldovan applications, the fact confirmed by the steady growth until 2011 of the number of pending applications (see Table no. 1 below). In July 2012, three more Moldovan lawyers, paid by the Government of the Republic of Moldova, joined the ECtHR Registry in order to help the ECtHR to process Moldovan applications which are manifestly inadmissible. Consequently, the number of pending applications against Moldova has decreased from 4,261 on 31 December 2011 until 1,159 on 31 December 2014.

²¹ On 1 January 2014, the Rule 47 entered into force. It institutes stricter requirements for submitting applications to the ECtHR. In order to interrupt the period of six months set for submitting an application, the applicant must submit a typed application form, which needs to be duly filled in (see, for example, judgment *Malysb and Ivanin v. Ukraine*, 9 September 2014). In case an application is incomplete or if not all documents which are necessary for preliminary examination of the application are attached, the ECtHR will inform the applicant accordingly, within 1-2 weeks since the receipt of the letter, about the need to submit another application which needs to be properly prepared, with all the necessary documents attached. In case an applicant submits an incomplete application in the last days of the six months deadline, he/she will not have the possibility to comply with this deadline. For more details, see: http://www.echr.coe.int/Documents/Rule_47_of_the_Rules_of_Court_2014_1_ENG.pdf.

²² ECtHR, Glossary of statistical terms of February 2010, available at: http://www.echr.coe.int/Documents/Stats_glossary_ENG.pdf.

Table1: Statistical data concerning the applications lodged with the ECtHR against the Republic of Moldova (2009–2014)

	2009	2010	+/-2009	2011	+/-2010	2012	+/-2011	2013	+/- 2012	2014	+/- 2013	1.11.98-31.12.14
Applications allocated to a decision-making body	1,322	945	- 28.5%	1,025	+8.5%	938	- 8.5%	1,354	+ 45.1%	1,105	- 18.5%	10,803
Applications declared inadmissible or struck out	386	434	+ 12.4%	550	+26.7%	1,905	+ 246%	3,143	+ 65%	1,341	- 57.3%	9,623
Applications communicated to the Government	216	135	- 37.5%	118	-12.5%	56	-52.5%	85	+ 51.8%	73	- 9.6%	1,160
Judgments delivered	30	28	- 6.6%	31	+10%	27	-12.7%	19	- 29.6%	24	+26%	297
	31.12 2009	31.12 2010		31.12 2011		31.12 2012		31.12 2013		31.12 2014		
Applications pending before a decision-making body	3,349	3,826	+14.2%	4,261	+11.4%	3,256	-23.6%	1,442	- 55.4%	1,159	- 19.6%	

Out of 1,159 applications pending at the end of 2014, 165 applications were allocated to the single judge, 724 applications were allocated to the Committees or the Chamber, 251 applications were communicated to the Government, 6 applications are still waiting for Government's response and 13 applications were declared admissible. Thus, in 2011 there were 3,168 pending applications before the single judge or Committees (clearly inadmissible applications) and by 31 December 2014 this number has decreased to 165 applications. This explains the decrease of the total number of pending applications in the period 2012–2014. Data from 2014 also shows that there are about 1,000 pending applications before the ECtHR with increased chances of success, which may result in judgments, friendly settlement or unilateral declarations by the Government.

Applications allocated to a decision-making body

If the application meets the requirements of submitting applications to the ECtHR, it is allocated to a judicial body for examination. Out of 10,803 Moldovan applications allocated to a decision-making body in the period 1998–2014, 1,105 applications are dated from 2014. Although the number of Moldovan applications allocated to a decision-making body has slightly decreased in comparison with the last year (1,354 applications), this number remains relatively stable, and even high compared with 2010 (945 applications) and 2011 (1,025 applications). The decrease in the number of applications allocated to a decision-making body in 2014 might be explained by the reluctance of lawyers to address the ECtHR after several thousands of applications were declared inadmissible in 2012–2014 and also by the change in 2014 of the procedure related to the registration of applications by the ECtHR.

Applications that do not meet the rules are not registered as valid applications, but are included in the list of applications that are disposed of administratively. This is confirmed by the fact that the total number of applications that were disposed of administratively in 2014 (25,100 applications) has increased by 84% compared to 2013 (13,650 applications). Half of these applications were liquidated because of their non-compliance with the Rule 47²³. It is also important to note that the total number of applications allocated to a decision-making body by the ECtHR in 2014 has decreased by 15%.

A worrying sign is that during 2013 and 2014, the Republic of Moldova was at the 4th position out of 47 member states of the Council of Europe in respect of the number of applications allocated to a decision-making body in relation to the country population²⁴. By the number of applications allocated to a decision-making body, in 2014 Moldova was surpassed only by Serbia, Liechtenstein and Ukraine. On average, ECtHR has 0.68 applications per 10,000 residents. In other words, in 2014, Moldovans have addressed ECtHR 14 times more often than Georgians, six times more often than Armenians and twice more often than Latvians and Slovenians.

In the past two years, the applicants in Moldovan cases complained mostly about the inefficiency of the remedy introduced by the Law no. 87²⁵, about the improper revision of the final judgments, about violation of the right to property, about the insufficient reasoning of judgments and about the unfair proceedings²⁶.

Applications declared inadmissible or struck out

In case an application does not meet the admissibility criteria laid down in art. 34 or art. 35 of the ECtHR, it is declared inadmissible. In case an application does not meet the requirements of art. 37 and art. 39 of the ECHR, it can be struck out. Out of 9,623 applications declared inadmissible or struck out in between 1998 and 2014, 6,389 applications were solved in the last 3 years. 2012 was the first year when the number of Moldovan applications solved by the ECtHR exceeded the number of applications allocated to a decision-making body, the fact that decreased the overall number of Moldovan pending applications. Unburdening the ECtHR of the backlog from previous years will allow the ECtHR to focus in the future more on the applications with increased chances of success.

Applications lodged with the ECtHR may be declared inadmissible or struck out by ECtHR decisions published on the ECtHR website or by letters addressed to the applicants. After communication of the application, its inadmissibility or striking out is decided based

²³ Statistical analysis of ECtHR for 2014, pag. 4, available at: http://www.echr.coe.int/Documents/Stats_analysis_2014_ENG.pdf.

²⁴ Compared to the countries with the number of population comparable with the population of the Republic of Moldova, the coefficient of applications allocated to a decision-making body reported to 10,000 inhabitants in 2014 was the following: Moldova – 3.11 applications; Georgia – 0,23 applications, Slovenia – 1,71 applications, Letonia – 1,49 applications, Armenia – 0,51 applications.

²⁵ Law no. 87, of 21 April 2011, regarding reparation by the state of the damage caused by violating the right to examination in a reasonable time, or of the right to have the court judgment executed in a reasonable time.

²⁶ Statistical data received by the LRCM from the ECtHR Registry on 16 September 2014.

on a reasoned decision which must be published on the ECtHR website. In 2014, ECtHR adopted 49 such decisions²⁷. By 12 decisions, applications submitted by the applicants were declared inadmissible. The main reasons invoked for inadmissibility of these decisions are the following: manifestly ill-founded claims of the applicants, non-compliance with the six-month time limit, non-exhaustion of domestic remedies and the loss or lack of the victim status. Out of the 37 remaining decisions, by 16 decisions applications were struck out because applicants did not want to continue examination of the application, and in one case – because the dispute was resolved at the national level. By 16 decisions applications were struck out based on the friendly settlement of the case and by four decisions ECtHR has accepted unilateral declarations of the Government.

By two decisions where applications were struck out, the applicants were awarded EUR 15,000 each for non-pecuniary damage for their ill-treatment during April 2009 events. The total amount of just satisfaction awarded by the decisions issued in 2014 represents EUR 217,000. Thus, we note that GA is increasingly resorting to friendly settlement of the disputes with the applicants or to unilateral declarations²⁸. This reduces the number of violations and, respectively, the number of convictions of the Republic of Moldova. This trend however reduces the visibility of the ECHR violations in the system, as tax payers continue to bear high costs for paying satisfaction for state's errors. In total, during 2001–2014, over EUR 3,300,000 were awarded based on friendly settlements or unilateral declarations formulated by the Government.

Applications communicated to the Government

When an application meets the requirements for submitting an application and has not been declared inadmissible or struck out, it is communicated to the Government. Communication of an application to the Government raises the presumption that this application has good chances of success. Since ratification of the ECHR and until 2014, the ECtHR has communicated 1,160 applications to the Government of the Republic of Moldova. At the end of 2014, 251 communicated applications were still pending with the ECtHR. In recent years, the number of applications annually communicated to the Government has decreased. In 2012, 56 applications were communicated to the Government, in 2013 – 85 and in 2014 – 73 applications. By 2012, the number of communicated applications annually exceeded 100. For example, in 2009, the ECtHR has communicated 216 applications to the Government of the Republic of Moldova. After analyzing Table no. 1 we see that the decrease in the number of applications annually communicated to the Government coincides with the increase in processing the inadmissible applications

²⁷ Analytical note „Republic of Moldova at the ECtHR in 2014”, Legal Resources Centre from Moldova, 30 January 2015, pag. 10, available at: <http://LRCM.org/wp-content/uploads/2015/01/LRCM-Nota-Analitica-ECtHR-in-2014.pdf>.

²⁸ In 2014, the payment of just satisfaction under ECtHR decisions issued in respect of Moldova (EUR 217,000) is almost equal to the satisfaction paid under ECtHR judgments delivered in respect of Moldova (EUR 225,271), although judgments are perceived as the main source of government's obligation to pay damages to the applicants based on a solution provided by the ECtHR.

or struck out applications. During 2012-2014, 6,389 pending applications were declared inadmissible and/or struck out. Therefore, the decrease in the number of applications communicated annually can be explained by the fact that in the last 3 years ECtHR has focused on inadmissible applications and has examined applications communicated in the previous years. One of the most important cases which is currently pending before the ECtHR is *Mozzer v. Moldova and Russia*, where the applicant has complained that a number of his rights as detainee had been violated in the Transdnistriean region. The application was communicated in March 2010 and is pending before the Grand Chamber.

Judgments delivered against Moldova

Until 31 December 2014, the ECtHR delivered 297 judgments on Moldovan cases. 24 of them were delivered in 2014. According to the number of judgments delivered, Moldova is ahead of Germany, Spain, the Netherlands and Portugal, that became contracting states long before Moldova did and that have a much larger population than Moldova. According to the chart below, the following ECHR articles were most often violated: art. 6 ECHR (the right to a fair trial – 31% of all violations) and art. 3 ECHR (prohibition of torture, inhuman and degrading treatment – 24% of all violations). The types of violations that are found most commonly by the ECtHR are the following: the non-execution of domestic judgments – in 64 judgments, violation of the right to an effective remedy – in 46 judgments, inadequate investigation of cases of ill-treatment and deaths – in 37 judgment, quashing of final judgments – in 28 judgments, detention in poor conditions – in 27 judgments, ill-treatment or excessive use of force by state representatives – in 23 judgments and insufficient reasoning of arrest warrants – in 18 judgments.

Some of the most important judgments delivered in the period 2013-2014 include *Eremia and Others*²⁹, *Mudric*³⁰, *B.*³¹ and *T.M. and C.M.*³², where ECtHR examined cases of domestic violence in respect of Moldova for the first time. In cases *Sandru*³³ and *Pareniuc*³⁴ ECtHR examined Moldovan entrapment cases for the first time. In *Urechean and Pavlicenco*³⁵ ECtHR ruled for the first time on the immunity of the President of the country. In the case of *Eduard Popa*³⁶, the ECtHR found ineffective investigation of ill-treatment which endangered the life of the applicant, and in *Timuş and Țăruş*³⁷, ECtHR found that police officers were responsible for the death of a person which occurred during the arrest. In cases *Iurcu*³⁸ and *Buhaniuc*³⁹, the

²⁹ ECtHR, Judgment *Eremia and Others v. Moldova*, 28 May 2013.

³⁰ ECtHR, Judgment *Mudric v. Moldova*, 16 July 2013.

³¹ ECtHR, Judgment *B. v. Moldova*, 16 July 2013.

³² ECtHR, Judgment *T.M. and C.M. v. Moldova*, 28 January 2014.

³³ ECtHR, Judgment *Sandru v. Moldova*, 11 February 2014.

³⁴ ECtHR, Judgment *Pareniuc v. Moldova*, 1 July 2014.

³⁵ ECtHR, Judgment *Urechean and Pavlicenco v. Moldova*, 2 December 2014.

³⁶ ECtHR, Judgment *Eduard Popa v. Moldova*, 12 February 2013.

³⁷ ECtHR, Judgment *Timuş and Țăruş v. Moldova*, 15 October 2013.

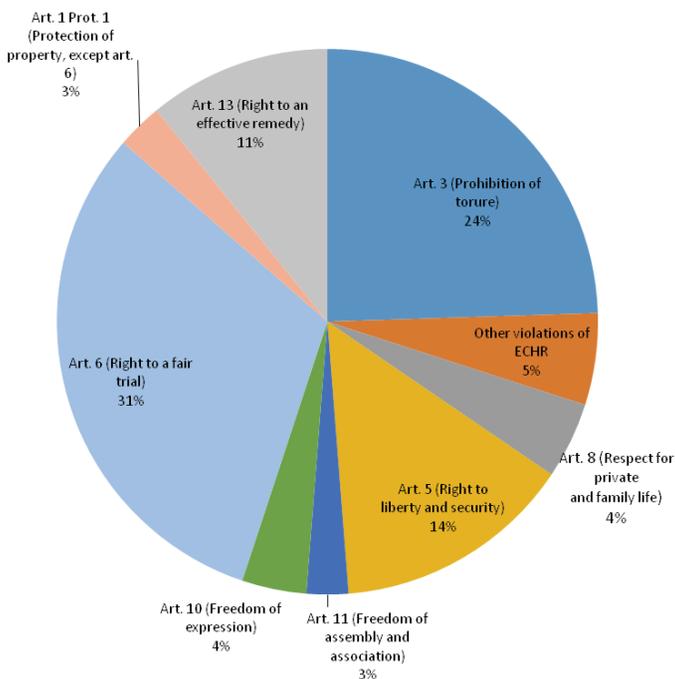
³⁸ ECtHR, Judgment *Iurcu v. Moldova*, 9 April 2013.

³⁹ ECtHR, Judgment *Buhaniuc v. Moldova*, 28 January 2014.

ECtHR found ill-treatment of persons during April 2009 events and ineffective investigation of complaints of ill-treatment. The case of *Ziaunys*⁴⁰ represents a novelty; in this case the ECtHR examined the seizure by Moldovan authorities of several bags with scrapped Transnistrian banknotes. In *Tocarenco*⁴¹ judgment, the ECtHR has indicated specific measures which were necessary to ensure applicant's access to her child.

Based on 297 judgments delivered by the ECtHR until 31 December 2014, the Government of the Republic of Moldova was obliged to pay over EUR 14,100,000, of which EUR 225,271 – based on 24 judgments delivered in 2014 and EUR 325,600 – based on 19 judgments delivered in 2013.

Diagram 1: *Violations of ECHR found by the ECtHR in Moldovan cases in the period 1997-2014*



Supervision of execution of judgments issued against Moldova by the Committee of Ministers

After ECtHR judgments become final they are transmitted to the CM for supervising their execution. CM has the competence to supervise the execution of ECtHR judgments. Art. 46 para. 1 of the ECHR requires states to abide by the final judgments against them. Sometimes, findings or operative part of the ECtHR judgments require states to amend their domestic legal framework, to change a deficient practice or to pay large amounts

⁴⁰ ECtHR, Judgment *Ziaunys v. Moldova*, 11 February 2014.

⁴¹ ECtHR, Judgment *Tocarenco v. Moldova*, 4 November 2014.

as compensation. Thus, in order to facilitate execution of ECtHR judgments, CM may exert political pressure on the state that does not execute measures which are necessary for redressing and preventing further violations. However, experience shows that execution of a general measure by a state may last for several years.

In 2013, CM was supervising the execution of 239 Moldovan cases, out of which 72 were reference cases. In the same year, the CM received 28 new cases, out of which 4 were reference cases⁴². In 2013, the CM issued final resolutions on 21 Moldovan cases, which means that CM was satisfied with the execution of these judgments. In order to facilitate execution of judgments, CM is systematizing judgments per groups of violations. The main groups of Moldovan judgments which are under the CM supervision are listed in Table 2 below. These data show that some of the problems found by the ECtHR 9-10 years ago (poor conditions of detention, ill-treatment of persons in detention and unlawful arrest) have still not been remedied by the Republic of Moldova.

Table 2: The main categories of Moldovan judgments identified by the CM

Main judgment	Number of judgments in the group	Case description
Corsacov group 4 July 2006	25	Ill-treatment in police custody; ineffective investigation of complaints related to ill-treatment; absence of an effective remedy.
Eremia and Others 28 August 2013	1	Failure of authorities to provide protection against domestic violence.
Paladi group 10 March 2009	2	Poor conditions of pre-trial detention in the remand centers under the authority of the Ministry of Interiors and Ministry of Justice, including lack of adequate medical assistance; absence of an effective remedy.
Becciev group 4 October 2005	4	
Ciorap group 19 June 2007	14	
Șarban group 4 January 2006	14	Violations related to unlawful apprehension or arrest (lawfulness, duration and justification).

In conclusion, in the recent years, the number of applications pending before the ECtHR has decreased considerably due to the increase in the number of lawyers who are processing Moldovan applications. Decrease in the number of applications allocated to a decision-making body in 2014 might be explained by stricter requirements for lodging applications to the ECtHR and by the reluctance of Moldovan lawyers to address the ECtHR after several thousands Moldovan applications were declared inadmissible in 2012-2013. Decrease in the number of applications communicated to the Government in recent years could be explained by the fact that Moldovan lawyers have focused in this period on manifestly

⁴² Committee of Ministers of the Council of Europe, „Supervising the execution of judgments and decisions of the European Court for Human Rights”, 2013, pag. 40.

inadmissible applications. GA is resorting more often to friendly settlement and unilateral declarations, what in consequence reduced the number of condemnations of Republic of Moldova, but also reduced the visibility of systemic problems. Most condemnations of Moldova are related to the violation of the right to a fair trial and of the right not to be subjected to torture, inhuman and degrading treatment. At the same time, CM has been supervising for already 9-10 years the execution of judgments where ECtHR found violations related to the poor conditions of detention, ill-treatment in police custody and unlawful arrest, which means that these problems still persist in the Republic of Moldova.

Payment of awarded compensations and reopening of the domestic proceedings

By Art. 46 of the ECHR, the states agreed to abide with the final judgments of the ECtHR delivered in cases to which they are parties. This implies payment of just satisfaction awarded by the ECtHR and, sometimes, reopening of domestic proceedings or another form of redress (individual measures). Besides individual measures, governments must also undertake measures aimed at preventing similar ECHR violations in the future (general measures). This chapter analyses the rules and practices existing in the Republic of Moldova concerning individual measures. General measures will be analysed in the following chapters of the study.

ECtHR may find a violation of the ECHR through judgments delivered by a committee of three judges, by a chamber of seven judges or by a Great Chamber composed of 17 judges. Judgments delivered by the committee of three judges and the Great Chamber are final from the date of their delivery. Judgments of the chamber of seven judges can be appealed to the Great Chamber within three months from the date of delivery. Generally, these judgments become final when this term expires, or, in case of appeal, on the date when the appeal is rejected⁴³. The obligation to pay just satisfaction may also be based on the decision of the ECtHR striking out an application following friendly settlement or acceptance of the unilateral declaration of the Government. Struck out decisions are final from the date of the decision.

2.1 Payment of compensations

The ECtHR informs the applicant through a letter sent by land post that the judgment is final and, if just satisfaction was awarded, invites the applicant to contact the GA in order to receive the awarded compensation. ECHR does not establish a deadline for paying just satisfaction. Nevertheless, since 1991, ECtHR has always indicated in the operative part of the judgments that just satisfaction shall be paid within three months. This time limit starts from the day when the judgment becomes final. In case of friendly settlement or unilateral declaration, the Moldovan GA usually mentions that just satisfaction shall be paid within three months since the notification about the adoption of the ECtHR decision is received.

⁴³ See art. 44 ECHR

Amounts awarded by the ECtHR are net. Taxes and costs related to the receipt of just satisfaction, such as transfer costs, shall be borne by the Government. The debt of the applicant to a third party or to the state should not be deducted from the amount awarded for legal costs⁴⁴. The failure to pay just satisfaction in due time automatically generates the obligation to pay simple interest on the outstanding amount. Usually, the methodology of calculating the interest is indicated in the operative part of the ECtHR judgment, or in the text of the ECtHR decision. Simple interest shall be payable at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The simple interest is calculated based on the amounts calculated in euro.

ECtHR awards just satisfaction in Euro. It is paid by the MF to the residents of the Republic of Moldova in Moldovan lei. Exchange is made based on the exchange rate of the National Bank of Moldova on the date of payment made by MF. This rate is in line with the commercial exchange rates.

In a vast majority of cases, the applicants usually contact the Moldovan GA shortly after receiving the letter from the ECtHR and submit details of their bank accounts where just satisfaction shall be paid. The GA shall submit this information to the Ministry of Finances (MF), which shall make the payment. Usually just satisfaction awarded by the ECtHR is paid to the bank account of the applicant within the period specified in the judgment or decision of the ECtHR. Payment after the deadline may be due to the erroneous bank details provided by the applicant or failure to submit such details in due time.

Moldovan legislation on execution of judgments does not limit the right of the applicant's creditors to forcibly collect the money awarded by the ECtHR for non-pecuniary damage or costs and expenses. This situation does not fully comply with the ECHR requirements.⁴⁵ Until 2014, MF was paying to the applicants the equivalent of the amount awarded in the ECtHR judgment in Moldovan lei. It was not paying taxes that could be chargeable for these amounts. Moldovan legislation does not expressly regulate the methodology of taxation of money received based on ECtHR judgments and decisions. However, art. 20 let. d³ and z³ of the Fiscal Code provides that income tax shall not be charged from compensation for real damage caused by illegal actions or compensations received for moral damage. Art. 20 let. z⁶ of the Fiscal Code does not exclude income tax on compensation for lost income that exceeds the amount of real damage. However, no cases where applicants were required to pay taxes from compensation for lost income awarded by the ECtHR were identified. Services provided by advocates are not subject to VAT in the Republic of Moldova.

⁴⁴ See Memorandum on payment of just satisfaction, elaborated by the CM, available at <https://wcd.coe.int/ViewDoc.jsp?id=1393941&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383> pp. 113-122.

⁴⁵ See Memorandum on payment of just satisfaction, elaborated by the CM, available at <https://wcd.coe.int/ViewDoc.jsp?id=1393941&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

Recommendations:

1. Moldovan legislation shall be supplemented with provisions that would not allow deductions from the amounts awarded by the ECtHR as legal costs due to be paid to the representative of the applicant at the ECtHR;
2. The tax legislation shall be supplemented with special provisions that would exclude taxation of amounts awarded to the applicant by the ECtHR, or would create an effective mechanism for compensation of taxes to be paid from amounts awarded by the ECtHR.

2.2 Reopening of domestic proceedings

ECHR does not expressly require reopening of domestic proceedings following violation of the ECHR found by the ECtHR. However, CM recommended the adoption of the relevant legislation to allow reopening of domestic proceedings (see Recommendation CMR (2000)2, from 19 January 2000). This recommendation suggests that reopening shall take place when ECtHR finds a violation of ECHR and when:

- „(i) the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and*
- (ii) the judgment of the Court leads to the conclusion that*
- a) the impugned domestic decision is on the merits contrary to the Convention, or*
 - b) the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of.”*

It clearly follows from ECtHR case-law that reopening shall be available in case of criminal conviction in an unfair trial. The Recommendation CM R(2000)2 also does not rule out reopening of civil proceedings.

Moldovan legislation allows reopening of domestic proceedings based on ECtHR judgments. The grounds from CrPC and CiPC for reopening domestic proceedings following ECtHR judgments appear to be in compliance with Recommendation no. R(2000)2. National legislation goes even further, allowing reopening of the proceedings based on ECtHR struck out decisions and on communication of the application to the Government.

Criminal cases

Art. 464¹ CrPC authorises reopening of criminal judicial proceedings following the ECtHR judgment or decision⁴⁶. The CrPC also authorises reopening of criminal judicial

⁴⁶ Relevant part of art. 464¹ CrPC reads as follows:

„Article 4641. Revision of the case following the judgment delivered by the European Court of Human Rights

(1) Final judgments delivered in cases where European Court of Human Rights found violation of human rights or freedoms or ruled to struck out an application following friendly

proceedings following communication by the Government of the application submitted to the ECtHR. This situation does not fall under provisions of art. 464¹ CrPC, but under provisions of art. 453 para.1 CrPC⁴⁷. Reopening after communication may be requested by the defendant, the injured party and the prosecutor general or his/her deputies (Art. 452 of CrPC). Request for reopening shall be submitted to the SCJ within six months from the date of communication. In case the request is allowed, the SCJ can maintain the solution of the first instance court, acquit the person, discontinue criminal investigation or re-examine the case and deliver a new judgment without aggravating the situation of the convicted person, or send the case for re-examination.

Criminal cases against the applicants

Following ECtHR judgments delivered until 31 December 2013, the reopening of at least eight criminal cases that referred to accusations brought against the applicants was requested. Although reopening of the *Plotnicova* case seems justified, apparently, the applicant has not requested reopening of the proceedings. SCJ has reopened all eight domestic proceedings. Reexamination of three of these cases was completed by December 2012. Out of the remaining five cases, re-examination of four cases was completed and only *Mitrofan* case seems to be pending before the Chişinău Court of Appeal. Information about these nine proceedings is presented in the following table.

settlement of the dispute between the state and applicants can be subjected to revision if at least one serious consequence of violation of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols is still in place and cannot be redressed except by revision of the delivered judgment.

(2) The following persons can request revision:

- a) a person whose right was violated;
- b) relatives of the convicted person, even after his/her death, only if the request is formulated in favour of the convicted person;
- c) prosecutor.

(3) The revision request shall be submitted to the Supreme Court of Justice, which shall examine the request in a panel composed of 5 judges.

(4) The revision request may be submitted within one year after publication of the judgment of the European Court of Human Rights in the Official Gazette of the Republic of Moldova.

(5) Following receipt, the court may order, ex officio, at the proposal of the prosecutor or at the request of the party, suspension in the execution of the challenged judgment.

...

(11) In case the court finds that the request is well-founded, it shall:

- 1) quash the challenged judgment in the part relating to the violated right and re-examine the case according to provisions of Articles 434–436 [examination of the appeal on points of law], which shall be applied accordingly;
- 2) when the examination of new evidence is necessary, orders re-examination of the case according to revision procedure before the court of law where violation of the right took place.”

⁴⁷ Art. 453 para. 1 CrPC provides the following:

„A final judgment may be appealed in cassation for annulment to correct errors of law made in the course of examination of the case, including when the European Court of Human Rights informs the Government of the Republic of Moldova that an application has been submitted.”

Table no.3: Information about criminal proceedings against applicants that could have been reopened based on ECtHR judgments

ECtHR judgment	Relevant violations found by the ECtHR	Information about the reopening proceedings
<p>Bujnița (36492/02) 16/01/2007 <u>final</u> 16/04/2007</p>	<p>Art. 6 § 1 ECHR – quashing of a final acquittal through cassation for annulment</p>	<p>On 26 November 2007, Plenary of the SCJ allowed the cassation in annulment of the applicant, quashed the conviction and upheld the acquittal.</p>
<p>Popovici (289/04 and 41194/04) 27/11/2007 <u>final</u> 02/06/2008</p>	<p>Art. 6 § 1 ECHR – conviction of the applicant in appeal on points of law without direct examination of evidence</p>	<p>On 7 December 2007, the applicant's advocate requested for the criminal proceedings to be reopened and the conviction to be quashed. On 30 June 2008, the Plenary of the SCJ accepted the request and quashed both the conviction and acquittal judgments and sent the case for re-examination to the Chișinău Court of Appeal. Without a request of the prosecutor, the Plenary of the SCJ ordered the arrest of the applicant.</p> <p>The representative of the applicant submitted a new cassation in annulment request, calling to quash the judgment of 30 June 2008, for the reason that no one requested the quashing of the acquittal and because this quashing does not follow from the ECtHR judgment, and re-examination of the case by the SCJ. On 17 November 2008, the Plenary of the SCJ allowed cassation in annulment, quashed the judgment of 30 June 2008 and sent the case for examination of the Criminal Section of the SCJ.</p> <p>On 21 January 2010, the SCJ allowed the appeal on points of law submitted by the prosecutors' office in part and convicted the applicant to 13 years of imprisonment.</p>
<p>Grădinar (7170/02) 08/04/2008 <u>final</u> 08/07/2008</p>	<p>Art. 6 § 1 ECHR conviction of the applicant without sufficient reasons</p>	<p>Ms. Grădinar and another convicted person in the same case filed a cassation in annulment. On 16 March 2009, the Plenary of the SCJ upheld the cassation for annulment submitted by Ms. Grădinar and discontinued the proceedings in respect of Mr. Grădinar for the reason that he passed away. The cassation in respect of the second person was rejected, because he was not an applicant in the ECtHR proceedings.</p>
<p>Năvoloacă (25236/02) 16/12/2008 <u>final</u> 16/03/2009</p>	<p>Art. 6 § 1 ECHR – conviction of the applicant in appeal on points of law without direct examination of evidence</p>	<p>On 31 May 2009, the Plenary of the SCJ allowed the cassation in annulment submitted by the applicant's advocate, quashed the judgment of the SCJ and ordered re-examination of the appeal on points of law by the Criminal Section of the SCJ.</p> <p>On 9 November 2010, the SCJ allowed the appeal on points of law submitted by the prosecutor, quashed the acquittal and ordered the re-examination of the case by the Chișinău Court of Appeal.</p> <p>On 25 June 2012, Chișinău Court of Appeal rejected the appeal lodged by the prosecutor as unfounded and upheld the acquittal sentence. On 4 December 2012, SCJ upheld the appeal lodged by the prosecutor and sent the case for re-examination at the Chișinău Court of Appeal.</p> <p>On 8 March 2014, Chișinău Court of Appeal sentenced the applicant to 18 years of imprisonment. On 22 October 2014, SCJ dismissed appeal of the applicant.</p>

ECtHR judgment	Relevant violations found by the ECtHR	Information about the reopening proceedings
Levița (17332/03) 16/12/2008 final 16/03/2009	Art. 6 § 1 ECHR – conviction of the applicants based on evidence received through torture	<p>On 8 February 2010, the Plenary of the SCJ upheld the cassation for annulment submitted by the applicant's advocate, quashed the conviction and sent the case for re-examination of the Chișinău Court of Appeal.</p> <p>On 2 May 2013, SCJ sentenced the applicants to 15 years and 10 months and, respectively, 14 years and 10 months of imprisonment.</p>
Dan v. Moldova (8999/07) 05/07/2011 final 05/10/2011	Art. 6 para. 1 ECHR – quashing the acquittal and sentencing the applicant in appeal without hearing of witnesses by the court of appeal	<p>On 22 October 2012, the Plenary of SCJ upheld the cassation in annulment filed by the applicant and sent the case for re-examination to the court of appeal.</p> <p>On 5 June 2013, Chișinău Court of Appeal upheld the appeal of the prosecutor and issued a new sentence convicting applicant to five years imprisonment, a fine in the amount of MDL 30,000, with deprivation of the right to occupy leading and administrative positions in the educational system for a period of two years. The court ordered conditional suspended imprisonment with a probation period of two years. On 28 January 2014, SCJ dismissed applicant's appeal on points of law as inadmissible.</p>
Plotnicova v. Moldova (38623/05) 15/05/2012 final 15/08/2012	Art. 6 para. 3 ECHR - refusal of the judge, without a formal decision, to allow applicant's request related to hearing a witness; failure of the prosecutor to provide access to some important documents requested by defense	<p>Apparently there was not requested for reopening of the criminal case.</p>
Ghirea v. Moldova (15778/05) 26/06/2012 final 26/09/2012	Art. 6 para. 1 ECHR – upholding the appeal of the prosecutor lodged after the prescribed deadline on the grounds that the prosecutor was on leave	<p>On 26 February 2013 the SCJ allowed applicant's revision request, quashed his conviction and upheld the acquittal of the applicant.</p>
Mitrofan v. Moldova (50054/07) 15/01/2013 final 15/04/2013	Art. 6 para. 1 ECHR – failure of the courts to respond to applicant's arguments that he is not subject of the offense he is accused of (art.329 CC) and that the minimum amount of damage caused, which is required by the incriminated criminal law, has not been reached.	<p>On 24 June 2014, the SCJ allowed applicant's revision request, quashed decisions of the appeal court and the cassation court and sent the case for retrial to the Chișinău Court of Appeal. It seems that the case is still pending before the Chișinău Court of Appeal.</p>

All SCJ solutions are compatible with ECtHR judgments. However, in some cases the reasoning of SCJ judgments does not fully comply with the position of ECtHR expressed in the judgment. Thus, in the *Popovici* case, the Plenary of SCJ initially quashed both the conviction, as well as payment of the applicant, although in its judgment ECtHR referred only to his conviction.⁴⁸ In the *Grădinar* case, the Plenary of the SCJ removed applicant's conviction on the grounds that he was sentenced after death. This reasoning is not consistent with the ECtHR judgment, which found that conviction was decided in the absence of sufficient evidence⁴⁹. In the same case, the Plenary of the SCJ dismissed the request coming from a person convicted based on the same evidence and in the same file with the applicant, although CrPC allowed the Plenary to examine this request⁵⁰. The reasoning used by the Plenary of the SCJ in the judgments *Popovici* and *Grădinar* suggest that SCJ tried to comply with the ECtHR judgments, however wanted to limit the benefits that the reopening of the proceedings could have brought for the applicants or third parties. This approach is worrying given that both judgments were unanimously adopted by the Plenary of the SCJ⁵¹.

Ill-treatment and investigation of ill-treatment, rapes and deaths

Cases discontinued during criminal investigation that led to or may lead to ECHR violation may be reopened by the prosecutor ex officio or upon request (Art. 287 of CrPC). In case of refusal of the prosecutor, the case may be reopened at the request of the interested person or by the investigative judge (Art. 313 of CrPC). If the decision of the prosecutor that is or can be contrary to the ECHR was upheld by the investigative judge, this decision can no longer be quashed by the prosecutor and the SCJ shall be requested to quash the decision of the investigative judge based on Art. 464¹ of CrPC.

Art. 287 para. 4 of CrPC provides that criminal investigation may be reopened no later than within one year after the criminal investigation was discontinued. This rule shall not apply if new facts occur or if a fundamental error committed during previous investigation affected the challenged judgment. Several criminal investigations concerning ill-treatment were reopened by the SCJ after this deadline, apparently, because deficient investigation represents a fundamental error.

Following the ECtHR judgments delivered until 31 December 2010, reopening of 17 criminal cases was justified. In four out of 17 cases, domestic proceedings were still pending on the day of delivery of ECtHR judgments. After delivery of ECtHR judgments, all 13 cases that were not pending on the day of delivery of ECtHR judgments were re-examined by the prosecutors. Re-examination was carried out upon the request of GA or ex officio.

⁴⁸ The case of *Popovici* refers to conviction with life imprisonment of a person accused of being the leader of a criminal group. In case the acquittal sentence is maintained, the ground for his detention could disappear.

⁴⁹ The position of the Plenary of the SCJ was, in fact, rejected by the majority of ECtHR judges that ruled for violation of Art. 6 ECHR. The position expressed in the judgment of the Plenary of the SCJ was expressed in a concurrent opinion of two judges.

⁵⁰ See art. 424 para. 2 CrPC.

⁵¹ The Plenary of SCJ includes all judges of the court.

After ECtHR judgments, eight proceedings were reopened, four by the prosecution and four through court orders. The other four proceedings were pending on the day of the ECtHR judgment. All 12 cases concern ill-treatment. Even though more than seven years passed after the delivery of the first ECtHR judgment, until 1 September 2012, no one was convicted in either of these cases. Only two cases were sent to the trial court. In the case *Corsacov*, judges discontinued criminal proceedings concerning ill-treatment because the time limitation for applying criminal sanction expired; while in the case of *I.D.* criminal proceedings on ill-treatment are still pending before the district court. Out of ten cases that were not sent to court, criminal investigation was discontinued in three cases, criminal investigation was suspended in four cases and three criminal investigations were still pending⁵².

In this study we tried to establish what happened with the seven pending/suspended criminal cases that resulted from the ECtHR judgments adopted until 31 December 2010 and 19 cases related to ill-treatment, rape and deaths where ECtHR adopted judgments between 1 January 2011 and 31 December 2013. Information about these 26 cases is presented in the table below.

Table 4: Information about the reopening of criminal proceedings related to ill-treatment or inadequate investigation of ill-treatment, rapes or deaths⁵³

ECtHR Judgment	Relevant violations found by the ECtHR	Information about the reopening of the proceedings
<p>Victor Savitchi (81/04) 17/06/2008 <u>final</u> 17/09/2008</p>	<p>Art. 3 ECHR – ill-treatment; Art. 3 ECHR – inadequate investigation of ill-treatment</p>	<p>On 17 March 2009, the Criminal Section of the SCJ upheld the cassation in annulment submitted by the General Prosecutor's Office on 11 December 2008, quashed the decision of the investigative judge on the complaint against the order refusing to open a criminal investigation into ill-treatment, and ordered the re-examination of the complaint by the investigative judge. On 22 May 2009, an investigative judge quashed the order refusing the opening of the criminal investigation.</p> <p>On 24 August 2009, the General Prosecutor's Office opened criminal investigation no. 2009378051 under Art. 328 para.2, letter a) of the Criminal Code (excess of official authority accompanied by violence). On 19 April 2011, Chişinău Prosecutors' Office ordered suspension of the criminal investigation for the reason that the whereabouts of the accused police officers was not known. Subsequently, criminal investigation was resumed, because a suspect was identified.</p> <p>On 31 January 2013, the criminal case was sent for examination to the Făleşti court. On 19 February 2014, Făleşti court discontinued criminal proceedings due to the fact that the time limitation for applying criminal sanction expired. Apparently the time limit expired in 2014. The prosecutor did not contest the sentence, although ill-treatment happened in 2000 and the time limitation for applying criminal sanction is 15 years.</p>

⁵² For more details, see LCRM Report of 2012, pag. 85-91.

⁵³ The table was prepared based on the information received by the General Prosecutor's Office and analysis of the SCJ judgments.

ECtHR Judgment	Relevant violations found by the ECtHR	Information about the reopening of the proceedings
Breabin (12544/08) 07/04/2009 <u>final</u> 07/07/2009	Art. 3 ECHR – ill-treatment of the applicant; Art. 3 ECHR – inadequate investigation of ill-treatment	<p>On 4 October 2011, the Criminal Section of the SCJ upheld the cassation in annulment submitted by the General Prosecutor's Office on 1 December 2009, quashed the decision of the investigative judge on the complaint against the order refusing to open the criminal investigation into ill-treatment and ordered re-examination of the complaint by an investigative judge. On 15 February 2012, an investigative judge quashed the prosecutor's order on the refusal to open criminal investigation.</p> <p>On 7 December 2009, the prosecutors' office opened the criminal investigation no. 2009018216 under Art. 328 para. 2 a) and c) of the Criminal Code (excess of official authority with application of violence and torture). Currently, the criminal case is still pending at the prosecutor's office from mun. Chişinău. Two police officers were charged in this case. According to the General Prosecutor's Office, the criminal case will soon be sent for court examination.</p>
Gurgurov (7045/08) 16/06/2009 <u>final</u> 16/09/2009	Art. 3 ECHR – ill-treatment of the applicant; Art. 3 ECHR – inadequate investigation of ill-treatment	<p>On 17 July 2009, the Chişinău Prosecutors' Office opened the criminal investigation no. 2009028198 under Art. 309¹ para. 2 c) of the Criminal Code (torture committed by two or more persons). In June 2012, the criminal investigation was still pending at the Chişinău Prosecutors' Office.</p> <p>Within the criminal investigation, a new expert's opinion was ordered, however experts could not answer all questions without hospitalization of the applicant. After the ECtHR judgment, the applicant refused to appear before prosecutors and to be hospitalized. According to the applicant's advocate, the applicant was afraid to be killed in the hospital.</p> <p>In December 2014, the criminal investigation in this case was still pending at the Chişinău Prosecutor's Office.</p>
Buzilov (28653/05) 23/06/2009 <u>final</u> 23/09/2009	Art. 3 ECHR – ill-treatment; Art. 3 ECHR – inadequate investigation of ill-treatment	<p>On 12 July 2007, the General Prosecutor's Office opened the criminal investigation No. 2007208063 concerning the applicant's ill-treatment. It was still pending on the day the ECtHR judgment was delivered.</p> <p>On 8 April 2011, the Hînceşti Prosecutors' Office ordered the suspension of the criminal investigation for the reason that persons who committed the crime could not be identified.</p> <p>On 19 July 2013, the first Deputy Prosecutor General ordered the resumption of criminal investigation and the criminal case was sent for investigation to Leova Prosecutor's Office. In December 2014, the criminal investigation of this case was still pending at Leova Prosecutor's Office.</p>
Parnov (35208/06) 13/07/2010 <u>final</u> 13/10/2010	Art. 3 ECHR – ill-treatment of the applicant; Art. 3 ECHR – inadequate investigation of ill-treatment	<p>On 21 December 2010, the Criminal Section of the SCJ upheld the cassation in annulment submitted by the General Prosecutor's Office, quashed the decision of the investigative judge, annulled the order refusing opening of criminal investigation of ill-treatment and sent the case-file to the prosecutors' office. ⇨</p>

ECtHR Judgment	Relevant violations found by the ECtHR	Information about the reopening of the proceedings
		<p>⇒ On 9 February 2011, the Prosecutors' Office of the Rîșcani District in Chișinău opened the criminal investigation no. 2011028017 under Art. 328 para. 2 a) of the Criminal Code (excess of official authority with application of force) on ill-treatment of the applicant. In June 2012, criminal investigation was still pending at the Chișinău Prosecutor's Office.</p>
<p>Mătășaru and Savîțchi (38281/08) 02/11/2010 <u>final</u> 02/02/2011</p>	<p>Art. 3 ECHR – inadequate investigation of ill-treatment</p>	<p>In 2010, the domestic proceedings were still pending. Even though in 2009 the persons identified by the applicant were recognized as suspects, subsequently, the criminal investigation against them was discontinued. On 6 November 2009, the criminal investigation was suspended, because the perpetrators could not be identified. On 30 March 2010, the criminal investigation was discontinued because no crime had been committed. Both orders were subsequently annulled.</p> <p>In March 2012, the applicant received by post an order of 16 June 2011 suspending the criminal investigation until identification of the perpetrators. In March 2012, this order was challenged and the criminal investigation was resumed and subsequently was again suspended.</p>
<p>I.D. (47203/06) 30/11/2010 <u>final</u> 11/04/2011</p>	<p>Art. 3 ECHR – ill-treatment</p>	<p>On 15 March 2010, the deputy prosecutor general ordered the annulment of the order to refuse to open the criminal investigation and opened a criminal investigation under Art. 328 para. 2 a) and c) of the Criminal code (excess of official authority with application of force and torture). Three persons were recognized as suspects.</p> <p>The criminal case was sent for examination to the Buiucani District Court, mun. Chișinău. On 4 April 2014, the court sentenced two policemen under art.166¹ para. (2) let. c) and d) of the Criminal Code (inhuman and degrading treatment with aggravating circumstances) and sanctioned them with a fine of MDL 20,000 each, with deprivation of the right to hold positions within MIA for a 5-year term. One person was acquitted because he did not apply torture.</p> <p>In December 2014, the prosecutor's and applicant's appeal was still pending before the Chișinău Court of Appeal.</p>
<p>Lipencov v. Moldova (27763/05) 25/01/2011 <u>final</u> 25/04/2011</p>	<p>Art. 3 ECHR – inadequate investigation of ill-treatment; Art. 5 ECHR – criminal apprehension of the applicant beyond the time limit prescribed by law</p>	<p>Following a inspection, the General Prosecutor's Office decided that reopening of the proceedings related to the alleged ill-treatment of the applicant is inopportune. With regard to the applicant's apprehension by the police and his detention in police custody beyond the legal time limit, on 15 October 2011, the Ciocana Prosecutor's Office, of Chișinău has repeatedly refused the opening of criminal investigation, due to the existence since 13 December 2004 of an unquashed order on the same facts.</p>

ECtHR Judgment	Relevant violations found by the ECtHR	Information about the reopening of the proceedings
Bisir and Tuluş v. Moldova (42973/05) 17/05/2011 <u>final</u> 17/08/2011	Art. 3 ECHR – ill-treatment; Art. 3 ECHR – inadequate investigation of ill-treatment	General Prosecutor’s Office reopened the criminal proceedings concerning the ill-treatment. In December 2014, the criminal case was still pending before the Chişinău Prosecutor’s office.
Ipate v. Moldova (23750/07) 21/06/2011 <u>final</u> 21/09/2011	Art. 3 ECHR – ill-treatment; Art. 3 ECHR – inadequate investigation of ill-treatment	General Prosecutor’s Office decided that the request for quashing the order of the investigative judge and reopening of the criminal proceedings is inopportune.
Gorobeţ v. Moldova (30951/10) 11/10/2011 <u>final</u> 11/01/2012	Art. 3 ECHR and Art. 5 para. 1 ECHR – unlawful detention of the applicant for 41 days in a psychiatric institution	<p>On 23 April 2010, pursuant to art. 166 para. (1) (inhuman or degrading treatment) and 361 para. (1) (false in public documents) of the Criminal Code, General Prosecutor’s Office initiated criminal proceedings and two doctors were charged. The criminal case no. 2010048059 is pending before the Balti Prosecutor’s office.</p> <p>On 14 January 2011, the Balti Prosecutor’s office ordered discontinuation of the criminal proceedings against a doctor charged under art. 166 para. (1) of the Criminal Code, and ordered administrative liability instead. He was sanctioned with a fine in the amount of MDL 3,000. On 6 June 2011, due to the fact that the time limitation for applying criminal sanction expired, Balti Prosecutor’s office ordered discontinuation of the criminal proceeding in respect of the same doctor charged for committing offense regulated by art. 361 para. (1) of the Criminal Code.</p> <p>On 16 June 2011, the Balti Prosecutor’s office ordered discontinuation of the criminal proceeding in respect of the second doctor due to the fact that the time limitation for applying criminal sanction expired.</p>
Taraburca v. Moldova (18919/10) 06/12/2011 <u>final</u> 06/03/2012	Art. 3 ECHR – ill-treatment; Art. 3 ECHR – inadequate investigation of ill-treatment	On 31 October 2013, the Botanica Prosecutor’s office ordered the discontinuation of the criminal proceeding in the case no. 2011428081 on the ground that the person who committed ill-treatment could not be identified.
Pascari v. Moldova (53710/09) 20/12/2011 <u>final</u> 20/03/2012	Art. 3 ECHR – ill-treatment; Art. 3 ECHR – inadequate investigation of ill-treatment	<p>On 7 August 2014, the criminal case against two police officers charged with committing an offense provided by art.309¹ para. (3) let. c) of the Criminal Code (aggravated torture) was sent for examination to the Singerei district court. In December 2014, still no judgment was delivered in this case.</p> <p>In relation to the other two former police officers whose whereabouts is unknown, criminal investigation was disjoined and it is still pending before the Singerei Prosecutor’s office.</p>

ECtHR Judgment	Relevant violations found by the ECtHR	Information about the reopening of the proceedings
Buzilo v. Moldova (52643/07) 21/02/2012 final 21/05/2012	Art. 3 ECHR –inadequate investigation of ill-treatment	On 19 March 2009, the Botanica court found the two police officers guilty for ill-treating the applicant and convicted them under Art. 309/1 para. (3) c) Criminal Code (aggravated torture) to five years imprisonment with suspension. On 3 March 2014, Chişinău Court of Appeal convicted the two policemen to five years imprisonment with execution. On 30 September 2014, the SCJ dismissed the appeals on point of law lodged by the police officers.
Sochichiu v. Moldova (28698/09) 15/05/2012 final 15/08/2012	Art. 3 ECHR – excessive use of force during apprehension; inadequate investigation of ill-treatment	On 24 October 2014, the order on discontinuation of the criminal case was quashed by the investigative judge, with the resumption of criminal investigation (nr.2009028178). In December 2014, the criminal case was still pending before the Chişinău Prosecutor's office.
I.G. v. Moldova (53519/07) 15/05/2012 final 15/08/2012	Art. 3 ECHR – inadequate investigation of rape	The Prosecutor's office decided that the revision of the criminal case or the initiation of a regress action is not opportune.
Ghimp and others v. Moldova (32520/09) 30/10/2012 final 03/01/2013	Art. 2 ECHR – death of a person as a result of injuries caused in police custody; inadequate investigation of death	On 24 December 2012, the SCJ upheld the request of the General Prosecutor, quashed the SCJ decisions of 29 May 2012 and of the Chişinău Court of Appeal of 28 February 2011 and ordered the retrial of the case by the Chişinău Court of Appeal. In December 2014, the case was pending before the Chişinău Court of Appeal. The delay in examination of the case is due to a forensic expertise carried out in Romania.
Struc v. Moldova (40131/09) 04/12/2012 final 04/03/2013	Art. 3 ECHR – ill-treatment; Art. 3 ECHR – inadequate investigation of ill-treatment	On 10 July 2014, the Department for combating torture within the General Prosecutor's Office sent a criminal case to the court where the police officer Radu Baranov was charged under art. 309 ¹ para. (1) of the Criminal Code (inhuman and degrading treatment). In December 2014, the case was pending before the Ungheni district court.
Gasnov v. Moldova (39441/09) 18/12/2012 final 18/03/2013	Art. 3 ECHR – ill-treatment; Art. 3 ECHR - inadequate investigation of ill-treatment	On 13 September 2013, the Glodeni Prosecutor's office ordered the opening of criminal proceedings (nr.2013098006) based on art. 166 ¹ of the Criminal Code. In December 2014, the criminal case was pending before Glodeni Prosecutor's office.
Ipati v. Moldova (55408/07) 05/02/2013 final 05/05/2013	Art. 3 ECHR – ill-treatment; Art. 3 ECHR - inadequate investigation of ill-treatment	On 16 June 2013, the First deputy General Prosecutor quashed the decision of 26 January 2010 on discontinuation of the criminal case related to applicant's ill-treatment (no. 2006018137) (opened in relation to ill-treatment of Gheorge Ipati). In December 2014, the criminal case was still pending before the Chişinău Prosecutor's office.

ECtHR Judgment	Relevant violations found by the ECtHR	Information about the reopening of the proceedings
Eduard Popa v. Moldova (17008/07) 12/02/2013 <u>final</u> 12/05/2013	Art. 2 ECHR corroborated with Art. 3 ECHR – inefficient investigation of ill-treatment that endangered life	<p>On 22 February 2010, the Ialoveni Prosecutor's office opened the criminal case no. 2010448005 on the applicant's alleged ill-treatment by police.</p> <p>On 21 May 2014, the First Deputy Prosecutor General ordered the withdrawal of the criminal case from the Ialoveni Prosecutor's office and transmission of the case for investigation to the Chişinău Prosecutor's office.</p> <p>In December 2014, the criminal case was still pending before the Chişinău Prosecutor's office.</p>
Iurcu v. Moldova (33759/10) 09/04/2013 <u>final</u> 09/07/2013	Art. 3 ECHR – ill-treatment; Art. 3 ECHR - inadequate investigation of ill-treatment	<p>On 15 January 2013, the General Prosecutor's office ordered the suspension of the criminal investigation no. 2009038163 because the whereabouts of the perpetrator was not known. The order is still in force.</p>
Gorea v. Moldova (6343/11) 23/07/2013 <u>final</u> 23/10/2013	Art. 3 ECHR – ill-treatment; Art. 3 ECHR - inadequate investigation of ill-treatment	<p>The criminal case concerning the ill-treatment of the applicant, which referred to three defendants, was sent for examination to the Ialoveni district court. On 12 December 2013, it discontinued the criminal proceedings because the time limit for applying criminal sanction expired. On 8 April 2014, the Chişinău Court of Appeal dismissed defendants' appeals. On 22 October 2014, the SCJ dismissed the defendants' appeals on points of law.</p>
N.A. v. Moldova (13424/06) 24/09/2013 <u>Final</u> 24/12/2013	Art. 3 ECHR – inadequate investigation of rape	<p>On 27 November 2014, the SCJ allowed revision lodged by the applicant, quashed its own decision of 21 December 2005 and decision of the Chişinău Court of Appeal of 7 June 2005 and sent the case for retrial to the Chişinău Court of Appeal.</p>
Timus and Tarus v. Moldova (70077/11) 15/10/2013 <u>final</u> 15/01/2014	Art. 2 ECHR – death of a person as a result of the use of lethal force by police officers; inadequate investigation of death	<p>In December 2014, the criminal investigation in relation to the murder (no. 2009428019) was pending before the Chişinău Prosecutor's office. Until the ECtHR delivered its judgment, the criminal case was investigated by the same prosecutor's office.</p>
Feodorov v. Moldova (40424/06) 29/10/2013	Art. 3 ECHR - inadequate investigation of ill-treatment	<p>The criminal investigation was not resumed.</p>

After analyzing the information provided in the Table above, we found that out of 26 cases, the proceedings were not reopened in four cases⁵⁴, criminal investigation was suspended

⁵⁴ Lipencov, Ipate, I.G. and Feodorov.

because perpetrators could not be identified in three cases⁵⁵, the prosecutor discontinued criminal investigation in one case because the time limit for applying criminal sanction has expired⁵⁶, and the criminal investigation is still pending in the other 10 cases⁵⁷. Six other cases were submitted for court's revision. In two cases no decisions have been adopted yet⁵⁸, two other cases were discontinued because the time limit for applying criminal sanction expired⁵⁹, and in two cases the perpetrators were convicted⁶⁰. In the other two cases violation of the ECHR was due to judicial proceedings⁶¹. A brief analysis of this data confirms that many criminal investigations concerning ill-treatment are still pending for more than five years without significant progress. It is hard to believe that after five years these criminal investigations will be successful. In some cases, the ECtHR has clearly found ill-treatment of the applicants, and applicants could identify the perpetrators. However, those criminal cases have not yet been sent to the court, although the ECtHR judgment has been delivered more than five years ago⁶². This could indicate a lack of genuine desire among prosecutors to effectively investigate cases of torture. In fact, most criminal investigations which are prolonged are investigated by the same prosecutor's office – Chişinău prosecutor's office.

Civil cases

Reopening of civil cases following the ECtHR proceedings is regulated by art. 449 CiPC. This article allows the reopening of civil proceedings following the ECtHR judgment where a violation of the ECHR was found, and following unilateral declaration of the Government which served as the basis for striking the application out. Reopening can also be requested after a friendly settlement procedure is initiated. Relevant part of art. 449 CiPC reads as follows:

„Revision shall be declared when:

...

g) the European Court of Human Rights or the Government of the Republic of Moldova initiated a friendly settlement procedure in a case pending against the Republic of Moldova;

h) the European Court of Human Rights found in a judgment or the Government of the Republic of Moldova admitted, in a declaration, a violation of fundamental rights or freedoms that can be redressed, at least partially, by quashing of the judgment delivered by a domestic court.”

⁵⁵ Mătăsar, Taraburcă and Iurcu. The last two cases refer to ill-treatment occurred in April 2009, and in the Mătăsar case, the applicant has clearly indicated on the person who had aggressed him.

⁵⁶ Gorobeţ.

⁵⁷ Breabin, Gurgurov, Buzilov, Parnov, Bisir and Tulus, Sochichiu, Gasonov, Ipati, Eduard Popa and Timuş and Tarus.

⁵⁸ Pascari and Struc.

⁵⁹ Victor Saviţchi and Gorea.

⁶⁰ I.D. and Buzilo.

⁶¹ Ghimp and others and N.A.

⁶² See, for instance, Breabin or Gurgurov cases.

It seems that in both cases provided by art. 449 CiPC, a revision request may be lodged by the applicant during ECtHR proceedings and also by the GA. The GA can submit revision request in order to initiate a friendly settlement and after delivery by ECtHR of a judgment or decision. All revision requests lodged under art. 449 let. g) and h) of the CiPC are examined by the SCJ.

Based on the ECtHR judgments delivered in Moldovan cases until 31 December 2010, applicants requested revision of at least 20 civil proceedings. Revision requests were allowed in 18 out of 20 cases. Revision requests were rejected in the *Kommersant Moldovya* and *Business și Investiții pentru Toți* cases. In 18 cases where the procedure was reopened, solutions of the SCJ were in line with the spirit of the ECtHR judgments. Nevertheless, in some cases which referred to major financial claims against the state, the SCJ was reserved in respect of the applicants' allegations⁶³.

Although during January 2012 - December 2013, the ECtHR delivered more than 10 judgments where it found a violation of the right to a fair trial in the civil proceedings, in this study we found only three cases where reopening of civil proceedings had been requested. Information about these causes is presented in the table below. Solutions offered by the SCJ in these cases are consistent with the spirit of ECtHR judgments. The fact that these cases are fewer may be explained by a full remedy of the applicants within the ECtHR proceedings and by decrease in the number of civil cases examined by the ECtHR in recent years.

Table 5: Information about civil proceedings reopened as a result of the ECtHR judgments⁶⁴

ECtHR judgment	Relevant violations found by the ECtHR	Information about the reopening of the proceedings
Dragostea Copiilor - Petrovski - Nagornii v. Moldova (25575/08) 13/09/2011	Art. 6 para. 1 ECHR – quashing of a final judgment delivered in favor of the applicant after improperly upholding a revision request	On 27 January 2012, the SCJ upheld applicant's revision request, quashed the previous judgment that upheld the revision request and the subsequent judgments delivered and rejected the revision request of the applicant's opponent in the domestic proceedings.
Jomiru and Crețu v. Moldova (28430/06) 17/04/2012	Art. 6 para. 1 ECHR and Art.1 Protocol no. 1 to the ECHR – quashing of a final judgment following the improper upholding of the revision request	On 29 April 2013, the Plenary of the SCJ upheld the revision request of the applicants and awarded them MDL 960,000 for pecuniary damage.
Strugaru v. Moldova (44721/08) 22/10/2013	Art. 6 para. 1 ECHR and Art. 1 Prot. 1 – quashing of a final civil judgment following improper application of revision	On 9 July 2014, the SCJ rejected applicant's revision request on the grounds that the applicant was fully compensated within the ECtHR proceedings.

⁶³ For more details, see LRCM Report of 2012, pag. 99-100.

⁶⁴ Table was prepared based on the analysis of SCJ judgments.

Recommendations:

1. Prosecutors and judges shall take without delay decisions on the reopening of criminal proceedings following the ECtHR judgments or decisions;
2. Decisions on refusal to reopen investigations related to ill-treatment, on discontinuation or suspension of such criminal investigations should be duly justified. Reopening of an investigation should not be refused and an investigation should not be discontinued in case there is a possibility, at least illusory, to identify guilty persons and to make them criminally liable;
3. Reopened cases of ill-treatment, rape or death must be investigated promptly;
4. Reopening of the proceedings based on communication of the application to the Government should only take place where there is an obvious violation of the ECHR. Reopening of the judicial proceedings following communication of the application to the Government, without taking into account the circumstances of the case, could be contrary to the ECHR, as it could result in unjustified quashing of a final judgment.

Raising awareness about the ECHR

The CM recommended to the Member States of the CoE (see Recommendation (2004)4) to ensure training in the field of ECHR at the university and professional levels. The CM recommended that ECHR and ECtHR case-law should be introduced in the university curriculum, especially at the faculties of law and political science, as well as in the curriculum of educational institutions teaching legal professions, including the police studies. The trainers/professors should be well prepared, and countries were called to support initiatives aimed at ensuring high professional quality of the professors and trainers specialized in this field.

Besides training in the field of ECHR and ECtHR case-law, by Recommendation (2002)13, the CM also recommended to the Member States of the CoE to ensure translation and quick dissemination of the summary or the entire text of the ECtHR case-law relevant for judicial practice.

3.1 Training on ECHR

One of the conclusions of the report „Execution of judgments of the ECtHR by the Republic of Moldova 1997-2012”, published in 2012 (further „Report of LRCM of 2012”) refers to the fact that the ECHR was insufficiently studied in the first bachelor cycle at the two law faculties under examination⁶⁵, and ECHR is partially studied within the courses „International Protection of Human Rights” (4 hours at FIUM and 32 hours at SUM) and, partialy, within the course of International Public Law, Criminal Procedure and Civil Procedure. The situation in 2013-2014 has not changed significantly. For example, a separate course dedicated to ECHR is not taught within bachelor studies in the period 2013-2016 and in the period 2014-2017⁶⁶ at the SUM, which is partially included in the optional course „International Protection of Human Rights”. The bachelor studies at FIUM⁶⁷ also do not provide a separate course on ECHR, which is partially included in the „European law” course. Although other courses make reference, and should make reference, to the ECHR

⁶⁵ Faculties of Law from the State University of Moldova (SUM) and Free International University from Moldova (FIUM), selected as the biggest educational institutions by the number of students.

⁶⁶ Education plans are available at http://SUM.md/?page_id=8043, accessed on 23 March 2015.

⁶⁷ Available at <http://drept.FIUM.md/oferta-educationala/planuri-programe>, accessed on 23 March 2015.

and ECtHR case-law depending on the studied material, for example, criminal procedure, civil procedure, business law, etc., this is not sufficient to have a good understanding of the system established by the ECHR and to create sufficient skills to directly apply the ECHR.

Master programs seem to have a better situation. For example, according to the report of the LRCM of 2012, out of 10 master programs studied at the SUM, four programs included courses that refer exclusively or mainly to the ECHR. Apparently, master programs offered by SUM in 2014 continue this practice, by offering the following courses that refer exclusively or mainly to the ECHR:

Master program	The title of the course	No. of hours ⁶⁸
International Law (90 credits)	Principles of applying ECHR in the domestic legal framework	150/40
Informational Law (90 credits)	Observance of human rights within informational society	150/40
Criminal Law (90 and 120 credits)	Observance of human rights in criminal law	150/40
Civil Judicial Procedure (90 credits)	ECHR procedure and practice	300/60
Criminal and Criminal Procedure Law	Human rights in criminal proceedings	150/45
Human Rights (90 and 120 credits)	Material and procedural law at the of the ECHR	300/60
Human Rights (90 and 120 credits)	Litigation strategies at the ECtHR	150/30

Despite the fact that ECHR is studied much more within master programs than within bachelor studies, this fact does not compensate the insufficiency of information about the ECHR within bachelor programs. Students from master programs represent about 15% of the total number of students from the Law Faculty of SUM⁶⁹. On the other hand, according to the current legal provisions, a person could become advocate, prosecutor or judge without graduating a master program. This fact suggests that many legal experts do not actually study the ECHR in detail. If we really want the ECHR law to be implemented at the domestic level in an appropriate manner, then law students within bachelor studies must study the ECHR law regardless of their specialization, or the access to the position of judges, prosecutors or advocates should be denied to those who did not graduate the master program or studies at the National Institute of Justice (NIJ).

The LRCM Report of 2012 also analyzed the training of judges and prosecutors in ECHR offered by the NIJ and found that the ECHR was included both in the initial and continuous training program for the candidates to the position of judge and prosecutor. In

⁶⁸ The number of academic hours, presented as follows: the first figure represents the total number of hours (direct contact and individual work), the second figure represents the total number of hours of direct contact (course and seminar).

⁶⁹ According to information available on the website of SUM on 23 March 2015 (http://SUM.md/?page_id=457), 3,718 students (2,143 - full-time and 1,575 - with reduced frequency) were enrolled at the Faculty of Law, cycle I, and 561 students were enrolled at the master program, cycle II.

2011, 80% of the total number of judges and 46% of the total number of prosecutors attended the NIJ training. However, judges and prosecutors interviewed for this study declared that the seminars provided by NIJ are often theoretical, and the performance of some trainers is weak. It was also noted that the issues related to the ECHR are repetitive, which is largely explained by the fact that most seminars were organized by NIJ with the support of external donors, who organize trainings based on their own priorities. In a survey conducted by the NIJ in 2012 on the training preferences of judges and prosecutors for 2013, ECHR was ranked as second preference. This suggests that although Moldovan judges and prosecutors were trained on the ECHR, they still need more training in this area.

The situation concerning the training of judges and prosecutors did not change significantly in 2012. The initial training plan of the candidates for the position of judge and prosecutor for 1 October 2014 – 31 March 2016 includes the course "ECHR and ECtHR case law" in the first semester with the duration of 54 hours. Therefore, all candidates for the position of judge and prosecutor who study at the NIJ should be familiar at least with the basic principles of the ECHR. NIJ could assess the respective course in order to determine if the planned hours are sufficient and teaching methodology is appropriate to the candidates' needs and expectations.

As regards the continuous training of judges and prosecutors, according to information provided by the NIJ, in 2013, 20 seminars on different aspects related to the ECHR and ECtHR jurisprudence⁷⁰ were organized, where 292 judges and 151 prosecutors were trained. Out of the 20 seminars, eight were organized by NIJ and 12 were organized by NIJ in partnership with foreign donors. In 2014, six seminars were organized on different aspects of the ECHR and ECtHR jurisprudence⁷¹, where 92 judges and 55 prosecutors were trained. Out of the six seminars, two were organized by NIJ and 4 were organized by NIJ in partnership with foreign donors. These data show a substantial decrease in the number of seminars and number of judges and prosecutors trained within the continuous training at NIJ in 2014, compared to 2013.

According to the Report determining the training needs of judges and prosecutors, Annex no. 2 to the NIJ Board Decision no. 12/7 of 10/31/2014, ECHR and ECtHR jurisprudence represent subjects of interest. This report does not clearly explain the priorities of the

⁷⁰ The seminars were organized on the following topics: ECtHR Jurisprudence. Civil and criminal matters. Cases against Moldova (6); National and international standards in the field of anti-discrimination. National case law and the ECtHR (6); ECtHR case law and legal method according to the tradition of judicial precedent (4); The application of coercive procedural measures and preventive measures (2); Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in matters on environment issues. Domestic and ECtHR jurisprudence in environmental law (1); The protection of fundamental human rights through ECtHR Jurisprudence. (1).

⁷¹ The seminars were organized on the following topics: ECtHR Jurisprudence on the obligation to investigate the illegal deprivation of property (1); Mechanisms of protection of the migrants under the ECHR (1); ECtHR case law and legal method according to the tradition of judicial precedent (1); National and international standards in the field of anti-discrimination. National case law and ECtHR (1); ECtHR case law. Civil and criminal matters. Cases against Moldova (1); Protection of refugees and asylum seekers in accordance with the ECtHR and international law of the refugees (1).

continuous training, and only lists a number of topics. Thus, it is unclear whether the ECHR is included in the list of main priorities or is included among many other topics requested by prosecutors and judges. According to this report, both judges and prosecutors recommend updating continuous training programs in order to avoid repeating the same subjects during training courses. From many recommendations included in the report, there is a need to essentially and qualitatively improve the continuous training at the NIJ in general and on the ECHR in particular. In order to determine the continuous training needs of judges, the assessment report should be more analytical and include more specific recommendations.

3.2 Translation of ECtHR judgments and providing information to the specialists

The LRCM Report of 2012 concluded that all ECtHR case-law concerning the Republic of Moldova until 2011 was translated in Romanian language by the GA or non-governmental associations, in particular by the Public Association „Lawyers for Human Rights”. These translations were available free of charge on internet two-six months after judgments or decisions become available. Professionals from the Republic of Moldova also consult translations of ECtHR judgments in Russian and Romanian languages carried out in Romania and Russia. In order to make ECHR standards more accessible in the members states of the Council of Europe, the ECtHR launched the program of translation of its caselaw, including a first project launched with the support of the Trust Fund for Human Rights (HRTF) in July 2012, which includes translation of the main ECtHR judgments and decisions, including in Romanian language, and Republic of Moldova was included among the countries-beneficiaries of this project. Therefore, all interviewed persons declared that, due to available translations, they do not encounter linguistic difficulties in studying ECtHR case-law, and judges and prosecutors recognized that translations are sufficient for them. However, they declared that they do not have enough time to study them.

During the period 2012 - 2014, the situation with the translation of ECtHR judgments was similar with the findings from 2012, however with some improvements. The GA and the Public Association „Lawyers for Human Rights” continued translating the main judgments of the ECtHR concerning the Republic of Moldova. Over 2,500 judgments and their summaries, which were placed on the ECtHR HUDOC database, were translated within the project focused on translation of ECtHR judgments supported by the Trust Fund for Human Rights, which also includes the Republic of Moldova. Moreover, besides translations carried out within this project, a number of translations carried out by third parties (governmental and non-governmental) were also taken over. They were placed on the ECtHR website. Thus, according to information from April 2014⁷², there were over 11,000 translations in unofficial languages of the ECtHR. In March 2015, there were over 13,600 translations available on the ECtHR website, including over 2,000 translations in the Romanian language and over 1,000 translations in Russian language. In fact, based on

⁷² Available at http://echr.coe.int/Documents/HRTF_standards_translations_ENG.pdf, accessed on 23 March 2015.

the number of available translations, the texts translated in the Romanian language were on the second place, after translations available in the Turkish language (about 3,100 texts). Also, in April 2014, the interface of the ECtHR HUDOC database was launched also in the Russian language. Given the fact that many legal professionals in Moldova speak Russian language, access to the ECtHR case law is also eased through the Russian language. Finally, thematic files concerning pending applications and ECtHR case law, developed by the press service of the ECtHR, also represent useful source for ECtHR jurisprudence. Many of them are already translated into Romanian language by the Ministry of Foreign Affairs of Romania and are available on the ECtHR website⁷³. Vast majority of thematic files are also available in Russian language.

In conclusion, the availability of ECtHR caselaw for the Moldovan specialists has increased considerably due to the existing official and unofficial translations. In principle, the linguistic barriers in accessing ECtHR judgments should not exist unless there is a recent judgment. At the same time, apparently professionals face the problem of time limits and impossibility to process the large amount of information on the ECtHR caselaw. From this perspective, competent authorities, primarily the GA and, possibly, the SCJ, including in cooperation with the non-governmental organizations, could initiate a practice of publishing regular thematic bulletins on the ECtHR jurisprudence.

Recommendations:

1. During bachelor studies at the faculties of law, the studying of ECHR must be provided for all specialties, preferably within a separate course dedicated to the ECHR and ECtHR jurisprudence;
2. NIJ must evaluate or make public, in case such an assessment has been carried out, the course on ECHR provided during initial training, in order to determine whether the hours dedicated and the methods used are sufficient and adequate;
3. NIJ must reconsider its approach to organizing continuous training, including concerning the ECHR, in order to ensure delivery of practical and useful seminars for judges and prosecutors, based on their needs. The needs assessment report of the continuous training should include more detailed recommendations.

⁷³ Thematic files in the Romanian language are available at: <http://echr.coe.int/Pages/home.aspx?p=press/factsheets/romanian>.

Measures taken in order to prevent violations found by the ECtHR

4.1 Ill-treatment and deaths

Until 31 December 2014, ECtHR found violations of art. 3 of the ECHR by the Republic of Moldova in 60 ECtHR judgments for ill-treatment or inadequate investigation of ill-treatment and in two other cases –for too lenient sanction applied for ill-treatment⁷⁴. The first conviction for ill-treatment and inadequate investigation of ill-treatment was found in *Corsacov* judgment, which was delivered on 4 April 2006. Since 2010, the ECtHR found two violations of art. 2 of the ECHR by unjustified deprivation of life⁷⁵ by state representatives and other eight violations by inadequate investigation of deaths or risks of deaths⁷⁶.

Guarantees against ill-treatment

The large number of ill-treatments found and the large number of ill-treatment cases examined annually by the ECtHR confirm the fact that these cases are not singular and abusive use of force is a fairly widespread phenomenon in the Republic of Moldova. The following table presents statistical information on cases of ill-treatment registered in Moldova during January 2009 – 2014. Most complaints of ill-treatment refer to police actions.

The table below presents statistical data regarding ill-treatment cases registered in the Republic of Moldova in the period January 2009 –2014. Most ill-treatment complaints refer to police actions.

⁷⁴ ECtHR, Judgment *Valeriu and Nicolae Roşca v. Moldova*, 20 October 2009 and *Pădureţ v. Moldova*, 5 January 2010.

⁷⁵ ECtHR, Judgment *Ghimp and others v. Moldova*, 30 October 2012 and *Timuş and Țăruş v. Moldova*, 15 October 2013.

⁷⁶ ECtHR, Judgment *Răilean v. Moldova*, 5 January 2010; *Iorga v. Moldova*, 23 March 2010; *Anuşca v. Moldova*, 18 May 2010; *Ghimp and others v. Moldova*, 30 October 2012; *Eduard Popa v. Moldova*, 12 February 2013, *Timuş and Țăruş v. Moldova*, 15 October 2013; *Feodorov v. Moldova*, 29 October 2013; and *Vasilca v. Moldova*, 11 February 2014.

Table 6: Data about ill-treatment cases, registered in the period January 2009 –2014⁷⁷

Year	Registered cases	Criminal investigations opened	% of registered cases	Criminal proceeding ceased	% of opened criminal investigations	Cases sent to court	% of opened criminal investigations ⁷⁸
2009	992	159	16%	75	47%	36	23%
2010	828	126	15%	72	57%	65	52%
2011	958	108	11%	92	85%	36	33%
2012	970	140	14%	68	49%	46	33%
2013	719	157	22%	121	77%	49	31%
2014	663	118	18%	92	83%	46	39%

According to the interviewees, police resorted to torture because of pressure exercised by performance indicators, insufficient professional training of the police, tolerance of such behaviour by police superiors, deficient documentation of ill-treatment signs, extremely rare cases of sanctioning policemen, application of mild sanctions, and the fact that judges easily admitted evidence gathered as a result of torture, even in cases when such complaints existed. Ill-treatment also exists due to the practices deriving from the Soviet system, where persons who applied torture enjoyed virtual immunity.

All interviewed persons declared that professional capacity of the MIA subdivisions responsible for investigation of crimes is poor. In the spring of 2011, following the raise in the pension age,⁷⁹ several hundreds of the most experienced employees of the MIA left their jobs.

Several interviewed persons who earlier worked in the prosecutor's office or police declared that nothing happens in the police commissariats without the knowledge of the commissar or deputy commissar. The interviewed prosecutors declared that they never received notifications concerning ill-treatment from the superiors of policemen charged with ill-treatment. Lack of notifications from the superiors of policemen confirms the fact that superiors tolerate ill-treatments, because they know very well what is happening in the police commissariats, and the prosecutor's office annually receives several hundreds of complaints concerning ill-treatment in the police commissariats. On the other hand, we are not aware of any case when superiors of policemen who ill-treated were truly sanctioned for admitting irregularities in the subdivisions they lead. On the contrary, according to an

⁷⁷ Information from this table was taken from the Activity Report of the Section on combating torture from the General Prosecutor's Office.

⁷⁸ The total amount of data from the table may exceed 100% because the percentage was calculated based on the number of cases initiated in the reference year, while the prosecution could quash or send to the court the ill-treatment cases initiated in previous years.

⁷⁹ Policemen were entitled to have a special pension after 20 years of employment. The amount of this pension was comparable with the amount of remuneration of policemen. Through the Law No. 56, from 9 June 2011, this age increased until 25 years. Many of the MIA employees who, until this law, were entitled to a pension preferred to retire.

investigation carried out by a newspaper from Chişinău, several days after the events of April 2009, heads of subdivisions responsible for coordinating the police actions in the centre of Chişinău were disciplinary sanctioned by the Minister of Interior; two days later these sanctions were revoked, and in July and August 2009 they were decorated by the Minister of Interior.⁸⁰ This practice cannot be tolerated.

Documentation of ill-treatment signs was always a subject of discussion in the Republic of Moldova. In the judgments *Pruneanu* and *Petru Roşca*, ECtHR found that upon arrival to the police isolator (IDP), applicants were examined for bodily injuries, and in the case of *Levinţa* examination was conducted in a superficial manner. After 2006, upon arrival to the IDP, examination of apprehended persons is carried out by a medical assistant, who is included in the list of employees of all IDPs. Nevertheless, interviewed advocates alleged that examination of injuries by medical assistants was often only limited to questioning persons and providing short description of obvious injuries. Some interviewed persons declared that as long as medical assistants are employed by the MIA, they will not be interested to adequately document cases of ill-treatment. The Government recognized that this represents a problem and by p. 18 of the National Human Rights Action Plan for 2011-2014 (NHRAP)⁸¹, it undertook to transfer IDPs from subordination of the MIA into subordination of the Ministry of Justice until 2014. However, apparently because IDPs are situated within police stations, they cannot be transferred to the Ministry of Justice until arrest houses are built. In December 2014, building of arrest houses has not started yet, and financial resources were not allocated yet. It is hard to imagine that the change of administrative subordination of IDPs cannot be made in the current situation. It seems that the real problem lies in the unwillingness of the Ministry of Justice to take over IDPs, due to their poor detention conditions. On the other hand, in order to strengthen the position of the ill-treated person, the Law no. 66 of 5 April 2012, in force since 27 October 2012, supplemented art. 64 of the CrPC with the right of the apprehended person to independent medical assistance.

Adequate documentation of injuries upon arrival to the IDP will not eliminate all risks of ill-treatment. In case of *Pruneanu* and *Pădureţ*, for instance, applicants were ill-treated in the period between their effective apprehension and their arrival to the IDP. In practice, no person is admitted to the IDP without the protocol on apprehension that needs to be prepared during several hours after the *de facto* apprehension.⁸² All interviewed advocates declared that from the moment of bringing apprehended persons to the commissariat and until their arrival, their clients were placed in offices of criminal police or criminal investigation officers, and despite the fact that the law prohibits this practice, police officers discussed with them about admitting their guilt. This practice needs to be eradicated, and all persons brought to the commissariat for apprehension should be brought directly to the

⁸⁰ See <http://www.timpul.md/articol/papuc-a-dat-premii-pentru-%E2%80%9Ecoridorul-mortii%E2%80%9D-8869.html>.

⁸¹ Adopted by Decision of the Parliament no. 90, of 12 May 2011.

⁸² Art. 167 para. 2 of CrPC requires that report on apprehension should be drafted in the presence of an advocate, within up to three hours from the *de facto* apprehension.

IDP, and documentation of apprehension needs to be carried out later. In any case, after bringing the person in the police commissariat any conversation between the apprehended person and investigators should be prohibited.

The number of recorded cases of ill-treatment confirms that the phenomenon of torture still persists in the Republic of Moldova, although it is declining. According to the table above, 970 complaints on ill-treatment were registered in 2012, which is the highest number recorded in the period 2009-2014. However, during 2013 and 2014 the number of recorded ill-treatment complaints decreased to 663 in 2014. The interviewed advocates argued that in recent years, cases of physical abuse of their clients by police decreased significantly, however attempts to psychologically influence the apprehended persons increased. Nevertheless, apprehended persons are still physically aggressed by the police, especially in remote regions of Chisinau.

Legislation of the Republic of Moldova does not include the interdiction to continue detention of the person in detention facility where s/he alleged of being ill-treated by the state representatives. However, in the decision of the Plenary no. 8, of 30 October 2010, SCJ explained in p. 16.5 that „if traces of ill-treatment are confirmed by the medical examination, the prosecutor or the court needs to take measures in order to transfer the person from the conditions s/he was detained (the need to continue detention under preventive arrest, the transfer to another penitentiary institution will be discussed)”. No cases were established where this recommendation would be applied; however, according to the general rule, a person cannot be held in IDP more than 72 hours. In any case, this situation could also exist in case of ill-treatment of a person in the penitentiary or returning the person to the IDP upon the request of the criminal investigation body.

Investigation of ill-treatment

All cases of ill-treatment in the Republic of Moldova are investigated by the prosecutors and not by the police. Nevertheless, even in this situation, ECtHR found that the procedural obligation was not carried out concerning the competence of the body that investigated the case, and neither concerning its independence or impartiality, thoroughness and promptness of investigation and involvement of the victim.

Figures from the Table above confirm the fact that during 2009 – 2014, more than 80% of cases concerning ill-treatment finalized with issuing the order not to open criminal investigation, which means that they were examined based on Article 274 of the CrPC. According to a well-established practice, prosecutors were initially verifying the circumstances of the case in detail and, if they were convinced that the case was well-founded, they were opening the criminal investigation. This practice often was leading to disappearance of important evidence and in most of the cases, criminal investigation was never opened. It is clear that some complaints could be invented or clearly abusive. However, it is very unlikely that this represents 80% of the complaints. In fact, Moldovan prosecutors are reluctant towards opening criminal investigation, apparently, because of strict evidence of opened criminal investigations and of performance indicators, which are based, *inter alia*, on the percentage of criminal investigations sent to the court.

CrPC provides that criminal investigation is initiated based on an order issued by the criminal investigation body. In most cases, such an order is not issued and complaints are rejected on the basis of a brief investigation carried out in accordance with art. 274 CrPC. Despite convictions in judgments *Răilean* and *Mătăsaru and Savițchi*, the practice of examination of serious cases of ill-treatment in accordance with art. 274 of the CrPC continued also after January 2010, when judgment *Răilean* was adopted. The Law no. 66, of 5 April 2012 in force since 27 October 2012, amended art. 279 of the CrPC and extended procedural actions that can be carried out until criminal investigation is initiated. According to these changes, all procedural actions can be carried out before the order for initiating criminal investigation is issued, except for those which require the authorization of the investigating judge⁸³. However, on 23 April 2013, the SCJ issued a recommendation explaining that the following procedural actions can be carried out after registration of the notification: a) hearing witnesses; b) on site investigation; c) presentation for recognition; d) experiment; e) bodily examination; f) corpse examination; g) technical-scientific and forensic examination⁸⁴. According to the meaning of this recommendation, an expert examination cannot be called before criminal investigation is initiated and most of ill-treatment cases cannot be effectively investigated without expert examination. Furthermore, according to art. 143 para. (1) pp. 1 and 2 CrPC, the reason of the death and the severity and nature of bodily injuries can be proved only by expert examination. However, in case of more than 80% of complaints the order on initiating criminal investigation is never issued.

Even if the criminal investigation is initiated, the manner of carrying out expert examination in cases of ill-treatment is questionable. According to art. 143 para. (1) p. 3¹ CrPC, an expert examination must be ordered and performed in order to determine the „physical and mental condition of the person against whom there are allegations of committing acts of torture, inhuman or degrading treatment”. Prosecutors interpret this norm as imposing an obligation on them to determine the mental condition of the victim in any case concerning ill-treatment. The determination of the mental condition is carried out during examination in psychiatric institutions. Many victims refuse to go to psychiatric institutions for examination.

In the *Boicenco* judgment, ECtHR criticized the fact that ill-treatment was investigated by the prosecutor responsible for carrying out criminal investigation against the applicant. Following *Boicenco* judgment, on 19 November 2007, the General Prosecutor issued the decision no. 261/11. Through this decision, territorial prosecutors were obliged to designate a special prosecutor who would carry out urgent measures aimed at investigating ill-treatment cases. After the opening of criminal investigation, criminal cases were sent for investigation, depending on the territorial competence, to the Military Prosecutor’s Office, Prosecutor’s Office from Gagauzia, Prosecutor’s Office from Balți or Prosecutor’s Office from Cahul.

By the Decision of the Parliament no. 77, from 4 May 2010, a new structure of the General Prosecutor’s Office was approved. It provided the creation of the Section on

⁸³ Phone tapping or searches should be authorized in the Republic of Moldova by the investigative judge.

⁸⁴ Recommendation of the SCJ No. 38, of 23 April 2013, available at http://jurisprudenta.csj.md/search_rec_csj.php?id=60.

combating torture. This Section is operational starting from 24 May 2010. According to the Regulation of the General Prosecutor's Office, this section organizes and coordinates the activity of the sub-divisions of the prosecutor's office in the field of combating torture, verifies compliance with the legislation during investigation of ill-treatment cases, carries out criminal investigation based on the order of the GP, analyzes real situation and summarizes case-law on investigation of ill-treatment cases, as well as offers practical and methodological assistance to the prosecutors in the investigation of ill-treatment cases. Through the order of the GP no. 90/8, from 2 November 2010, the order no. 261/11 was cancelled, and territorial prosecutors were obliged to designate one prosecutor to investigate ill-treatment cases. This could not be a prosecutor who deals with the activity of the MIA officers. The last condition is not always observed, because of the limited number of prosecutors in many district prosecutor's offices. Through the same order, prosecutors were obliged to inform the Section on combating torture, within 24 hours, about the receipt of any notification/complaint concerning the ill-treatment. In December 2014, four prosecutors were working in the Section on combating torture. They were conducting criminal investigation only in few cases and were monitoring investigation of the remaining cases of ill-treatment. Despite the fact that the mechanism instituted through the order no. 90/8 aims at excluding the situation that occurred in the *Boicenco* judgment, the Moldovan society does not fully trust the prosecutorial system. This perception is supported by the image of the prosecutors in the society that was created during many years, and by the fact that the number of prosecutors in the subdivisions of the prosecutor's office is small, which can lead to reluctance of the anti-torture prosecutors to efficiently investigate cases of torture in the detriment of investigations of their colleagues. For this reason, foreign experts recommended creating an independent body responsible for investigation of all complaints against law enforcement bodies⁸⁵.

Thoroughness of investigation was always criticized in the 45 judgments where ECtHR found violation of art. 2 and 3 of ECHR. Thus, in the case of *Boicenco*, even though it was alleged that the applicant was in a bad condition, the prosecutor did not examine the applicant's medical file and did not interrogate the doctors who treated the applicant. In cases of *Buzilov* and *Parnov*, the prosecutor refused to open criminal investigation only based on the statements of the police officers, and in cases of *Victor Savițchi* and *Gurgurov* the prosecutors ignored the applicants and witnesses' statements that confirmed ill-treatment. In cases of *Pruneanu*, *Breabin* and *Buzilov* not all eye-witnesses were heard, in the case of *Răilean* the key person in the case, who presumably was driving the vehicle that deathly injured the son of the applicant, was not heard, and in the case of *Mătăsaru and Savițchi* the person who was the cause of the altercation was also not heard. In the cases of *Gurgurov*, *Buzilov* and *Mătăsaru and Savițchi* the presentation for recognition and confrontation were not carried out, despite the fact that the applicants declared that they could identify the perpetrators, and in the case of *Petru Roșca*, even though the investigation judge quashed an earlier order, subsequently, the prosecutor issued a similar order without eliminating

⁸⁵ Eric SVANIDZE, Country report, Moldova, Combating ill-treatment and impunity and efficient investigation of ill-treatment, Chișinău 2009, p. 60; Amnesty International Report „An unresolved issue, combating torture and ill-treatment in the Republic of Moldova”, 2012, p. 15.

the deficiencies mentioned by the investigation judge. Deficiencies mentioned above could disclose insufficient professionalism of the prosecutors

Despite considerable efforts of the General Prosecutor's Office and of the SCJ to assist prosecutors in investigation of ill-treatment cases, the quality of prosecutors' orders remains poor and that, despite the fact that orders are lengthier now than several years ago, often the impression is that the prosecutors cannot motivate or deliberately do not take the effort to motivate their orders. Deficiencies mentioned in the ECtHR judgments are generally found in many investigations. Many orders of the prosecutors are cancelled by investigation judges, the verification procedure provided by Article 299¹ CrPC⁸⁶ seems to be a simple formality, and after the prosecutor's order is quashed by the judge, often prosecutors do not redress deficiencies indicated in the court judgment. Thus, according to the Annual statistical report for 2014, prepared by the DJA, 3,558 complaints were lodged to the investigative judges in 2014 against actions of the criminal investigation bodies, and 686 (19%) out of them were lodged by the injured party. 1,105 of the total number of examined complaints (31%) were admitted. Poor quality of investigations was also confirmed in this Study when the impact of reopening criminal investigation concerning the ill-treatment was examined based on the ECtHR judgments⁸⁷.

Apparently, neither judges nor prosecutors treat cases of ill-treatment as priority cases. The length of the criminal investigation and examination of such cases in court continues to be problematic. It is necessary to mention that since the beginning of 2014, 131 criminal cases concerning ill-treatment were still pending with the prosecutors, and at the end of 2014, 118 criminal cases were still pending, and only 46 cases were sent to the court. It is also necessary to note that out of all cases concerning ill-treatment reopened following the ECtHR procedures, at least in four cases criminal investigation continues after more than four years after the re-opening of the proceedings. Thus, in 2011, courts delivered judgments in 43 criminal cases concerning the ill-treatment, and another 38 criminal cases were still pending in the first instance court on 1 January 2015. Such delays are not typical for the legal system of the Republic of Moldova (for details, see section 4.4 of the Report).

In several judgments, ECtHR found that victims were not sufficiently involved in the investigation process. Thus, in cases *Pădureț, Iorga, Anușca* and *Mătăsaru and Savițchi*, the applicants were not informed about the developments in the criminal investigation and in the case *Anușca*, information about discontinuation of the criminal investigation was passed with a one month delay. In the case of *Mătăsaru and Savițchi*, the prosecutor did not inform the applicant about ordering an expert's opinion and about charging the suspects and subsequent revocation of charges and refused to provide access to some materials of the criminal investigation, including those prepared with the involvement of the applicant. Lack of proper involvement of the victims in the investigation of cases is due to the existing legal provisions in the Republic of Moldova and the mentality of the prosecutors. Art. 212 of CrPC refers to confidentiality of criminal investigation and authorities interpret this norm as prohibiting the access of the third parties, including of the victim, to any

⁸⁶ According to Art. 299¹ CrPC, any order of the prosecutor needs to be challenged to the higher prosecutor and only subsequently to the investigative judge.

⁸⁷ See Section 2.2. of the Report.

information about criminal investigation⁸⁸. Disclosure of this information by the criminal investigation body represents a crime regulated by Art. 315 of the Criminal Code and is punished with imprisonment of up to three years. Prosecutors declared that Art. 212 of CrPC does not allow them to periodically inform the victims about the developments in the criminal investigation. CrPC does not provide the right of the victim to request information about the developments in the criminal investigation. Thus, CrPC shall be amended in order to comply with the ECtHR standards and prosecutors should be trained regarding the involvement of victims in the investigation of ill-treatment cases.

Lenient punishment for ill-treatment

In the judgments *Valeriu and Nicolae Roşca* and *Pădureţ*, ECtHR found that, because of the failure to apply sanctions or because of applying mild sanctions for torture, the obligation to prevent ill-treatment was not fulfilled. Both judgments were delivered in the period of October 2009 – January 2010. The case *Valeriu and Nicolae Roşca* refers to sanctioning for excess of power with three years imprisonment and with suspension and interdiction to work in police for two years, while during the investigation process, the person who applied torture was not suspended from his/her office. This was the minimum punishment provided by the law, and in the sentences, the judges did not refer at all to the obvious aggravated circumstances. The qualification of the acts as excess of power instead of torture was also criticized. The case of *Pădureţ* refers to exemption from responsibility of one torturer exempted due to the expiration of the time limitation for criminal liability. In this case, the suspension from office was also not applied. The ECtHR also mentioned that ill-treatment acts committed by a state agent should not be subjected to time limitations.

By December 2012, the Criminal Code of the Republic of Moldova had concurrent provisions concerning incriminating the ill-treatment. Some cases concerning ill-treatment were qualified as excess of official authority accompanied by acts of torture (art. 328 of the Criminal Code) and not as acts of torture (art. 309¹ Criminal Code). The Criminal Code was amended by the Law no. 252, of 8 November 2012, in force since 21 December 2012. Now inhuman and degrading treatment and torture are incriminated by one single article - art. 166¹ of the Criminal Code. Art. 309¹ of the Criminal Code and Art. 328 of the Criminal Code (in the part that refers to ill-treatment) were revoked and ill-treatment is no longer a qualified circumstance in the other articles of the Criminal Code. These changes make it impossible to apply art. 90 of the Criminal Code (suspension of executing the imprisonment sentence) for the acts of torture⁸⁹. However, in case of inhuman and degrading treatment, the person may be sanctioned with the fine from MDL 16,000 to MDL 20,000. This may be a too lenient sanction. Art. 60, 79, 107 of the Criminal Code were amended by the same law, by excluding the possibility of applying

⁸⁸ This interdiction does not extend to the access to documents drafted with participation of the person.

⁸⁹ The Criminal Code does not allow the suspension of imprisonment sanctions exceeding five years. Art. 166¹ par. 3 of the Criminal Code provides that the minimum sanction that can be applied for torture represents six years imprisonment.

time limitation for the criminal liability or applying a more lenient sanction than the minimum provided by the law or amnesty for the acts of torture or degrading treatment.

Information concerning criminal cases related to ill-treatment and examined by the courts from the Republic of Moldova in the period of 2011- 2014 are presented in the following table. If in 2011 - 2014 only two persons were imprisoned for ill-treatment, only in 2014, 8 persons were imprisoned.

Table 7: Data about criminal cases concerning ill-treatment examined by the courts in the period 2011- 2014⁹⁰

Year	Cases sent to court	Article 309 ¹ of the Criminal Code	Article 328 of the Criminal Code	Cases Examined	Acquittal/ discontinuation of the proceedings		Convictions		Incarcerations
					Cases	Persons	Cases	Persons	
2011	36	13	14	43	16		23		1
2012	46	13	10	23	11	24	12	16	0
2013	49	9	15	24	13	32	11	37	1
2014	46	6	9	15	5	8	10	23	8

Although the data from the table suggests that punishments for ill-treatment were increased, this is mostly due to the tightening of the legislation rather than to the enhanced awareness among judges of the importance to combat torture. The judges are still tempted to be indulgent towards the employees of the law enforcement bodies, which is sometimes exaggerated. The insufficient reasoning of court judgments is a general problem within the judicial system in the Republic of Moldova. This problem is even more acute when it comes to individualization of sanctions. Judges perceive individualization of sanctions as an issue of their discretion rather than a legal matter. For this reason, judges explain very rarely the application of one sanction or another. This practice was criticized in the judgment *Valeriu and Nicolae Roşca*. Five years after this judgment, no improvement in the reasoning of court judgments in this regard was noticed. It appears that this happens because of the lack of uniform judicial practice concerning applied sanctions.

The suspension from office within a criminal case is ordered by the employer, upon the request of the prosecutor, and according to art. 200 CrPC, the respective decision can be appealed to the investigative judge. During the suspension time, the salary is not paid. The suspension from office of policemen suspected of ill-treatment happens quite rarely in the Republic of Moldova. Following the events from April 2009, when several hundreds of ill-treatment complaints were lodged, only 14 policemen were suspended from their office. 12 suspensions were subsequently quashed by judges.⁹¹ Judges invoked procedural grounds, as

⁹⁰ This data was taken from the Activity reports of the Section of the General Prosecutor's Office on combating torture.

⁹¹ See, Promo-LEX, Report on Human Rights from the Republic of Moldova, 2009-2010, p. 17

well as the fact that as a result of non-payment of salaries, suspension placed policemen in a vulnerable situation. Such situation denotes a distorted perception by the MIA, prosecutors and judges of the purpose for suspending them from office. The CrPC also needs to be amended in order to provide the right to receive salary during the suspension period.

Recommendations:

1. The law that regulates the police activity needs to provide an unconditional obligation of the police to report in written form about the use of force by police;
2. The apprehended persons should be brought directly to the IDPs. The practice when the apprehended person is held in the offices of criminal police or criminal investigation officers before they are brought to the IDPs should be prohibited;
3. IDPs should be transferred under the authority of the Ministry of Justice as soon as possible, irrespective of the building of arrest houses;
4. Legal provisions have to be adopted to prohibit the continued detention of a person, ill-treated by the authorities, in the commissariat or detention facility where s/he was subjected to ill-treatment;
5. The practice regarding the opening of a criminal investigation needs to be revised. Cases that are not *prima facie* absurd should not be investigated without opening a criminal investigation. The Recommendation of the SCJ No. 38 also needs to be revised;
6. An independent body to investigate all complaints against the law enforcement bodies shall be established;
7. Rules need to be adopted that would provide for a priority treatment of the criminal cases by judges and prosecutors;
8. The CrPC should be amended to authorize criminal investigation bodies to periodically inform the victim about the developments of the criminal investigation and to adequately involve the victim in the process of investigating ill-treatment, and prosecutors need to be trained on this;
9. The intervention of the SCJ is necessary for establishing a judicial practice that would exclude mild sanctions for ill-treatment. Sanctioning inhuman or degrading treatment with a fine should be admitted only in exceptional situations;
10. The legislation needs to be amended to provide for automatic suspension from office of policemen that have been accused of ill-treatment, or for an obligation of his/her detachment for the period of criminal investigation.

4.2 Poor conditions of detention

Until 31 December 2014, in 26 judgments, ECtHR found violation of Art. 3 of the ECHR because of poor conditions of detention. The first judgments for poor conditions of detention were delivered back in 2005 in the cases *Ostrovar* and *Becciev*. The 26 judgments mentioned above relate to the conditions of detention in four penitentiaries and six police isolators of temporary confinement: Penitentiary No. 13 from Chisinau – 19 judgments⁹²,

⁹² *Ostrovar*, 13 September 2005; *Istratii and others*, 13 June 2006; *Modârca*, 10 May 2007; *Țurcan*,

Penitentiary No. 3 – 1 judgment⁹³, Penitentiary No. 15 – 2 judgments⁹⁴, Penitentiary No. 6 – one judgment⁹⁵ and the following IDPs: of the Chişinău General Police Inspectorate – five judgments⁹⁶, of the General Section for Combating Organized Crime (DGCCO) - three judgments⁹⁷ and of the the Commissariats in Orhei – two judgments⁹⁸, center sector of the Chisinau municipality⁹⁹, Anenii Noi¹⁰⁰ and Hincesti – one decision each¹⁰¹.

Penitentiary institutions

The main problems raised concerning the Penitentiary No. 13 may be resumed as follows:

- a) the cells were overcrowded and beds were missing¹⁰²;
- b) the food was insufficient or of bad quality¹⁰³;
- c) cells were infested with vermins and cockroaches¹⁰⁴;
- a) iron blinders were blocking the access of natural light¹⁰⁵;
- b) bed linen was too old¹⁰⁶;
- c) water and electricity were disconnected periodically, which was imposing restrictions on the use of the toilet¹⁰⁷;
- d) passive smoking was widespread, poor medical assistance, toilets were not separated and taking showers once in 15 days¹⁰⁸.

27 November 2007; *Ciorap*, 19 June 2007; *Popovici*, 27 November 2007; *Străisteanu and others*, 7 April 2009; *Valeriu and Nicolae Roşca*, 20 October 2009; *I.D.*, 30 November 2010; *Rotaru*, 15 February 2011; *Haritonov*, 5 July 2011; *Hadji*, 14 February 2012; *Arseniev*, 20 March 2012; *Culev*, 17 April 2012; *Plotnicova*, 15 May 2012; *Constantin Modarca*, 13 November 2012; *Ciorap (no. 3)*, 4 December 2012; *Mitrofan*, 15 January 2013; and *Ipati*, 5 February 2013.

⁹³ *Segheti*, 15 October 2013.

⁹⁴ *Ciorap (no. 3)*, 4 December 2012 and *Segheti*, 15 October 2013.

⁹⁵ *Rotaru*, 15 February 2011.

⁹⁶ *Becciev*, 4 October 2005; *Istratii and others*, 13 June 2006; *Străisteanu and others*, 7 April 2009; *Taraburca*, 6 December 2011 and *Feraru*, 24 January 2012.

⁹⁷ *Stepuleac*, 6 November 2007; *Popovici*, 27 November 2007 and *Haritonov*, 5 July 2011.

⁹⁸ *Malai*, 13 November 2008 and *Ciorap (no. 2)*, 20 July 2010.

⁹⁹ *Brega*, 20 April 2010.

¹⁰⁰ *Gavrilovici*, 15 December 2009.

¹⁰¹ *Ciorap (no. 2)*, 20 July 2010.

¹⁰² See Judgment *Ostrovar*, 13 September 2005; *Istratii and others*, 13 June 2006; *Modârcă*, 10 May 2007; *Ciorap*, 19 June 2007; *Ţurcan*, 27 November 2007; *I.D.*, 30 November 2010; *Arseniev*, 20 March 2012; *Plotnicova*, 15 May 2012; *Constantin Modârcă*, 13 November 2012; *Mitrofan*, 15 January 2013 and *Ipati*, 5 February 2013.

¹⁰³ See Judgment *Ostrovar*, 13 September 2005; *Becciev*, 4 October 2005; *Istratii and others*, 13 June 2006; *Modârcă*, 10 May 2007; *Ciorap*, 19 June 2007; *Plotnicova*, 15 May 2012 and *Mitrofan*, 15 January 2013.

¹⁰⁴ See Judgment *Ostrovar*, 13 September 2005; *Istratii and others*, 13 June 2006; *Ciorap*, 19 June 2007 and *Mitrofan*, 15 January 2013.

¹⁰⁵ See Judgment *Istratii and others*, 13 June 2006; *Modârcă*, 10 May 2007; *Ciorap*, 19 June 2007 and *I.D.*, 30 November 2010.

¹⁰⁶ See Judgment *Istratii and others*, 13 June 2006; *Modârcă*, 10 May 2007 and *I.D.*, 30 November 2010.

¹⁰⁷ See Judgment *Modârcă*, 10 May 2007; *Ciorap*, 19 June 2007 and *I.D.*, 30 November 2010.

¹⁰⁸ See Judgment *Ostrovar*, 13 September 2005.

The LRCM Study of 2012 established that in 2011 the Penitentiary no. 13 was overcrowded, the norm of space for each detainee was smaller than 2,9 m², including areas occupied by basins and toilets. According to statistics, on 1 January 2015, 1,203 persons were detained in the penitentiary no. 13, although the maximum limit of this penitentiary was 1,000 detainees¹⁰⁹. The limit of 1.000 persons also does not take into consideration the norm of 4m² per detainee recommended by the CPT. In order to observe the minimum limit of space per detainee, which is 4m², penitentiary no. 13 should detain 710 persons¹¹⁰. Respectively, the situation of overcrowded cells in penitentiary no. 13 has not changed at all, and it remains an important problem of this penitentiary.

Concerning the other problems identified in penitentiary no. 13, some improvements took place in the period 2012-2014. For example, reparations were carried out in a number of detention facilities, with construction of separating walls for the toilets in the cells and installment of additional sinks and taps, therefore sinks are currently installed in 80% of the detention facilities; one washing machine with a capacity of 25 kg was delivered in order to ensure laundry of bed linen for the detainees from the ATM base (which should, to a certain extent, improve the situation of the bed linen), current repairs were conducted in the central bath for the prisoners suffering from TB and in the bath for women; and electric boilers for cooking were rehabilitated (which should lead to improved quality of food for prisoners)¹¹¹.

The situation in penitentiary no. 13 is quite worrying because the building is very old, most of it dating from the second half of century XIX, and its reparation is problematic, if not impossible. The problem of penitentiary no. 13 is acknowledged by national authorities. On 14 June 2013, the request of the Moldovan Government for a loan in the amount of EUR 39.000.000¹¹² for building a new prison to replace Penitentiary no. 13 was approved. Despite of the fact that construction works are planned to be finalized by December 2017, they have not started yet.

The problems identified in penitentiary no. 15 refer to insufficient food and inadequate hygiene conditions. The problem identified in penitentiary no. 3 refers to inadequate hygiene conditions. The problems identified in penitentiary no. 6 refer to insufficient food, detention in wet conditions, overcrowded cells, infestation of the cells with verms, which led to applicant's TB illness, and lack of conditions for necessary diet required for the treatment of tuberculosis. Following a monitoring visit carried out in Prison no. 15 in 2014 by representatives of the National Preventive Mechanism against Torture, several problems were identified in relation to this penitentiary. In addition to the fact that cells are overcrowded, the following are mentioned in relation to the hygiene: „Each cell has a sanitary block, which represents a real source of infection. The water is provided by a tap without sink, this tap is connected to the toilet. The toilet serves simultaneously as a way of evacuation of sewage, and of the toilet water. The water from this tap, located directly above the toilet, serves as drinking water for the detainees; this tap is also used by the detainees to do their

¹⁰⁹ Statistics are available at: <http://www.penitenciar.gov.md/ro/statistica>, accessed on 23 March 2015.

¹¹⁰ Information offered by the DPI at the request of LRCM.

¹¹¹ Information offered by the DPI at the request of LRCM.

¹¹² Law no. 295, of 12 December 2013, on the ratification of the Loan Framework-Agreement between the Republic of Moldova and the Development Bank of the Council of Europe for implementation of the Project aimed at construction of the penitentiary in Chişinău.

toilet, to wash themselves and to satisfy their physiological needs in the same place. This situation cannot be tolerated in terms of the requirements imposed by international organizations.”¹¹³

The common problem of the whole penitentiary system in Moldova refers to insufficient food. The LRCM Report of 2012 established that in 2010-2011, there was no considerable increase of allocations for food of the detainees, despite the fact that the total number of detainees dropped by more than 25% comparing with 2005. Accordingly, the situation concerning the food of the detainees was not redressed in 2012. According to the data provided to the LRCM by DPI, the amount allocated for the detainees' food in 2012 – 2014 was as follows:

Year	Total amount allocated (MDL)	Amount allocated daily per detainee (MDL)
2012	31,263,800	13,17
2013	31,501,900	13,27
2014	14,668,600	11,76

The above data indicates similar amounts for 2012-2013 and a cut in 2014 by 47% of the amount allocated for the daily feeding of a detainee comparing with the previous year. Without going into details of the food ration, the overall amount allocated for detainees' food is alarming. Despite the fact that in 2012 the allocation was insufficient, in 2014 this amount was even smaller. Moreover, the official rate of inflation for the period 2012-2014 represented 9.7%. The authorities should increase the amount allocated for the detainees's food in order for the system to ensure an adequate food supply. The situation of food supply for the detainees is positively maintained by the relatives of the detainees, who can send food packages to the detainees.

Police detention centres

The ECtHR judgments mention the following challenging aspects concerning the conditions of detention in the police detention centres (IDP):

- a) IDP of the General Police Commissariat from Chişinău – the cells are overcrowded, food is insufficient, lack of walks in open air, iron blinders were blocking the access of natural light, artificial light is permanently on, no bed linen and mattresses;
- b) IDP of the General Section for Combating Organized Crime of the MIA (SCOC) – lack of windows, escorting to the toilet and water tap once per day, lack of heating and of bed linen, insufficient food;
- c) IDP of the Police Inspectorate Centru from Chişinău – detention for 48 hours in a cell without windows, lack of toilet (guardians were escorting detainees to the toilet, upon their request), cold cells and no bed linen;
- d) IDP of the Police Commissariat from Orhei – insufficient food, light is permanently on, failure to separate sanitary facilities from the rest of the cell, verms;
- e) IDP of the Police Commissariat from Anenii-Noi – overcrowded cells, wooden platform for sleeping, lack of heating, absence of a toilet in the cell, exposure to a passive smoking.

¹¹³ See opinion of the Center for Human Rights, prepared following the monitoring visit carried out on 16 June 2014, available at www.ombudsman.md.

IDPs are designed for detention of persons apprehended within criminal proceedings until they are escorted to the penitentiary, including persons brought from penitentiary for carrying out procedural actions, as well as persons apprehended within administrative proceedings. Art. 175¹ of the Enforcement Code establishes that IDPs are designed solely for detention of persons for a period not exceeding 72 hours. Criminal apprehension may not last more than 72 hours (art. 25 par. (3) of the Constitution and art. 165 par. (1) of the CrPC), and administrative arrest for committing administrative offences may not last more than 24 hours (art. 435 par. (2) AC). The LRCM Report of 2012 found that in practice persons arrested during criminal proceedings outside mun. Chişinău can spend more than 72 hours in IDPs, because the escort to the penitentiary takes place on average once a week. Also, including in Chişinău, the arrested persons can be brought back to the IDPs, upon the request of the criminal investigation body, for carrying out procedural actions. In cases of administrative arrest carried out in regions outside Chişinău, persons were executing their sanctions in IDPs, because detainees are escorted to penitentiaries located outside Chişinău only once a week and because of the short period of administrative arrest. According to the findings from 2012, many persons arrested in criminal or administrative proceedings were spending more than 72 or 24 hours in the IDPs.

According to the Report of LRCM of 2012, the activity of several IDPs, including of the IDP SCOC, in 2012 was ceased because of poor detention conditions. This IDP was never reopened.¹¹⁴ The IDP of the General Police Commissariat from Chişinău was fully renovated in 2011 with the financial support of the European Commission. An amount of EUR 250,000 was spent for renovations. In order to ensure 4 m² space per detainee, the capacity of the IDP was reduced from 98 places to 54 places. From 27 cells, only 22 cells were left and the space of the isolator was increased from 300 m² to 420 m². There is a toilet in each cell and windows do not have blinders. In addition to the renovation of the building, new furniture and bed linen were purchased. In 2012 the material conditions of detention in the IDP of the General Police Commissariat from Chişinău were assessed as good. Following the interviews with advocates, we found that the situation concerning the conditions of detention in the respective IDP in 2014 continued to be good.

During 2010-2014, the following sources were spent for repair/renovation of detention facilities in Police Commissariats from Anenii Noi, Hincesti and Orhei. No such data is available concerning the IDP of the Center Police Commissariat, mun. Chişinău:¹¹⁵

Police Detention Center	Capacity	No. of cells	Expenditures for reparation (MDL)	No. of detainees in 2014
Anenii noi	35	6	50,000	284
Hinceşti	4	1	30,000	191
Orhei	9	3	150,000	677

¹¹⁴According to the letter no. 31/1-50 of 16 January 2015, MIA and General Police Inspectorate, in response to the request for information by the LRCM.

¹¹⁵According to the letter no. 31/1-50 of 16 January 2015, MIA and General Police Inspectorate, in response to the request for information by the LRCM. It was not possible to obtain information concerning the specific renovations carried out with these amounts of money.

In order to ensure the implementation of the National Action Plan for Human Rights for 2012–2015, in 2013–2014 all IDPs were inspected by the employees of the General Police Inspectorate and of the Medical Service of the MIA. As a result of these verifications, violations of the legislation and of the CPT standards were found, and the activity of several IDPs, including of the IDP from Anenii Noi Commissariat, was partially stopped. According to the information of the GPI from January 2015, the daily amount of food for persons detained in IDPs represented 15 lei.¹¹⁶ This norm is slightly higher than the norm indicated by the DPI for daily supply of detainees in penitentiaries. Given the budget constraints in recent years, it is not clear yet if that rule was observed.

The Action Plan of the Government concerning the conditions of detention

In October 2013, the Government of the Republic of Moldova, through the GA, submitted the first action plan to the CoE CM Secretariat aimed at ensuring execution of ECtHR judgments, which referred to the group of cases *Becciev, Ciorap and Paladi*.¹¹⁷ The action plan focused solely on the poor conditions of detention and lack of medical care. The Government proposed that the remedies for poor conditions of detention need to be developed within another action plan, after conducting an assessment by the authorities in the second half of 2014 and development of a strategy in this respect.¹¹⁸ Concerning poor conditions of detention, although the Government acknowledges the problem of overcrowded cells and enumerates violations found by the ECtHR separately in each case and, respectively, each detention institution, the Government does not acknowledge the fact that poor conditions of detention represents a systemic problem in the Republic of Moldova.¹¹⁹ The Government mentioned that the poor conditions of detention are rather sporadic and are related in particular to the penitentiary no. 13 and to the police detention centers subordinated to the MIA.

The main problem mentioned by the Government is the lack of financial resources to repair detention institutions that are in poor condition. Concerning penitentiary no. 13, the Government noted that different investments were made during 2007–2013 to improve the quality of food supply for the detainees and the conditions of detention. A loan was awarded to the Republic of Moldova for building a new penitentiary, which will lead to the closure of the existing penitentiary no. 13. Concerning other prisons subordinated to the Ministry of Justice, renovations were carried out in the penitentiary no. 1 from Taraclia, penitentiary no. 7 from Rusca and penitentiary no. 17 from Rezina, and a new penitentiary for juveniles in Goian was built (p. 74–75 of the plan). The Government also claims that it is addressing

¹¹⁶According to the letter no. 31/1–50 of 16 January 2015, MIA and General Police Inspectorate. The letter makes reference to the Decision of the Government no. 609 of 29 May 2006 „on approval of the minimum norms of daily food supply of the detainees and delivery of detergents”.

¹¹⁷Action Plan on groups of cases *Becciev, Ciorap and Paladi* of 29 October 2013, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2385472&SecMode=1&DocId=2068302&Usage=2>.

¹¹⁸Such an evaluation was not published by the end of 2014.

¹¹⁹See in this respect, in particular, p. 62–66 of the Action Plan on groups of cases *Becciev, Ciorap and Paladi* from 29 October 2013.

the problem of overcrowded penitentiary institutions through various strategies aimed at reducing prison population, by improving the probation services and increasing application of measures alternative to arrest (p. 80 of the plan).

In conclusion, the Government proposes the implementation of a series of general and individual measures. General measures include implementation of the Justice Sector Reform Strategy for 2011-2016, especially with reference to the prison system, the revision of the mechanism concerning execution of ECtHR judgments, in particular by extending parliamentary control of the execution of judgments, and strengthening the role of the Ombudsman on monitoring the conditions of detention. Individual measures proposed by the Government include: the revision and codification of the secondary legal framework concerning the rights of the detainees, the revision of the manner of applying arrests, raising knowledge among authorities about conditions of detention, in particular by consolidated analysis of the recommendations of all international bodies responsible for monitoring conditions of detention and the national preventive mechanism against torture, evaluation of the current remedies for poor detention conditions and elaboration of a strategy in this respect (p. 106-128 of the action plan).

The elaboration of the action plan on the poor conditions of detention is an important step towards initiating concrete actions to remedy the situation. At the same time, it would be important to review the action plan in the process and make sure the action plan focuses on the specific cases that generated violations. Although the attempt was to carry out a thorough review of all violations, it is difficult to follow the specific line of argumentation of the proposed measures. It would be better in the future to have a more detailed structure and categorization of the problems and proposed measures, and issues that were not found by the ECtHR or sporadic violations need to be omitted or tackled in a separate point. The plan would be more useful if it would provide actions carried out by each institution separately, in case of those mentioned several times, and general measures proposed per system.

Recommendations:

1. Construction of a new penitentiary in Chisinau in order to replace penitentiary no. 13;
2. Increasing the allowance for food provided to the detainees;
3. Timely transportation of the detained persons from IDPs to prisons, in order to ensure observance of the legal provisions related to detention of a person in IDP for up to 72 hours;
4. Implementation of the measures presented in the Action Plan on group of cases *Becciev, Ciorap și Paladi* of 29 October 2013, in particular assessment of the existing remedies for poor detention conditions and evaluation of how the arrests are applied, including observance of the time limit for detaining a person in the IDP for no longer than 72 hours.

4.3 Insufficient reasoning of arrests

In the Republic of Moldova, the arrests are ordered by the investigation judge. CrPC obliges judges to adequately reason their orders authorizing arrests. The same obligation also results from the decision of the Plenary of the SCJ No. 4, of 28 March 2005, and decision of the Plenary of the SCJ no. 1, of 15 April 2013, which replaced decision no. 4. Nevertheless,

insufficient reasoning of the court orders authorizing arrests issued in the Republic of Moldova was constantly criticized by the ECtHR. In the judgments issued by the ECtHR in Moldovan cases until 31 December 2014, ECtHR found a total of 53 violations of art. 5 of ECHR. In 18 judgments, ECtHR found that the orders of investigation judges authorizing arrests were not reasoned sufficiently. The first judgments where the Republic of Moldova was condemned for insufficient reasoning of arrest warrants were judgments *Șarban* and *Becciev*, dating from October 2005. Furthermore, we will analyze the impact of these judgments.

In all those 18 cases, the arrests and/or extension of arrests was ordered based on a simple reproduction of the legal grounds provided by the CrPC, without indication of concrete grounds that served as the basis for the court to consider as valid allegations that the applicant could hinder from examination of the case, and that the applicant could abscond or commit other crimes. The judges did not try to combat the arguments brought by defence against the arrests. In 2007, in the *Mușuc* judgment¹²⁰, ECtHR underlined the frequent and repetitive nature of this violation even two years after the first violation was found. In the LRCM Report of 2012, it was found that, between 2007 and 2011, no considerable progress was registered in this field¹²¹. This explains the large number of convictions at this chapter. In the period between 2012-2014, ECtHR found other three similar violations in the Moldovan cases.

Poor reasoning of arrest warrants could be explained by an earlier practice of the courts to frequently order arrests, poor reasoning by prosecutors of requests to authorize arrest, high workload of the investigative judges and their professional background, limited time provided by law for the examination of the requests, lack of diligence of some judges, tolerance of this practice by courts of appeal, poor professional preparation of many advocates, social cliché, as well as by corruption within the judicial system.

In 2008, the Plenary of the SCJ summarized the case-law concerning the arrests and established that „court orders concerning application of procedural constraint measures are insufficiently reasoned, which in consequence contradicts the provisions of Art. 306 of the Criminal Procedural Code” and asked judges „not to issue orders that are not reasoned enough when examining requests for application of preventive measures and their extension”¹²².

In 2013, Soros Foundation-Moldova published the Report on Observance of the Right to Liberty at the Criminal Investigation Stage in the Republic of Moldova. The Report was based on the analysis of the judicial practice in the period June-December 2011 on the examination of the requests for arrest or extension of arrests. 652 files were studied, which represents 24.8% of all files related to arrests which were examined in that period¹²³. The authors of the report came, *inter alia*, to the following conclusions:

- a) Usually, the reasoning of the prosecutors’ requests for pretrial arrest or its extension was limited to the description of the charge and transcription of the grounds for arrest provided by the CrPC. Prosecutors do not describe in sufficient details the circumstances that justified the arrest. Preventive arrest authorized during criminal investigation may

¹²⁰ See Judgment *Mușuc v. Moldova*, 6 November 2006, para. 43.

¹²¹ See LRCM Report of 2012, page 142-147.

¹²² See Judgment of the Plenary of the SCJ no. 20, of 14 November 2008.

¹²³ Available at http://soros.md/files/publications/documents/Raport_Respectarea_Dreptului_print.pdf.

not exceed 30 days, and the prosecutor may ask the investigation judge to extend the arrest. Many requests for extension of arrest differ insignificantly from the requests which served initially as the basis for ordering the arrest. They also do not motivate to what extent the circumstances that initially served as the ground for arrest continue to be relevant. In 80% of the requests examined, prosecutors invoked all three risks that could justify the arrest, and namely the risk of absconding, of committing other crimes or influencing criminal investigation. Frequent invocation of all three risks in the same request suggests that prosecutors were unsure whether the evidence held was sufficient to arrest the person and therefore they invoked all risks as a precaution;

- b) Republic of Moldova can „be proud” for having a rich ECtHR case-law on the right to liberty. However we could find references to the ECtHR case-law in none of the 652 requests examined. Prosecutors did not make reference to the ECHR in their requests for arrest, except in a few cases where the ECHR was abstractly invoked;
- c) Requests for arrest must be accompanied by evidence which needs to support the arguments invoked in the request. In 9% of the examined requests for arrest and in 68.1% of the requests for extension of arrest, no evidence was attached. Nevertheless, in many cases where no evidence was attached to the request, the request for authorization of arrest was still upheld. Apparently, this is explained by the fact that judges study the materials of the criminal case „under conditions of confidentiality”. In about 31% of all arrests which were studied, there is evidence confirming that the investigative judges received the materials of the criminal case. Although this is not in line with the ECHR, judges were refusing access of the defense to the materials of the criminal case submitted by the prosecutor, invoking the confidentiality of the criminal investigation.
- d) During the period July – December 2011, 1,425 requests for authorization of arrest were examined in the Republic of Moldova. 85% of them were fully or partially upheld. In seven courts requests for arrest were upheld in 100% of cases. Out of 1,207 requests for extension of arrest which were examined, 83.1% were fully or partially upheld. In 12 out of 41 courts where investigative judges are operating, 100% of requests for extension of arrest were fully or partially upheld. Given the questionable quality of requests for arrest, this percentage is alarming;
- e) Comparing with 2005, court orders became lengthier because relevant legislation and standard passages are now reproduced in all decisions adopted by the same judge. However the real reasons that lay at the basis of ordering the arrest or extension of arrest need to be described in succinct and abstract manner. In most cases, investigative judges do not explain their position in relation to the reasonable suspicion, though this is an essential condition for arresting a person;
- f) Investigative judges often invoke the ECtHR case-law when reasoning their decisions. However, these references are purely declarative. Often the solution offered in the arrest warrant is contrary to the ECtHR case-law cited in the same decision.
- g) Investigative judges uphold more than 80% of the requests for arrest. However, in the second half of 2011, only 22% of the orders issued by the investigative judge were challenged. This phenomenon may be explained by the mistrust of the defense in the efficiency of appeal

against arrest warrants. Such an approach is not unreasonable, considering that while most orders of the investigative judges are poorly motivated, in the second half of 2011, courts of appeal upheld only 14% of the appeals lodged by the defense;

- h) Cassation courts uphold on average only about 20% of appeals on points of law against arrest warrants. More than half of the appeals on points of law which were upheld in July-December 2011 were lodged by the prosecutors. The admission rate of the appeals on points of law lodged by the prosecutors is three times higher than the admission rate of the appeals on points of law lodged by the defense. Most likely, this phenomenon is explained by the accusatory predisposition of the judges from the courts of appeal;
- i) Similarly to the investigative judges, courts of appeal are mostly arguing their decisions by using general and abstract reasoning, without making reference to the circumstances of the case and without responding to the arguments invoked by the parties. Deficiencies in motivating the decisions of the courts of appeal encourage deficient practices of the investigative judges. Apparently, judges who examine arrests under appeal on points of law have a much more reserved attitude than investigation judges in relation to application of non-custodial preventive measures.

In April 2013, the Plenary of the SCJ adopted a new explanatory decision (no. 1/2013) on examination of the requests for authorization of arrest. It explains in details the conditions and the procedure for applying preventive measures and is based mostly on the ECtHR standards. Although this decision is not binding, judges are following the Recommendations of the SCJ. Nevertheless, the analysis of official statistics for 2012-2014 does not show significant change in the judicial practice related to the manner of examining requests for arrest. Although the share of criminal cases where prosecutors request arrest decreased from 32.8% in 2011 to 19.7% in 2014, the effective number of requests for arrest decreased only by 13% - from 3.306 in 2011 to 2.876 in 2014. Surprisingly, the admission rate of arrest requests in 2014 (82.7%) was even higher than in 2011 (80.9%).

Table 8: Statistics concerning requests for arrest examined in 2006, 2009-2014

Year	No. of criminal cases sent to the court	No. of requests (without extension)	In relation to the no. of cases sent to the court	Variation comparing with the previous year	Requests upheld by the judges	% of upheld requests
2006	13,912	5,083	36.5%		4,025	79.2%
2009	9,525	3,427	36%	- 32.6%	2,878	84%
2010	9,387	3,287	35%	- 1.4%	2,814	85.6%
2011	10,088	3,306	32.8%	+ 0.6%	2,674	80.9%
2012	11,720	3,342	28.5%	+1.1%	2,682	80.3%
2013	9,797	2,672	27.3%	-20%	2,059	77.1%
2014	14,586	2,876	19.7%	+8.0%	2,378	82.7%

Investigative judges invoked high workload and poor quality of requests for arrest as an excuse for poor reasoning of their judgments. Indeed, since the institution of investigative judges has been created in 2003, the number of investigative judges has not changed

significantly¹²⁴, despite the increase in the workload of the investigative judges. The table below shows official statistical data on the cases examined by the investigative judges in 2006, 2009–2014. According to this table, the number of cases examined by investigative judges increased from 20,670 in 2006 to 41,432 in 2014 (100%). Indeed, it is very difficult to have a qualitative delivery of justice with such a high workload, especially taking into consideration that about 50% of the total number of cases are examined by eight investigation judges from Chişinău. In January 2015, LRCM presented a Study aimed at increasing the efficiency and balancing the workload of investigation judges in the country¹²⁵. Recommendations of this Study are still waiting for implementation.

Table 9: Statistics on the cases examined by the investigation judges in 2006, 2009–2014¹²⁶

Year	Authorizing of search	Authorizing confiscation of objects and documents	Authorizing confiscation of correspondence	Authorizing phone tapping	Suspension from office	Seizure of goods	Other constraint measures	Requests for authorizing arrest	Requests for extension of arrest	Complaints against actions of law enforcement	Total
2006	3,515	882	200	1,931	43	142	4,217	5,083	2,662	1,995	20,670
2009	5,437	1,890	57	3,848	1	162	5,780	3,427	2,395	1,985	24,982
2010	7,453	3,234	83	3,890	0	147	9,164	3,287	2,395	1,932	31,585
2011	8,759	3,939	199	3,586	0	155	10,775	3,332	2,688	2,190	35,623
2012	8,744	4,627	206	5,029	0	187	8,574	3,342	2,881	2,421	36,011
2013	9,346	4,813	116	2,915	1	169	9,071	2,672	2,439	2,634	34,176
2014	11,535	4,057	111	5,952	0	285	10,102	2,876	2,956	3,558	41,432

The high workload cannot serve as an excuse for not reasoning arrest warrants. On the other hand, investigative judges from the regions have much lower workload than judges in the cities; nevertheless, the quality of arrest warrants does not vary significantly based on the amount of work. Moreover, it is difficult to understand why judges prefer to issue arrest warrants based on poorly reasoned requests, while the law imposes them another approach. The impression is that the quality of the performance of the investigative judge mostly depends on the attitude of the judge. Thus, while in the second half of 2011 the rate of upheld requests in some courts represented 40–70%¹²⁷, in other district courts all

¹²⁴In December 2014, there were 44 positions of investigative judge in the Republic of Moldova.

¹²⁵LRCM, Reform of the institution of investigative judge in the Republic of Moldova, January 2015, available at: <http://LRCM.org/wp-content/uploads/2015/01/LRCM-Raport-JI-28-01-2015.pdf>.

¹²⁶The data was taken from annual statistical reports submitted by the courts to the Department of Judicial Administration.

¹²⁷In the Soldanesti court, 38% of requests for arrest were upheld, in the Bender court - 66%, and in the Cahul court- 67%.

or almost all requests for arrest were upheld.¹²⁸ Some interviewed judges mentioned that, due to a widespread practice of poor reasoning of arrest warrants at the level of district and appeal courts, investigative judges are not interested to better motivate their arrest decisions. Moreover, a well motivated judgment would look strangely among other poorly motivated judgements. On the other hand, a good reasoning requires a lot of time and many investigative judges complain that they do not have time.

As mentioned above, the short terms imposed by law for examination of requests for arrest affect the quality of how such cases are examined. According to Art. 166 para. 7 of CrPC, request for arrest has to be submitted to the investigation judge at least three hours before the apprehension term expires. Judges consider that arrest warrants should be issued before the expiry of the apprehension term, which means within three hours. Indeed, the Report of the Soros Foundation stated that, „in about half of the cases where the duration of the hearing could be established, examination of the request lasted up to 30 minutes. The Centre court, mun. Chisinau, which examined the highest number of requests for arrest during the reporting period, was often daily examining 8-15 requests for arrest. The speed of examination of arrest requests clearly affected the quality of the judicial act.”¹²⁹.

Recommendations:

1. In order to improve the quality of actions carried out by investigative judges, the quality of their work needs to be evaluated and their workload needs to be balanced;
2. In order to allow qualitative examination of requests for arrest, the investigative judges should have sufficient time available. The period of 3 hours from art. 166 para. 7 CrPC could be increased to 24 hours;
3. Prosecutors need to improve the quality of arrest requests, and judges - the quality of decisions where requests for arrest are examined;
4. Courts of Appeal should radically reconsider their practice, by exemplary reasoning their decisions and quashing any decisions on arrest which are poorly reasoned;
5. The SCJ shall closely monitor the judicial practice regarding the arrests and support the investigative judges and the courts of appeal in eradicating practices which run contrary to the ECHR.

4.4 Excessive length of judicial proceedings

According to the LRCM Report of 2012, generally, the Republic of Moldova did not have and does not have systemic problems with the length of judicial proceedings. Lengthy examination of cases represents an exception. Thus, both in civil and criminal cases, the first hearing takes place maximum six weeks from the notification of the court. The examination

¹²⁸In Ceadir-Lunga court, 95% of requests for arrest were upheld, and in Basarabeasca, Briceni, Comrat and Donduseni courts - 100% of requests were upheld.

¹²⁹See Soros-Moldova Foundation, *Report on Observance of the Right to Freedom at the Criminal Investigation Stage in the Republic of Moldova*, 2013, p. 8, available at http://soros.md/files/publications/documents/Raport_Respectarea_Dreptului_print.pdf.

of a case of average complexity by all three levels of jurisdiction (first instance, appeal and appeal on points of law) does not last more than 18-24 months, which is below the average in the west-European countries. On the contrary, because judges pay particular attention to the time limit for examination of cases, many of them neglect the quality of their work.

Despite the fact that the length of judicial examination of a case is overall acceptable, the persistent problem of the Moldovan system consists of frequent adjournments of court hearings and practice of sending cases for re-examination. This fact leads to a delayed examination of simple cases and superficial examination of complex cases. For these reasons, ECtHR found violations of Art. 6 of ECHR in nine cases¹³⁰. The first such judgment is the *Holomiov* judgment, which was delivered back in 2006.

Conclusions reached in LRCM Report of 2012 on the general term for judicial examination of cases are also applicable to the situation in 2014. Examination of cases outside the time limit set is not a rule. This fact is confirmed by official statistics for 2014, presented in the following table.

Table 10: Statistics on the length of examination of cases in courts in 2014^{A31}

Type of case	Total backlog cases at 31.12.2014	Length of examination of a case by judges					
		More than 12 months	% of backlog cases	More than 24 months	% of backlog cases	More than 36 months	% of backlog cases
Civil	20,354	1,827	8.9%	578	2.8%	321	1.6%
Criminal	6,539	694	10.6%	207	3.1%	69	1%

Adjourning court hearings continues to represent a problem. Moldovan judges are extremely indulgent towards the requests of the participants in the trial to adjourn court hearings. Thus, in the case of *Holomiov*, at least 44 hearings took place in the first instance court. In 2008, court hearings were adjourned because of the failure to bring the arrested defendant before the court or to submit evidence concerning the notification of the party, the superficial attitude of judges towards the adjournment requests, absence from the court hearings of the prosecutor, advocate and even of the judge, or difficulties in bringing witnesses before the court.¹³² This finding was also valid in 2012. Persons interviewed within the LCRM Report of 2012 declared that the real reasons for adjourning the hearings¹³³ are the fear of judges that their judgments will be quashed, the excessive delay requests lodged

¹³⁰ ECtHR, Judgment *Holomiov v. Moldova*, 7 November 2006; *Mazepa v. Moldova*, 12 April 2007; *Guşovschi v. Moldova*, 13 November 2007; *Cravenco v. Moldova*, 15 January 2008; *Boboc v. Moldova*, 4 November 2008; *Pânzari v. Moldova*, 29 September 2009; *Deservire SRL v. Moldova*, 6 October 2009; *Matei and Tutunaru*, 27 October 2009; and *Oculist and Imas v. Moldova*, 28 June 2011.

¹³¹ The table was prepared based on statistics published by the Ministry of Justice. They are available at: <http://www.justice.gov.md/pageview.php?l=ro&idc=56&>, accessed on 23 March 2015.

¹³² Final Report of the OSCE Trial Monitoring Programme in the Republic of Moldova, especially pp. 60-61.

¹³³ Usually, the period of time between the hearings does not exceed two months. However, in cases of *Deservire SRL*, *Holomiov*, *Matei and Tutunaru*, *Guşovschi* and *Cravenco*, ECtHR found that there were long periods of time between the hearings without any explanation.

by the parties during the examination of the case, the absence of witnesses, late drafting of expert reports and failure of judges to prepare for the examination of the case.

By the amendments to the CrPC that entered into force on 1 December 2012 (the Law no. 155, of 5 July 2012), a possibility was offered to judges to prepare for examination of civil cases without summoning court hearings and the rules related to submission of evidence were narrowed. These amendments aimed at decreasing the number of court hearings and ensuring faster examination of cases. However, innovations introduced by the Law no. 155 have not yet been fully used by the judges. Legal experts interviewed for this Study mentioned that some judges started to apply these provisions, however many judges still adjourn examination of cases to allow submission of new evidence, even if the parties already had the possibility to submit evidence, and some judges do not properly prepare cases for examination, therefore, the examination of cases is delayed.

Through the SRSJ, the authorities of the Republic of Moldova committed to strengthen the National Centre of Judicial Expertise. This measure could shorten the time which is necessary for drafting the experts' conclusions. However, the time necessary for elaboration of experts' conclusions still did not reduce significantly.

The failure of witnesses to appear in court, especially in criminal cases, represents a serious problem in the Republic of Moldova. The courts mainly presume that witnesses are willing to come. However, often, witnesses do not come because they do not want or cannot come, and hearings are adjourned. This problem needs to be remedied.

In the judgments *Mazepa* and *Gusovschi*, the ECtHR criticized the repeated re-examination of cases. According to the LRCM Report of 2012, the superior courts in the Republic of Moldova were resorting extremely often to the practice of sending cases for reexamination.

Until 1 December 2012, civil cases could be sent for re-examination both by the SCJ as well as by the courts of appeal.¹³⁴ By the Law no. 155, of 5 July 2012, Art. 385 of CiPC was amended and the possibilities of the court of appeal to send cases for re-examination were limited to only two cases: if the competence was violated and if the court ruled on the rights of persons who were not participants in the trial. The appeal court can also send a case for re-examination if the summoning procedure was violated and if parties request sending the case for re-examination. Through the same law, the right of the SCJ to send civil cases for re-examination to the first instance court was also limited. The SCJ can send a case for re-examination to the first instance court only in cases when courts of appeal can do the same. Persons interviewed for the LRCM Report of 2012, including judges, declared that cases are sent for re-examination both because of errors committed by the courts, as well as because of the hesitation of the judges to take a decision in complex or sensible cases.

¹³⁴Courts of appeal were obliged to send cases for re-examination when they established violation of the procedural norms (Art. 385 para. 1 d) of CrPC). In three cases, however, upon the request of the parties, courts of appeal could examine the appeal without sending the case for re-examination. When the SCJ finds that a judicial error cannot be corrected within the appeal on points of law, it can send the case for re-examination both in the first instance court, as well as in the court of appeal (Art. 445 para. 1 c) CrPC).

The following tables show data concerning situations, where the SCJ sent civil cases for re-examination in 2012¹³⁵, 2013¹³⁶ and 2014¹³⁷. Statistics show that in the last three years, the Civil, Commercial and Administrative Panel of the SCJ has sent for re-examination about 35% of the civil cases, where the appeal on points of law against court decisions was upheld. In 2009 this coefficient represented 53%, which is by 18% less than five years ago. The decrease in the number of cases sent for re-examination was constant in the period 2012-2014. During this period the rate of appeals on points of law against civil judgments which were admitted has been also declining.

Table 11: Examination of appeals on points of law against decisions of the Civil, Commercial and Administrative Panel of the SCJ

	Administrative proceeding (section 2)		Civil cases (section 2)			Commercial cases (section 2)			Cases of insolvency	Total
	2013	2014	2012	2013	2014	2012	2013	2014	2014	
total examined	1,673	1,621	2,506	3,812	3,535	245	606	611	200	14,809
upheld	524	352	833	1,078	928	115	206	159	84	4,279
% of the total	31.3%	21.7%	33,2%	28.3%	26,2%	46,9%	34%	26%	42%	28.9%
sent for re-examination	195	82	136	456	368	48	96	67	65	1,513
% of the upheld	37.2%	23.3%	32,2%	42.3%	39.6%	41,7%	46.6%	42.1%	77.4%	35.3%

Until 27 October 2012, the courts of appeal were not able to send criminal cases for re-examination. Only the SCJ was able to send cases for re-examination to the court of appeal. Following the amendments introduced to the CrPC that entered into force on 27 October 2012 (the Law no. 66), the possibilities of the court of appeal to send cases for re-examination were enlarged. Therefore, the courts of appeal can now send cases for re-examination, however only in cases when the defendant was not summoned, when the defendant was not provided with the right to interpreter, was not assisted by an advocate or the provisions concerning the incompatibility of judges were violated (Art. 415 para. 1 p. 3). The appeal on points of law against the sentence issued by the appeal court may be upheld only if it falls within the grounds stipulated by Art. 444 of CrPC. It appears that the appeal on points of law was viewed by the legislator as a remedy in favour of the defendant (see Art. 444 para. 2 of CrPC), and the cassation court cannot aggravate his/her situation. For this reason, the SCJ is sending many criminal cases for re-examination.

¹³⁵Data taken from the Decision of the Plenary of the SCJ no. 4, of 21 January 2013, on the activity of the SCJ in 2012, pag.23-24.

¹³⁶Data taken from the Decision of the Plenary of the SCJ no. 1, of 20 January 2014, on the activity of the SCJ in 2013, pag. 36-38.

¹³⁷Data taken from the Decision of the Plenary of the SCJ no. 1, of 23 February 2015, on the activity of the SCJ in 2014, pag. 27-32.

The table below provides data on the criminal cases sent back by the SCJ for re-examination during 2012¹³⁸, 2013¹³⁹ and 2014¹⁴⁰. Statistics show that in 2012-2014, the SCJ sent back for re-examination more than 70% of the criminal appeals on points of law that were upheld. According to the Activity Report of the SCJ for 2011, in 2011 the Criminal Section of the SCJ upheld appeals on points of law in relation to 292 persons. 198 cases (68%) were remitted for re-examination. In 2014, the SCJ remitted for re-examination 79.8% of criminal cases where appeals on points of law were upheld. This increase can be explained by the decline in the share of upheld appeals on points of law.

Table 12: Criminal cases sent by the SCJ for re-examination in 2012, 2013 and 2014

	Ordinary appeals on points of law			Appeals on points of law for which no way of appeal is provided			Total
	2012	2013	2014	2012	2013	2014	
Total examined (persons)	1,630	1,432	2,152	27	31	67	5,339
upheld (persons)	529	392	560	19	6	7	1,513
% of the total	32,4%	27,4%	26%	70,4%	19,3%	10,4%	28,3%
Sent for re-examination (persons)	375	230	447	13	3	2	1,070
% of the upheld	70,9%	58,7%	79,8%	68,4%	50%	28,6%	70,7%

The SCJ recognized in the Decision of the Plenary no. 4 of 21 January 2013 that the practice of sending cases for re-examination is mainly explained by the bad examination of cases by the lower courts. Therefore, the problem established back in 2012 concerning the large number of cases sent for re-examination and, respectively, their long examination, is still relevant in 2015.

In the judgment *Matei and Tutunaru*, the ECtHR criticized the failure to speed up the proceedings after cases are sent for re-examination. After sending cases for re-examination, cases are examined according to the general order. Despite the fact that formally some cases (see Art. 192 para. 1 of CrPC) need to be examined in a priority order, there is no mechanism for priority examination of such cases within the judicial system of the Republic of Moldova.

¹³⁸Data taken from the Decision of the Plenary of the SCJ no. 4, of 21 January 2013, on the activity of the SCJ in 2012, pag. 12-13.

¹³⁹Data taken from the Decision of the Plenary of the SCJ no. 1, of 20 January 2014, on the activity of the SCJ in 2013, pag 18-19.

¹⁴⁰Data taken from the Decision of the Plenary of the SCJ no. 1, of 23 February 2015, on the activity of the SCJ in 2014, pag. 15-17.

The Law no. 88, of 21 April 2011 (in force from 1 July 2011), introduced an acceleration appeal in the CrPC (Art. 192 was supplemented). According to the new amendments, when there is danger that the reasonable term for examination of a specific case will be breached, participants at the trial may ask the court to accelerate the examination of the case. Such requests shall be examined within 5 working days by another judge. In case the request is admitted, the judge who examines the case must take certain actions and if necessary a time limit for examination of the case is established. Statistics related to this category of cases are not collected by the judicial system, and therefore their analysis was not possible. Also, no analysis of the effectiveness of this mechanism had been carried out until now. Accordingly, it is not clear whether this mechanism is effective in practice.

By the Law no. 87, of 21 April 2011 (in force from 1 July 2011), an compensatory appeal was introduced for violation of the reasonable term for examination of the case by court. For more details in this regard, see sub-chapter 6.1 of the study.

Recommendations:

1. Judges need to provide reasons for any adjournment of court hearings for long periods of time. In civil cases, judges should make use of innovations introduced by the Law no. 155 which allow judges to prepare the examination of civil cases without arranging court hearings and to discipline the process of submitting evidence by the parties.
2. Reducing the number of cases sent for re-examination and excluding the practice of sending cases repeatedly for re-examination by the courts of appeal and the SCJ;
3. Amendment of Art. 444 of CrPC in order to eliminate the need of the SCJ to send cases for re-examination, when cases can be equitably examined by the SCJ, even if the judgment that needs to be adopted could place the defendant in an unfavourable position;
4. Courts need to introduce practices that would ensure examination of cases sent for re-examination in a priority manner;
5. Introducing in the Integrated Case Management Program of the possibility to collect statistical data on the examination by the courts of acceleration appeals (art. 192 CrPC).

4.5 Improper quashing of final civil judgments

Until 31 December 2014, ECtHR issued 24 judgments related to violation of the principle of legal certainty by improper quashing of final judgments delivered in civil proceedings by appeal in annulment or improper application of revision. The new CrPC, in force since 12 June 2003, no longer provides for the appeal in annulment as an appeal remedy in civil proceedings. However, the problem of improper quashing of judgments in civil proceedings has not disappeared, largely because of improper application of the revision. The first condemnations of the Republic of Moldova in this respect are dated from 2005 and continue until present¹⁴¹.

¹⁴¹ See ECtHR, Judgment *Roșca v. Moldova*, 22 March 2005, *Asito v. Moldova*, 8 November 2005 or

The revision should not be treated as an appeal in disguise, which purpose is re-examination of the case. For this purpose the legislature established by art. 446-453 of CrPC a strict set of rules which limited the circle of persons who may submit request for revision (art. 447), introduced a comprehensive list of clear grounds for revision, which must be obligatory indicated in the revision requests (art. 449 and art. 451 par. (1)) and limited the time for submitting revision request (art. 450). These rules are considerably limiting the possibility of a judgment to be quashed. ECtHR recognized this as an adequate procedure¹⁴². Therefore, when national courts deviate from this procedure, questions arise regarding the observance of the principle of legal certainty and of the principle *res judicata*.

In the judgments *Popov (no. 2)*, *Tudor Auto SRL and Triplu-Tudor SRL*, *Oferta Plus*, *Eugenia and Doina Duca*, *Dragostea Copiilor – Petrovschi – Nagornii*, *Agurdino SRL*, *Cojocaru*, *Jomiru and Crețu*, *Strugaru*, and *Lipcan*, the ECtHR criticized the fact that domestic courts quashed final judgments based on the new evidence, although they did not motivate why the persons who submitted the revision requests did not know or could not have known about the existence of this evidence within the initial proceedings or if they have taken all existing measures in order to find them. In the case *Eugenia and Doina Duca*, the ECtHR criticized the fact that the SCJ revised one final judgment just based on the submission of an application to the ECtHR, although in the *Moldovahidromaș* judgment, the SCJ refused the request for revision based on the same ground.

Most of these cases refer to new circumstances invoked by the person who requested the revision. According to art. 449 para. b) of the CrPC, the revision request is submitted when essential facts or circumstances have been discovered which were not known and could not have been known to the person who submitted the revision request, if s/he proves that all measures have been taken in order to find out the essential circumstances and facts during prior examination of the case. This ground significantly narrows the possibility of quashing a final judgment, which is natural, because it protects the legal certainty principle. The term for submitting a revision request is limited to 3 months from the moment when essential circumstances or facts of the case, which were not known and could not have been known previously, became known to the (art. 450, letter b) of CrPC). However, in the judgments *Popov (no. 2)*, *Tudor Auto SRL and Triplu-Tudor SRL*, *Oferta Plus*, *Eugenia and Doina Duca*, *Dragostea Copiilor – Petrovschi – Nagornii*, *Lipcan*, *Jomiru and Crețu*, *Sfinx-Impex*, and *Banca Internațională de Investiții și Dezvoltare MB S.A.*, the ECtHR found that domestic courts ignored the time limit of 3 months for submitting revision request provided by art. 450 of the CrPC.

In the case *Popov (no. 2)*, the ECtHR acknowledged the revision mechanism established by art. 449-453 of CrPC, whose aim is compatible with the ECHR, and namely correction of judicial errors¹⁴³. Therefore, the ECtHR will examine only if this procedure is applied by domestic courts in a manner compatible with the ECHR. In the judgment *Popov (no. 2)*, the ECtHR noted the following in this regard:

Popov (no. 2) v. Moldova, 6 December 2005.

¹⁴²ECtHR, Judgment *Popov (no. 2) v. Moldova*, para. 47.

¹⁴³ECtHR, Judgment *Popov (no. 2) v. Moldova*, 6 December 2005, para. 47.

„43. [...] that Article 6 § 1 of the Convention obliges the courts to give reasons for their judgments. In *Ruiz Torija v. Spain*, (judgment of 9 December 1994, Series A no. 303-A), the Court found that the failure of a domestic court to give reasons for not accepting an objection that the action was time-barred amounted to a violation of that provision.

44. [...] One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII; *Roșca v. Moldova*, no. 6267/02, § 24, 22 March 2005).

45. Legal certainty presupposes respect for the principle of *res judicata* (*ibid.*, § 62), that is the principle of the finality of judgments. This principle insists that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (*Roșca v. Moldova*, cited above, § 25).”

If we analyze some recently delivered ECtHR judgments, we note that domestic courts do not always examine revision requests in accordance with the domestic legislation or ECtHR principles. In the case *Jomiru and Crețu* (violation period - 2005-2007), the ECtHR criticized the SCJ because it quashed a judgment within the revision procedure, which ruled the eviction of a family from an apartment and another family was installed in the respective apartment, based on the evaluation report on the investments made by the family evicted from the respective apartment. Nothing indicated in this case on the impossibility to submit this report within the initial proceeding. SCJ also did not rule on the objection of the applicant concerning late submission of the revision request¹⁴⁴. In the case *Strugaru* (the period of violation - 2008), the ECtHR found a violation of art. 6 ECHR on the ground that the SCJ quashed a final judgment by which some goods obtained by the spouses after divorce were shared, based on another judgment suggesting that the former husband of the applicant lived after divorce with a third person¹⁴⁵. In the *Lipcan* judgment (the period of violation - 2008), the Chișinău Court of Appeal upheld the revision request submitted by the Călărași Council based on a decision which canceled one of its earlier decisions. The ECtHR noted that allowing the public authority to obtain a revision of a final judgment, by invoking as a new circumstance its own decision where it canceled its earlier decision, is contrary to the principle of legal certainty. Moreover, the revision request was admitted by the domestic court, despite the fact that it was submitted outside the time limit of 3 months¹⁴⁶.

¹⁴⁴ ECtHR, Judgment *Jomiru and Crețu c. Moldovei*, 17 April 2012, para. 32-38.

¹⁴⁵ ECtHR, Judgment *Strugaru v. Moldova*, 22 October 2013, para. 15, 26-28.

¹⁴⁶ ECtHR, Judgment *Lipcan v. Moldova*, 17 December 2013, para. 16-21.

We note that the respective violations are mainly due to inadequate application of the norms related to the examination of revision requests. However, although these judgments were issued in 2012-2013 period, the violations mentioned in these judgments cover the period 2005-2008. We wanted to establish how the practice of the courts evolved in the recent years. According to the LRCM Report of 2012, the number of revision requests upheld by the SCJ tended to decrease, from 80 applications in 2006 (11.9% of those examined) to 13 applications in 2011 (2.7% of those examined). Despite this fact, according to the study, some revision requests admitted in 2012 raised questions¹⁴⁷. Surprisingly, in the period 2012-2014, the rate of upheld revision requests slightly increased as follows: 22 applications in 2012 (3.5% of those examined), 23 applications in 2013 (3.9% of those examined) and 25 applications were upheld in 2014 (3.5% of those examined). For more details please see the table below.

Table 13: *Information about the revision requests in civil cases examined in 2012-2014*¹⁴⁸

Year	Registered revision requests	Examined revision requests	Upheld revision requests	% of upheld requests from those examined
2012	528	531	22	3,5%
2013	586	584	23	3,9%
2014	676	704	25	3,5%

In 2012-2014, there was an increase in the number of submitted (registered) revision requests, compared to the period covered in the LRCM Report of 2012, from 476 requests in 2011 to 528 requests in 2012, 586 requests in 2013 and 676 requests in 2014. However, the main indicator of observance of the ECHR represents the manner how the upheld revision requests were examined by the SCJ.

The SCJ practice concerning the revision of civil judgments in 2014

In 2014, the SCJ upheld 25 revision requests, and 21 court judgments issued based on these requests were examined within this research¹⁴⁹. Out of 21 judgments which were analyzed, only eight judgments do not raise questions about the revision solution. Most of the eight judgments refer to the reopening of cases which solution was affected by a crime or administrative offense committed by a participant in the case.

¹⁴⁷LRCM Report of 2012, pag. 157.

¹⁴⁸Data was taken from the activity reports of the SCJ for reference years.

¹⁴⁹All the revision judgments from 2014 where the revision requests were upheld and which were found on the SCJ webpage were analyzed: judgments no. 2rh-7/14 of 15 January 2014, no. 2rh-1/14 of 29 January 2014, no. 2rh-18/14 of 14 February 2014, no. 2rh-2/14 of 19 February 2014, no. 3rh-39/14 of 12 March 2014, no. 2rh-47/14 of 9 April 2014, no. 2rh-145/14 of 30 April 2014, no. 3rh-71/14 of 21 May 2014, no. 2rh-168/2014 of 28 May 2014, no. 3rh-65/14 of 04 June 2014, no. 2rh-70/14 of 09 July 2014, no. 2rh-222/14 of 30 July 2014, no. 2rh-214 /14 of 06 August 2014, no. 3rh-87/14 of 06 August 2014, no. 2rh-219/14 of 06 August 2014, no. 2rh-250/14 of 17 September 2014, no. 3rh-100/14 of 01 October 2014, no. 3rh-82/14 of 12 November 2014, no. 2rh-100/14 of 03 December 2014, no. 2rh-286/14 of 10 December 2014, no. 2rh-404/14 of 24 December 2014.

After analyzing the 21 judgments of the SCJ where the revision requests were upheld in 2014, we found that the basis for revision in ten judgments were new circumstances invoked by the revision applicants, the basis for revision in four judgments were sentences that stated that the participants of the case committed crimes related to the proceedings, in two judgments the participants in the court proceeding were not involved in the initial procedure, two revision judgments were issued following the initiation of a friendly settlement procedure between the GA and the ECtHR, and one judgment was reviewed in a case which was based on a quashed judgment. The ground for revision in four cases is unclear because it was not specified by the SCJ or the ground for revision invoked by the SCJ was not provided by art. 449 of CrPC.

Eight judgments out of those analyzed do not raise essential questions regarding the admission of revision requests. By the judgment no. **2rh-214/44**, the revision request was upheld based on Art. 449 letter a) of the CrPC, and namely based on the judgment where it was found that the opponent of the revision applicant from the initial proceeding made false statements. Although the administrative procedure referred to in the revision request ceased following expiration of the time limitation period, the court found that the person was guilty under Art. 106 of the Administrative Code. In the case no. **2rhc-100/14**, the revision request was admitted on the basis of a conviction sentence, which confirms that the insolvency administrator in the initial procedure falsified the accounting documents which served as the basis for the courts to collect an exaggerated fee and insolvency expenses into his account. In the case no. **2rh-404/14**, the SCJ admitted the revision request based on a final conviction sentence which established that extortion in large proportions was committed by the opponents in the initial proceeding, which deprived the revision applicant of money. In the case no. **2rh-250/14**, the SCJ admitted the revision request based on a final sentence, which established that the opponent from the initial proceeding received an allowance for sick leave based on a false medical certificate (art. 361 CC). By the judgment no. **3rh-65/14**, the revision request was upheld because, after the initial proceeding, the Council of mun. Chişinău acknowledged through an informative note that the revision applicant lodged the preliminary application within the earlier proceedings. The Council of mun. Chişinău has denied in the initial proceeding the fact that the revision applicant submitted the preliminary application and this led to the dismissal of the application. In the case no. **2rh-7/14**, the SCJ admitted the revision request submitted in relation to a judgment issued by the SCJ by which the court ruled on a judgment which was not challenged in cassation. The SCJ admitted the revision request based on Art. 449 letter c), and namely based on the fact that the court ruled on the rights of a person who was not involved in the process. In the case no. **2rh-219/14**, the revision request was upheld on the basis of Art. 449 letter c), on the ground that the wife was not involved in the process of evacuation of her husband and his family from a house. In the case no. **2rh-222/14**, the SCJ admitted the revision request based on Art. 449 letter e). The revision applicant brought as evidence a decision of the SCJ that quashed the judgments issued by the Court of Appeal and the first instance court, in which the pledge agreement, signed between the bank who acted as revision applicant and the pledger, was declared null. As a result, the SCJ reviewed and quashed the decision

of the SCJ by which earlier claims of the bank who acted as revision applicant for forced transmission in the bank's possession of a pledged immovable were rejected.

However, a number of concerns related to admission of revision requests by the SCJ were identified in many of the examined court orders. In some cases, the SCJ did not invoke any grounds provided by art. 449 CrPC. In other cases, the SCJ has broadly interpreted the ground prescribed under letter b) of art. 449 (new circumstances). Both revision requests lodged by the GA following the initiation of the friendly settlement procedure with the ECtHR and admitted by the SCJ raise a number of questions. In several judgments, the SCJ directly applied the ECtHR standards, although the application of ECtHR standards in the examined case seemed improper. In another case the SCJ has apparently admitted a revision request which was submitted late. Details of these court orders are listed below.

Revision without a ground provided by art. 449 CrPC

As mentioned above, the grounds provided by art. 449 of CrPC are exhaustive, which means that revision cannot be admitted for other reasons. Apparently, domestic courts do not always comply with this rule. In most cases from 2014, the reparation of a judicial error represented a ground for reopening judicial proceedings without an actual ground stipulated by art. 449. For example, in cases no. **2rhc-18/14** and **3RH-82/1**, without invoking any ground under art. 449, the SCJ quashed final judgments on the basis that they were contrary to the recent practice of the SCJ. In the case no. **2rhc-47/14** the SCJ reopened the proceedings because the revision applicant eliminated the tardiness of an appeal by submitting a payment receipt issued by the post office which showed that the appeal was sent by post in due time. In the case no. **2rh-286/14** an order of the SCJ where the revision application of the Ministry of Finance was admitted and examined by the first instance court was quashed, because one of the SCJ judges participated in the examination of this case in the first instance. The SCJ did not make reference to any legal grounds for the revision of these cases, however, it argued that the reopening of these proceedings was necessary for observance of ECHR provisions.

Improper application of ECtHR standards

When the court wants to apply an ECtHR standard, it should explain how this standard applies to the specific case. The previous analysis showed that national courts are used to make blank references to ECHR Articles and invoke the ECtHR standards without explaining how those standards apply to the examined case¹⁵⁰. We note that during 2013-2014, the situation was not different in the examination of revision requests. In the case no. **2rhc-18/14**, for example, the SCJ reopened the judicial proceedings related to the annulment of

¹⁵⁰LRCM, Policy Document: The mechanism for compensation of damages caused by the violation of reasonable time requirement — is it efficient?, September 2014, pag. 8, available at: <http://LRCM.org/wp-content/uploads/2014/09/Document-de-politici-nr1-web.pdf>; Soros-Moldova Foundation, Report on Observance of the Right to Freedom at the Criminal Investigation Stage in the Republic of Moldova, pag. 95-98, available at: http://soros.md/files/publications/documents/Raport_Respectarea_Dreptului_print.pdf.

the minutes of the general assembly of a LLC, because the reviewed SCJ decision exceeded the limits of a previous SCJ ruling. Within the revision procedure, the SCJ argued that „art. 6 para. 1 of the ECHR implies that any person should be provided with a clear and coherent possibility to challenge an act that interferes with his/her rights, without setting factual and legal obstacles which are disproportionate with the very essence of the right and legitimate purpose pursued by the challenger”. In the case no. **2rh-47/14**, concerning the reopening of proceedings as a result of an SCJ error, where an appeal on points of law was rejected as being submitted late, although it was submitted in time, the SCJ declared that it upholds the revision request „in order to avoid a violation of the provisions stipulated in Art. 6 para. 1 ECHR”. These quotations, together with blank references to art. 449 of CrPC, represent the only legal support of the SCJ in favor of revising some final judgments.

In other rulings, the SCJ made more specific references to the ECtHR case-law, however they were either not applicable to the examined case, or were not found in the cited judgment. For example, in cases no. **2rh-214/44** and **2rh-286/14**, the SCJ made reference to the judgment *Nikitin v. Russia*¹⁵¹, which states that „... reopening of the proceedings based on new facts does not represent a violation of the rights ... provided by art. 4 Prot. 7 ECHR”. The court continued that „excluding the possibility of revising a judgment for formal reasons, may lead to the violation of the fairness and lawfulness of the court judgment...”. It is true that excessive formalism can lead to a violation of the rights of a person even within the revision procedures. However, this principle is not found in *Nikitin* case and, therefore, the legal support of the principle in question is not clear. Moreover, art. 4 Prot. 7 ECHR, quoted by the SCJ in these rulings, refers to the right not to be tried or punished twice. There is an exception to this principle when reopening of the proceedings is allowed, in accordance with the law and criminal procedure of the respective state, if new facts or a fundamental error was discovered within previous proceedings. This right obviously refers to the reopening of criminal cases, while the cited rulings of the SCJ refer to the revision of judgments issued in relation to inheritance issues and charging debts. It results that in these rulings, the SCJ made no genuine effort to convincingly explain the direct application of the ECHR, but only created the appearance of this fact.

Revision on the ground that the judgment contradicts the uniform practice

By the judgments no. **3rh-87/14**, **3rh-82/14** and **3rh-100/14**, final judgments were revised on the ground that they contradicted the uniform practice. Although „inconsistent practice” is not a ground for revision under Art. 449 of CrPC, in all three rulings the SCJ referred, *inter alia*, to the ground provided under Art. 449 let. b) of the CrPC (new circumstances). In cases no. 3rh-87/14 and 3rh-100/14, a more recent judgment of the SCJ was invoked as a new fact, where a diametrically opposed solution was offered to the earlier decision of the SCJ, whose revision was requested. In the case no. **3rh-82/14**, the Sport Dance Federation of Moldova (FDSM) brought as new circumstances orders of the Ministry of Youth and Sport of the Republic of Moldova by which expenses incurred by

¹⁵¹ECtHR, Judgment *Nikitin v. Russia*, 20 July 2004.

other sports federations for participation of national teams in international sports actions were covered, although in the challenged procedure, the FDSM claims for reimbursement were rejected by the SCJ decision of 23 January 2013. First of all, in cases no. **3rh-87/14** and **3rh-100/14**, there was a conflict between the SCJ revised decision and a more recent decision of the SCJ and there was no conflict between the revised cases and a well-established practice of the SCJ. In those judgments, the SCJ did not even try to justify that invoking its own case-law as a new circumstance does not represent a single case, but an example of a well-established practice. It is striking that, although the ground for revision provided by art. 449 let. b) of the CrPC is invoked, the content of this ground is completely ignored. Even according to the SCJ case-law, new circumstances invoked within revision procedures represent circumstances that objectively existed before issuing the judgment in the initial case¹⁵². Even if the decisions invoked as new circumstances existed before issuing judgments in the earlier revision procedures, they still do not qualify under letter b) of art. 449. An essential condition under this ground is that the revision applicant did not know and could not have known about the existence of such circumstances, while SCJ decisions are public and can be accessed by anyone. ECtHR noted in its jurisprudence that a public document cannot be considered a new circumstance in the context of art. 449 letter b) of the CrPC¹⁵³. Concerning the case no. **3rh-82/14**, it is obvious that art. 449 let. b) is not applicable, because orders of the Ministry of Youth and Sport could have been brought as evidence in the initial proceeding, given that those orders were dated between 2006-2013.

In all three judgments, the SCJ based its revision rulings on the ECtHR case *Beian v. Romania*¹⁵⁴. In this case the ECtHR found a violation of art. 6 para. 1 ECHR, because the inconsistent judicial practice of the Supreme Court of Romania in granting social benefits did not allow the applicant to benefit from the right to social benefit. The ECtHR found that the hierarchically superior court issued a number of decisions with diametrically opposite solutions, sometimes within the same day. If we come back to the revision decisions of the SCJ in Moldova, the SCJ argued that in accordance with *Beian* case, „the existence of contradictory case-law on similar cases represents in itself violation of the principle of legal certainty” and that it is „the role of the higher court to regulate contradictions existing within the national case-law”. In order to „avoid the violation of art. 6 para. 1 ECHR”, the SCJ admitted the revision requests. Such an approach of the SCJ creates much confusion. First of all, the selective application of ECtHR standards by the SCJ within the revision proceedings violates the very limits of the revision procedure, which are clearly established in the CrPC. Secondly, from the *Beian* case it does not clearly result that courts can review final judgments based on existence of inconsistent practice, but the fact that courts must follow the earlier established uniform practice. Thirdly, unification of the judicial practice is exercised within ordinary appeal remedies, and not within extraordinary appeal remedies, where only certain restrictive grounds expressly provided by law are admitted. Moreover,

¹⁵²For instance, SCJ, ruling no. 2rh-7/14, no. 2rh-145-14 etc.

¹⁵³See ECtHR, Judgment *Popov no. (2) v. Moldova*, para. 51.

¹⁵⁴ECtHR, Judgment *Beian v. Romania*, 6 December 2007.

revision of all earlier judgments which are not compatible with the new practice established by the SCJ seems unjustified. Therefore, although the revision these judgments may pursue a legitimate aim at the first glance, the revision of judgments based on the fact that they do not comply with the uniform practice is questionable and could in itself contradict the principle of legal certainty.

Revision based on evidence that removes the tardiness of the appeals on points of law from the initial procedure

In cases no. **3rh-39/14**, **2rh-145/14**, the revision applicants complained that their revision requests were rejected by the SCJ as being submitted late, because the cassation court took into consideration the date of registration of the appeals on points of law at the SCJ registry, and not the date of submitting the applications to the post office. The SCJ admitted the revision requests based on letter b) art. 449, qualifying the receipt notes or payment receipts issued by the post office as new circumstances. The superior court noted that according to art. 449 let. b) it is important that the new circumstance invoked by the revision applicant have to exist objectively at the date when the final judgment is delivered, and that these facts should be essential for the case solution. However, the court does not explain why the fact of submitting an application by post at a certain date could not have been known to it earlier. As the envelope sent by post must have indicated the date when the document was submitted, and therefore, the date of the appeal on point of law.¹⁵⁵ It could be that the date indicated on the envelope was not intelligible, but the court did not mention this fact in the above-mentioned rulings. The SCJ also interpreted let. b) of art. 449 as being applicable also to the court, i.e. to the situation when the court did not know and could not have known the new circumstances alleged by the revision applicant. This interpretation is questionable, given that letter b) of art. 449 of CrPC expressly refers to the new circumstances that are not known to the revision applicant. In other similar cases, the SCJ did not even try to interpret or apply art. 449 let. b) of the CrPC. For example, in cases **2rhc-70/14** and **2rhc-47/14**, the revision applicants invoked as new circumstance the payment receipts from the post office that served as evidence that their appeals on points of law were submitted on time. The SCJ admitted the revision applications and based their rulings on art. 449 of CrPC, however without indicating or interpreting specific grounds for revision.

Revisions admitted following friendly settlement of ECtHR proceedings

In 2014, the SCJ admitted two revision requests lodged by the GA following the initiation of friendly settlement procedures related to a pending case against the Republic of Moldova to the ECtHR. In both cases, the advocate Andrei CHIRIAC addressed the Moldovan courts with applications requesting payment of the debt for legal services from two foreign companies.

¹⁵⁵ According to art. 112 par. (2) of CrPC, if appeal or appeal on points of law was delivered to the post office before 12 p.m. of the last day of the deadline, the procedural act is considered submitted in term.

In the first case no. **2rh-1/14**, the first instance court ruled that SA „Vinis-NLG” should transfer MDL 561,165 on Mr. Chiriac’s account. The company appealed the judgment of the first instance court and in November 2010 the appeal court quashed the judgment of the first instance court and sent the case back for re-examination. In November 2010, Mr. Chiriac complained to the ECtHR that the appeal court did not motivate why the late appeal was admitted. In November 2011, Mr. Chiriac dropped the action brought at the domestic level and the Nisporeni court discontinued the proceeding. Following the communication of this case to the Moldovan government, the GA preferred to use the friendly settlement procedure. Subsequently, the GA initiated a revision procedure, in which he requested the SCJ to find a violation of art. 6 para. 1 of the ECHR, quash the decision by which the late appeal was admitted and, where appropriate, to pay the just satisfaction. Consequently, the SCJ admitted the revision request, quashed the decision of November 2010 and the ruling of the Nisporeni court of November 2011 on termination of the proceeding. The SCJ charged MDL 776,046 (MDL 561,165 for pecuniary damage and MDL 214,881 for default interest) in the benefit of Mr. Chiriac from the state¹⁵⁶. The SCJ noted that by admitting the late appeal, the court of appeal committed a serious judicial error. However, the cassation court did not examine when the calculation of the term of appeal started, did not examine when SA „Vinis-NLG” received the reasoned decision of the Nisporeni court and when the deadline for submitting the appeal expired. The case was sent for re-examination and the applicant had the possibility to regain the good he has „lost” within subsequent proceedings. The applicant however dropped the action submitted at the domestic level. In similar cases, the ECtHR has struck out the application submitted by the applicant due to lack of diligence¹⁵⁷. Moreover, the SCJ ordered the full payment of damages from the state, although apparently no party within the proceedings argued that the applicant company was insolvent or liquidated and that the execution of the judgment by the applicant company was not possible based on this judgment issued in favor of Mr. Chiriac. Moreover, the judgment by which the request to drop the action was admitted was also quashed.

In the second case, no. **2rh-2/14**, the first instance court ruled that the enterprise „Aroma Floris, S” had to pay MDL 3,171,486 in the benefit of Mr. Chiriac. Until the stage when the SCJ issued a judgment where the revision request lodged by the GA was admitted, this case is similar to the case examined above, except for the amounts collected by the SCJ following the admission of the revision request (MDL 4,346,901) and the fact that the proceedings did not cease in the first instance court, but the application was struck out because the applicant did not come to the court hearing. Also, in this case, two judges expressed a dissenting opinion in which they mentioned that no document that would prove the initiation of the friendly settlement procedure between the Government and the ECtHR was attached to the materials of the case.

After admitting the revision request and laying the compensation on the state, the Ministry of Finance requested the revision of the judgment issued in the case no. 2rh-2/14,

¹⁵⁶In consequence, the ECtHR struck the application out following the settlement of the case at the domestic level: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-147472>.

¹⁵⁷ECtHR, dec. *Goryacev v. Russia*, 9 April 2013, para. 42.

because one of the SCJ judges who issued the challenged judgment was the judge who also upheld the application of Mr. Chiriac in the first instance and who in the meantime was promoted to the SCJ, as well as because the Ministry of Finance was not involved in the process¹⁵⁸. Thus, based on the judgment no. **2rh-286/14**, the SCJ quashed the judgement no. 2rh-2/14 and ordered the re-examination of the revision request lodged by the GA. Even though the fact that the Ministry of Finance was not involved in the proceedings was the only argument that could meet the requirements of the grounds for revision (art. 449, letter c) of the CrPC), the SCJ invoked as revision ground the fact that the judge Druță participated twice in the examination of the same case. The SCJ did not use the grounds from art. 449 of CrPC for reasoning its revision ruling, but made standardized references to the ECHR standards, including to the case *Nikitin*, which were analysed earlier.

Following the judgement no. **2rh-286/14**, a disciplinary proceeding for the violation of the principle of impartiality was initiated against the judge who participated twice in the examination of the case, in the district court and the SCJ, and maintained his own judgment delivered in the first instance. Following the revision that annulled the payment of the debt in the amount of MDL 4,346,901, the advocate Chiriac denounced the friendly settlement agreement and asked the ECtHR to continue the examination of the case. In February 2015, the SCJ, on its own initiative, under Art. 261 let. h) of the CrPC, suspended the examination of the revision request lodged by the GA, noting that the ECtHR has already communicated this case to the Government.¹⁵⁹ Art. 261 let. h) of CrPC provides that proceedings shall be suspended when the case cannot be tried until the examination of another related case. Previously, the SCJ refused to admit requests of the parties for suspending domestic proceedings because another proceeding was under examination of the ECtHR. Moreover, apparently we cannot speak any longer about a friendly settlement of the case. For this reason, the revision request should have been rejected.

We would like to analyse whether a constant case-law of the ECtHR, similar to the revision requests initiated by the GA, existed in reality. In the revision proceedings, the SCJ found a violation of art. 6 para. 1 ECHR and art. 1 Prot. 1 ECHR, making reference to cases *Melnic v. Moldova* (2006), *Popov no. (2) v. Moldova* (2005) and *Ceacbir v. Moldova* (2005), and according to these cases the admission of late appeals without reasoning represents a violation of ECHR. The SCJ mentioned that these judgments are similar to the cases of Mr. Chiriac. However, if we have a closer look to the cases of Mr. Chiriac and ECtHR case-law invoked by SCJ, we can note some essential distinctions among them.

¹⁵⁸The Ministry of Finance invoked that the vote of Mr. Druță was decisive, considering that two out of five judges had separate opinions; that within the initial proceedings the defendant „Aroma Floris, S” was summoned by a local newspaper, even if the defendant is a resident of another country; that according to the documents from the case file, „Aroma Floris, S” took knowledge of the reasoned judgment only on 11 February 2011, and that, when submitting the appeal on 28 February 2011, it acted within the time limit established by law; that Mr. Chiriac did not invoke the tardiness of the appeal in the court of appeal and that during the initiation of the friendly settlement procedure the GA did not consult with the Ministry of Finance, although according to art. 13 para. (4) of the Law on governmental agent, requesting the opinion of the Ministry is mandatory.

¹⁵⁹SCJ, Judgment no. 2rh/15 of 11 February 2015, available at: http://jurisprudenta.SCJ.md/search_col_civil.php?id=16912.

First of all, in *Popov (no. 2)*, the ECtHR made reference to its earlier case-law which states that the failure to bring reasons for rejecting applicant's objection on the late submission of application represents a violation of art. 6 para. 1 ECHR.¹⁶⁰ In this standard, the ECtHR emphasizes that the applicant object before the national court that the application was lodged outside the time limit. It clearly results from the judgments delivered in *Melnic*¹⁶¹ and *Ceachir*¹⁶² cases invoked by the SCJ that applicants invoked the late submission of applications before the courts, which subsequently admitted requests of the opponents. It also results from another case, *Grafescolo v. Moldova (2014)*,¹⁶³ that the applicant invoked the late submission of the application at the national level. According to the statement of the MF within the revision proceeding no. 2rh-286/14 and the findings of the Judicial Inspection in a disciplinary case,¹⁶⁴ Mr. Chiriac did not invoke the late submission of the application in the court of appeal, even though there was opportunity to do so repeatedly¹⁶⁵. The SCJ did not reject this argument and did not refer to any document where Mr. Chiriac would have raised the issue of late submission of appeal, however it found a violation of art. 6 para. 1 ECHR and art. 1 Prot. 1 ECHR on the basis of ECtHR case-law where applicants submitted this type of objections at the national level. Secondly, in the case of SA "Vinis-NLG", Mr. Chiriac dropped the action after it was sent for re-examination in the first instance court and proceedings were discontinued, and in "Aroma Floris, S" case, the first instance court struck the application out based on non-participation of Mr. Chiriac in the court hearings. In both cases, the applicant did not uphold his applications within judicial proceedings after the cases were sent for re-examination. Therefore, the lack of objections in relation to late submission of appeals and the fact that the applicant dropped the actions submitted at the domestic level represent essential distinct aspects of the cases of Mr. Chiriac and the case-law invoked by the SCJ. Apparently, the SCJ case-law cited above does not represent constant case-law in the context of cases of Mr. Chiriac, and this raises further questions related to the justification of admitting of the analysed revision requests.

Other problematic aspects

In addition to repetitive problematic aspects identified following the analysis of the 21 rulings on admission of revision requests, some problems were identified that are not repetitive, but which are serious enough for them not to be considered. For example, in the case no. **3rh-71/14** where the revision applicant sought to challenge an administrative act awarding land into property, it is unclear to what new circumstance the revision applicant

¹⁶⁰ ECtHR, Judgment *Popov (nr. 2) v. Moldova*, § 43.

¹⁶¹ ECtHR, Judgment *Melnic v. Moldova*, § 15.

¹⁶² ECtHR, Judgment *Ceachir v. Moldova*, § 45.

¹⁶³ ECtHR, Judgment *Grafescolo v. Moldova*, § 23.

¹⁶⁴ Disciplinary Board of the CSM, Decision no. 18/3 of 27 March 2015, available at: http://csm.md/files/Hotarirele_CDisciplinar/2015/18-3.pdf.

¹⁶⁵ Also, both the Ministry of Finance in the revision procedure as well as Judiciary Inspection in the disciplinary procedure stated that SIA "Aroma Floris, S" did not violate the deadline for lodging appeal submitted on 28 February 2011, because it became aware of the reasoned judgment only on 11 February 2011. Accordingly, the period of 20 days for filing the appeal was observed.

referred, despite the fact that the ground provided by art. 449 let. b) of the CrPC was invoked (new circumstances). In any case, the revision applicant claims that he took note of the new circumstance during examination of the case in the court of appeal on 5 March 2014, a procedure that is not described in the judgment and, respectively, it is not clear how relevant it is. Moreover, from the text of the judgement it results that the revision applicant relied on the same circumstance as in an earlier revision procedure, but at that time the SCJ dismissed the revision application as inadmissible. The SCJ admitted the revision request, ignoring the provisions of Art. 451 para. (4) of the CrPC, which do not allow repeated submission of the revision request under the same grounds. In the repeated revision, the SCJ mentioned that in the earlier proceedings, the revision court did not take into account the circumstances invoked by the revision applicant. Following the apparently improper admission of the revision request and the re-examination of the case by the SCJ, the decision of the appeal court was quashed and a new judgment was issued, by which the revision applicant received the property right over the land.

The case no. **2rh-168/2014** refers to a request to declare annul an agreement, to recognition the right to property and evacuation from the house. The SCJ upheld a revision request submitted on 25 March 2014 against a rulings from 2 April 2013 (refusal to exempt applicant from court fees) and 02 May 2013 (restitution of the appeal on points of law), under circumstances that have become known to the revision applicant in May 2013, which is nearly one year ago, while the deadline for submitting revision request is 3 months¹⁶⁶. After admitting an application which is apparently submitted after the time-limit provided by the law and the re-examination of the case, the SCJ issued a ruling in favour of the revision applicant and maintained the right of ownership to the house.

In conclusion, although the number of revision requests annually admitted by the SCJ is maintained at a low rate, the SCJ case-law in revising final judgments raises many questions. The SCJ does not strictly observe the CrPC rules when admitting revision requests. In some cases the SCJ does not even indicate the ground provided by art. 449 of CrPC for admitting the revision request although the law provides for an exhaustive list of grounds for revision. In some cases, because of repetitive revision procedures, the SCJ commits errors like: admitting late revision requests or admitting repetitive revision requests.

¹⁶⁶The Revision applicant-defendant alleged that during the initial proceedings, when the appeal on points of law was submitted to the SCJ, he also submitted a request to be exempted from payment of court fees. On 2 April 2013, the request to be exempted from payment of court fees was rejected and a term of 15 days was awarded in order to remove the shortcoming of non-payment of the court fee. On 18 April 2013, the cassation applicant was offered a second deadline for payment of court fees, until 30 April 2013. On 2 May 2013, the case materials were returned to the cassation applicant. On 20 March 2013, the revision applicant lodged a revision request against the rulings of 2 April 2013 and 2 May 2013. On 20 November 2013, the revision request was rejected as inadmissible. On 25 March 2014, the person submitted another revision request against rulings of 2 April 2013 and 2 May 2013, stating that he learned only in late May about the rulings of 2 April 2013, by which the request to be exempted from payment of court fees was dismissed, and about the decision on restitution of the case file of 2 May 2013. The fact that the revision applicant was informed with delay is explained by the fact that he lived in a village where several persons had the same name and another person was informed about the respective rulings and the post office employees did not search for other persons in order to hand out these rulings.

Most of SCJ rulings include standard referances to the ECtHR case-law and do not identify relevant circumstances and the specific paragraph of the ECtHR judgment or decision. The SCJ made several attempts to directly apply the ECHR in revision proceedings, especially when the ground invoked by the revision applicant is not specified under Art. 449 of CrPC. Although in some cases the ECtHR standards invoked by the SCJ were the only support for revision, the SCJ invoked no ECtHR judgment which would clearly show that the revision based on the invoked ground is admissible and is consistent with the ECHR. Direct application of ECtHR standards by the SCJ represents in fact an attempt to reopen domestic proceedings in order to avoid violation of the ECHR, however these attempts are not always appropriate.

In most of SCJ rulings were the ground under Art. 449 let. b) was applied (new circumstances), the SCJ ignored the fact if the revision applicant knew or should have known about the new circumstances. As a result, the SCJ upheld revision requests based on the fact that the final judgment which was challenged was contrary to the uniform practice. Also, the SCJ applied let. b), art. 449 of CrPC in order to repair some errors committed as a result of rejecting some appeals on points of law as being submitted late, which were in fact submitted by post in time. These errors were determined by mistakes admitted by the SCJ.

The GA submitted two revision requests based on initiation of friendly settlement procedures in several cases, where an advocate from Chisinau was to receive nearly five million lei. Following the admission of these requests, apparently, the SCJ committed several violations, including: ignoring the fact that the applicant dropped the action at the domestic level, examination of the merits of the case twice by the same judge, and *ex officio* suspension of domestic proceeding based on the fact that there is an ongoing proceeding before the ECtHR.

Recommendations:

1. When admitting the revision requests, the SCJ needs to clearly identify the ground provided under art. 449 CrPC and the specific evidence put forward by the revision applicant in supporting the revision request;
2. Given that the grounds provided by art. 449 CrPC are exhaustive and cannot be extensively interpreted, it is necessary to exclude the practice of admitting revision requests that do not fall under one of the legal grounds;
3. The SCJ should refrain from quashing final judgments because of the risk that the ECHR might be violated. The risk of violating the ECHR in itself does not represent a ground for revision. The existence of an inconsistent practice and quashing previous judgments because they are contrary to the case-law which is later standardized are not compelling reasons for quashing a final judgment;
4. The SCJ needs to carefully check if legal time limits are observed, especially when several revision applications were submitted in the same case. Also, if the revision applicant has already invoked the respective circumstance in an earlier revision procedure, the SCJ should reject the repeated revision request;
5. GA should refrain from submitting revision requests when the violation of ECHR is not obvious.

4.6 Conviction based on evidence obtained from entrapment

In 2014, the ECtHR adopted two judgments in Moldovan cases where it found that the applicants were convicted following judicial proceedings based on evidence obtained from entrapments. In the judgment *Sandu v. Moldova*¹⁶⁷, the applicant, who was a veterinarian, was convicted for taking bribe from a private person for issuing a certificate that allowed him to take a dog out of the country. The domestic courts did not take into consideration the fact that the instigator did not even have a dog, which could have casted a doubt on the credibility of his grounds to submit a complaint to the police. Also, there was no evidence to prove that the applicant was involved in previous criminal activity, a fact confirmed by the police. The *Pareniuc v. Moldova*¹⁶⁸ case refers to the receipt by an employee of the tax authorities of an amount of money from an undercover agent. There was no evidence proving that the applicant was previously involved in bribery and that the recording of the operation in which the transfer of money was made clearly indicated that applicant refused on several occasions the bribe and accepted taking the bribe only after the insistence of the agent provocateur.

ECtHR noted in its case-law that the use of special investigation measures in itself does not represent a violation of the right to a fair trial. However, the risk of provocation determined by the use of these measures requires setting certain limits in the process of their use. The involvement of undercover agents was considered compatible with the ECHR if the following conditions were met:

- a) prior existence of reasonable grounds to believe that the person concerned is involved in a similar criminal activity or has previously committed such an activity;
- b) authorization of the activity of the undercover agent, by indicating the full information regarding the purpose and the reason for applying this method;
- c) the undercover agent can only be used to assist within an ongoing investigation and s/he must refrain from inciting the person concerned to committing a criminal act (*instigator*);
- d) existence of procedural safeguards against abuses.¹⁶⁹

National courts should be guided by these principles during the administration of evidence received as a result of entrapment. The SCJ intervention represents perhaps the most effective means available in Moldova for adjusting judicial practice. Although the SCJ adopted over 200 explanatory decisions, opinions and notifications, the entrapment is tangentially tackled only in one decision of the SCJ Plenary. The Decision of the Plenary no. 2/2011, which refers to the examination of cases on drugs, provides the following:

„13. In case a person states that s/he was victim of a provocation, especially if his/her allegations do not lack credibility, in the absence of contrary evidence in this regard, courts need to examine circumstances of the case and take necessary measures in order to discover the truth: whether provocation existed or not.

¹⁶⁷ECtHR, Judgment *Sandu v. Moldova*, 11 February 2014, para. 32-39.

¹⁶⁸ECtHR, Judgment *Pareniuc v. Moldova*, 1 July 2014, para. 33-42.

¹⁶⁹ECtHR, Judgment *Ramanauskas v. Lithuania* [GC], 1 July 2014, para. 49-61, Judgment *Furcht v. Germany*, 23 October 2014, para. 47-53; Judgment *Bannikova v. Russia*, 4 November 2010, para. 36-50.

The burden to prove that, during carrying out preliminary acts by the infiltrated agent the authorities had reasonable grounds to suspect the existence of a criminal activity carried out by a guilty person, rests with the prosecution. Instigation to committing an offense includes the respective actions of the police when there is no evidence that in the absence of their intervention the offense would have been committed (see ECHR judgments in cases Khudobin vs Russian Federation, Vanian vs Russian Federation, Kestas Ramanauskas vs Lithuania, Teixeira Castro vs Portugal)."

The above text highlights only some of the elements considered by the ECtHR during the examination of cases where provocations are alleged. Therefore, judges are not instructed to check whether the operation is authorized, to check the behavior of the „instigator”, and explain the legal guarantees offered to the accused person. It is necessary to note that, according to art. 9 para. 3 of the Law on Special Investigation Activity, the identity of undercover investigators represents state secret and can be disclosed only with his/her consent. Based on this rule, judges often refuse to hear the „instigators” in the court. When there is no audio or video recording of their behavior during the alleged provocation, the failure to hear them seriously diminishes the possibility of the defense to prove that an entrapment took place.

Recommendations:

Elaboration by the SCJ of detailed recommendations on the examination by the courts of allegations related to provocation to committing crimes or administrative offences.

4.7 Phone tapping

In the judgment *Iordachi and Others v. Moldova*¹⁷⁰, the ECtHR found that the domestic legislation on phone tapping did not contain sufficient guarantees against the arbitrary. In *Iordachi and Others*, the ECtHR noted that although Moldovan legislation on the phone tapping adopted after 2003 was clearer, the existing system was however not compatible with the ECHR. Concerning the initial stage of authorizing phone tapping, the ECtHR found that the nature of offenses for which authorizations for phone tapping could be issued was not defined clearly enough, as more than half of the offenses provided by the CC are part of this category; the law did not define clearly enough the categories of persons whose conversations could be tapped; there was no clear time limit for authorizing phone tapping; the law regulated vaguely situations and circumstances in which the measure could be authorized. Concerning the second stage of phone tapping, the ECtHR noted that although the law provides for judicial control, the role of the judge was limited to authorizing the tapping measure; the law did not provide an obligation to inform the investigation judge about the results of the tapping and did not require his/her control over prosecutors' compliance with the legal requirements; the law did not provide how tapping results need to be examined, kept and destroyed; the law did not establish an effective mechanism of

¹⁷⁰ ECtHR, Judgment *Iordachi and others v. Moldova*, 10 February 2009, para. 19-54.

parliamentary control over the observance of the legislation on phone tapping, and the law did not regulate what happens when the conversation between the client and the advocate is tapped. Also, the law did not provide that tapping could have been used as an ultimate resort, if carrying out the investigation through other means was impossible. This fact, analyzed through an extremely high number of authorizations, was particularly worrying in the opinion of the ECtHR.

Following the mentioned ECtHR judgment, in 2012, the requirements for the use of phone tapping were tightened by the introduction of a separate section in the CrPC dedicated to special measures¹⁷¹ and by adopting a new Law on special investigation activity¹⁷². According to the new legislative provisions, phone tapping can be carried out only within criminal prosecution¹⁷³. According to para. (2) art. 132¹ CC, special investigation measures are applied only if the following requirements are cumulatively met: 1) it is impossible to reach the objective of the criminal proceeding by other measures and/or the administration of evidence could be seriously hindered; 2) there is a reasonable suspicion that a crime is planned or committed and (3) proportionality between the necessity for the measure and the interference with the human rights. The list of crimes for which phone tapping is allowed is exhaustively provided in par. (2) art. 132⁸ CC. After this list was extended in 2013¹⁷⁴ and 2014¹⁷⁵, the crimes eligible for tapping represent about 1/3 of all crimes under the CC. The new provisions limit phone tapping to a period of 30 days, which can be extended to a maximum of 6 months, and each extension can be ordered for up to 30 days¹⁷⁶. After the period of 6 months expires, the repeated authorization of the special investigation measure on the same ground and on the same subject is prohibited, except when new circumstances occur¹⁷⁷.

According to para. (3) art. 132⁸ CrPC, only the suspect, accused or persons whose identity was not established can be tapped, but only if there are sufficient data confirming that they contributed to commission of crimes. In 2014, a norm was introduced which provided the possibility of authorizing photo tapping at the request of the victim, damaged party, relatives, his/her family members and witness, if there is imminent danger for his/her life, health or other fundamental rights, if it is necessary to prevent a crime or if there is a clear risk of irreparable loss or distortion of evidence¹⁷⁸. The law prohibited the ordering and tapping of phone conversations between the lawyer and his/her client concerning the relations of legal assistance¹⁷⁹. At the same time, when a phone was tapped accidentally, it is prohibited to transcript the communications between a lawyer and his/her client¹⁸⁰.

¹⁷¹Law no. 66 of 5 April 2012 on amending the CrPC, p. 48 and 49.

¹⁷²Law no. 59 of 29 March 2012 on special investigation activity.

¹⁷³Art. 132¹ para. (1) CrPC and art. 18 para. (3) of the Law on special investigation activity.

¹⁷⁴Law no. 270 of 7 November 2013 on amending some legislative acts, Art. II, p. 3.

¹⁷⁵Law no. 39 of 29 May 2014 on amending the CrPC, p. 8.

¹⁷⁶Art. 132⁴ para. (7) CrPC.

¹⁷⁷The same rules apply in case of using undercover agents or in case of investigation of facts related to prosecution of organized crime and financing of terrorism, as well as for searching the accused.

¹⁷⁸Art. 132⁸ para. (4) CrPC.

¹⁷⁹Art. 132⁴ para. (10) CrPC.

¹⁸⁰Art. 132⁹ para. (9) CrPC.

Within 24 hours after the period for which tapping was authorized expired, the OUP or the prosecutor must draft a protocol on the tapping and transcript¹⁸¹. The protocol and the original support where the recording was made are transmitted to the investigative judge who shall verify the compliance of the tapping with the legal requirements. Also, the investigative judge shall decide which records need to be destroyed and designate the responsible person, who shall usually be a prosecutor¹⁸². All records should be usually kept by the investigative judge until the criminal investigation is completed¹⁸³. If the investigative judge authorized phone tapping, the person who was subject to phone tapping must be informed about this after the tapping is carried out, but not later than the moment when the criminal investigation was discontinued. The obligation to inform the person whose phone was tapped lies on the prosecutor or the investigative judge¹⁸⁴. After the person is informed about the tapping, s/he may take knowledge of the protocol on tapping, the material support of information, as well as the ruling of the investigative judge on the legality of the undertaken measure¹⁸⁵. The parliamentary control of special investigation measures, including tapping, shall be carried out by the Parliamentary Committee on National Security, Defense and Public Order, which shall check the relevant report of the General Prosecutor which is to be presented each year until 15 February¹⁸⁶. The Report should include the number of authorized and cancelled special investigation measures, and the results of these measures¹⁸⁷. In practice, the report was never made public.

The adopted legislative provisions substantially limit the possibilities of unjustified tapping. However, in practice this process is carried out with many shortcomings. Although back in 2009 the ECtHR noted in the judgment *Iordachi and Others v. Moldova* that the phone tapping was used too frequently and that the authorizations awarded by the investigative judges had a high rate, the official statistics confirm that the situation has not changed significantly. Annually, the investigative judges uphold more than 98% of requests for phone tapping, and this percentage did not change significantly after the judgment *Iordachi and others* was delivered. Moreover, the number of phone tapping requests submitted by the prosecutors remains quite high. For example, in 2014, the number of phone tapping requests has increased by over 100% compared with 2013 and is even higher than the number of requests examined before the CrPC was amended. Although the number of requests varied from year to year, the rate of authorizations granted by the investigative judges remained high - over 98%. The statistics in the table below suggest that the authorization of phone tapping requests is almost automatic.

¹⁸¹ Art. 132⁹ para. (7) CrPC.

¹⁸² Art. 132⁹ para. (15) CrPC.

¹⁸³ Art. 132⁹ para. (13) CrPC.

¹⁸⁴ Art. 132⁵ para. (7) CrPC, art. 4 para. (1) and art. 22 para. (6) of the Law no. 58 of 29 March 2012 on special investigation activity.

¹⁸⁵ Art. 132⁵ para. (8) CrPC.

¹⁸⁶ Art. 38 of the Law no. 59 of 29 March 2012 on special investigation activity.

¹⁸⁷ Art. 38 of the Law no. 59 of 29 March 2012 on special investigation activity.

Table 14: Statistics on requests for authorization of phone tapping examined by the investigative judges in 2006, 2009-2014¹⁸⁸

Year	Examined requests	Variation comparing with the previous year	Upheld requests	% of upheld requests
2006	1,931	-	1,891	97.9%
2009	3,848	+199%	3,803	98.8%
2010	3,890	+1.1%	3,859	99.2%
2011	3,586	- 7.8%	3,539	98.7%
2012	5,029	+40.23%	4,911	97.6%
2013	2,915	-42.03%	2,876	98.66%
2014	5,952	+104.18%	5,861	98.47%

Following the interviews with investigative judges, we established that although the prosecutor is obliged to inform the investigative judge about the results of the phone tapping and submit the protocol, the transcript and the recorded material, this does not happen in all cases. As a result, there is no judicial control of phone tapping. The same situation also refers to informing the tapped person. Although the right of the person to be informed about phone tapping existed also prior to amendment of the CrPC, this happened in extremely rare cases. The situation has not changed radically since then. From the interviews we had with the experts in this field, it results that the investigative judges and the tapped persons are informed about phone tapping mainly in larger cities, such as Chisinau, Balti and Cahul, while in other regions the obligation to inform is often neglected. There are many cases when the person is informed with delay. Given the large number of tapping requests and requests authorized by the investigative judge, the fact that a person is informed with delay can be perceived as abuse.

Concerning the destruction of records that are irrelevant for the criminal prosecution by the prosecutor or of the records that need to be destroyed at the decision of the investigative judge, the General Prosecutor's Office informed us about the elaboration of guidelines that provide for the manner of keeping, destroying and archiving the materials acquired during special investigation activity¹⁸⁹. This guidebook, as well as the information about the number of records kept, destroyed and archived by the prosecutors, is confidential. We would like to note that the storing of personal data by itself represents a violation of the private life of a person, regardless of whether these data was or was not further used¹⁹⁰. On the other hand, the destruction of recordings considered irrelevant by the prosecutor, without submitting them to the judge and defense council can raise questions about defence's lack of access to information.

A particular concern is related to the need to ensure the security of records during criminal prosecution, if there was a leak of information in the media¹⁹¹. Additionally, there

¹⁸⁸Data was obtained from annual statistical reports presented by the courts to the Judicial Administration Department.

¹⁸⁹Information communicated by the General Prosecutor's Office on 16 April 2015.

¹⁹⁰ECtHR, Judgment *Amman v. Switzerland*, 16 February 2000.

¹⁹¹The scandal related to phone tapping, where a number of state officials were involved, such as the

are not enough specially equipped places in certain courts that would provide adequate security for maintaining materials of investigative judges. Keeping records of phone tapping in unsecured places may affect the right to private life of the tapped persons. Given that in some courts investigative judges change every two months¹⁹², the observance of the principle of confidentiality is almost impossible, and therefore there is a risk that the private life of tapped persons might be violated.

It appears that after *Iordachi and Others* no measures were taken to strengthen the mechanism of parliamentary control of applying special investigation measures. Moreover, the annual report of the General Prosecutor's Office on applying special investigation measures, presented to the parliamentary committee on national security, defence and public order, is not made public because it contains confidential information¹⁹³. Therefore, there is no transparent parliamentary control related to phone tapping. We consider that this report needs to be published, because, according to the law, this report needs to include statistics, and not personal data. Moreover, there is no need to disclose personal data to the parliamentarians. This report should also include data on the number of tappings carried out without authorization of the investigative judge and subsequently rejected following judicial control; the number of tappings stored, destroyed and archived by prosecutors; in how many cases persons were informed with delay about the fact that their phone is tapped, etc. Although the report must be submitted by 15 February of this year, on 31 March 2015, the General Prosecutor's Office has not submitted such a report to the Parliament yet.

The legislative initiative on combating extremism represents a regress in this field. On 17 July 2014, the Parliament adopted in the first reading a draft law on combating extremism¹⁹⁴. Under this draft law, SIS will be the primary authority responsible for preventing extremist activities and will be able to apply special investigation measures, based on the security warrant, outside criminal proceedings. Among others, SIS will be able to carry out phone tapping without ensuring the right to private life of the tapped persons. The draft law has been criticized by the Venice Commission¹⁹⁵ for several reasons, including for extremely vague formulations that allow authorities not to inform the person about the application of special measures after their finalization, for the lack of a requirement that the request or court order authorizing security warrant analyzes the justification of interference in the right to private life of a person, for the extremely large number of crimes where the security warrant can be issued, for the fact that the materials of the file related to security warrant represents state secret etc.

Prime-Minister and the head of State Tax Inspectorate at that time, http://www.publika.md/interceptari-telefonice-care-ar-putea-crea-un-nou-scandal-politic--nume-citate--filat--vicol--recean--ciocan--strelet-audio_1265141.html.

¹⁹² See, LRCM, Report „Reform of the institution of investigative judge in the Republic of Moldova”, 2015, pag. 45.

¹⁹³ Information communicated by the General Prosecutor's Office on 16 April 2015.

¹⁹⁴ Draft no. 281 of the Law on amending certain legislative acts, registered at the Parliament on 9 July 2014.

¹⁹⁵ Venice Commission, Opinion no. 756/2014 of 2 April 2014, CDL-AD(2014)009, available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)009-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)009-e).

Another situation when a phone tapping can be carried out outside the criminal proceeding is when the professional integrity is tested¹⁹⁶. At the request of the Constitutional Court, the Venice Commission issued an *amicus curiae* on whether the integrity testing interferes with the private lives of judges¹⁹⁷. The Commission mentioned that the use of undercover means by integrity testers, as well as the compulsory audio/video recording of the testing may represent an interference in the private life of judges, and art. 8 of ECHR provides safeguards against disproportionate application of surveillance measures. The commission stated that in order for the Law no. 325 to be compatible with the ECHR, it is necessary to introduce a judicial control. Also, the Law no. 325 violates all principles developed by the ECtHR on the involvement of undercover agents, and namely: the grounds specified in art. 4 and art. 10 para. (2) of the Law no. 325 are not sufficient to be considered as reasonable grounds for initiating testing; the testing plan approved by the CAN does not meet the minimum requirements for authorizing the activity of the undercover agent and the testor will actually use a false identity and will approach the judge with a corrupt offer, offering, for example, an amount of money, therefore he must be qualified as instigator. The Commission therefore concluded that, under the Law no. 325, the integrity testers may cause disproportionate interference in the private life of persons. By analogy, we believe that the findings of the Venice Commission can be applied accordingly to all public officials subjected to professional integrity testing.

The spectacular growth by over 100% of the number of requests for phone tapping; the extremely high rate of admission of requests by over 98%; the failure to inform the investigative judge about the results of phone tapping and, consequently, the failure of the judge to verify the compliance with the legal requirements during tapping; the failure to inform persons after phone tapping is stopped; frequent postponement of informing the person; lack of information related to destruction or storage of records by the prosecutor; keeping tapping results in insufficiently secured places by the investigative judge and the prosecutor; frequent change of investigative judges who are authorizing or checking the results of the tapping which are confidential; lack of transparent parliamentary control - all these elements allow us to conclude that phone tapping is still at the large discretion of the prosecution and OUP, without ensuring an adequate judicial control or transparent parliamentary control. In addition, the new legislative initiatives that allow phone tapping outside the criminal proceeding, without observing the minimum procedural safeguards, may lead to serious violations of the right of persons to private life.

Recommendations:

1. Elaboration of a detailed analysis by the SCJ of the practice of applying phone tapping provisions;

¹⁹⁶The Law no. 325 of 23 December 2013 on professional integrity testing.

¹⁹⁷Venice Commission, Opinion no. 789/2014 of 15 December 2014, CDL-AD(2014)039, pag. 19-21, available at <http://constcourt.md/download.php?file=cHVibGljL2NjZG9jL3Nlc2l6YXJpL3JvLWFFtaWN1c2N1cm1hZXRlc3RhcmludGVncml0YXRpaXRyYWRuZW9mOTU1YjIucGRm>

2. Ensuring specially equipped and secured places in all courts of the country for storing the materials of the investigative judges;
3. The prosecutor must inform the investigative judge about the outcome of each tapping and inform all persons subjected to phone tapping about the tapping itself;
4. The prosecutor should inform the public about the destruction and archiving of the results of tapings and recordings;
5. The publication of the report of the General Prosecutor which is presented to the Parliamentary committee on national security, defense and public order on special investigation measures, which should not contain personal data;
6. Revision of the draft law on combating extremism, adopted in the first reading in 2014, by including necessary safeguards for protection of the right to private life of the tapped persons;
7. To introduce a preliminary judicial control on the measures for professional integrity testing.

Contribution to reducing of the number of applications to the ECtHR

The large number of applications submitted to the ECtHR jeopardizes the entire mechanism established by the ECHR. Following many condemnations by the ECtHR, many European countries introduced compensatory remedies for the violation of the reasonable term requirement. In some countries, such as Russia, Serbia, Slovenia or Spain an appeal to the Constitutional Court was introduced for alleged violations of human rights and fundamental freedoms. For this reason, Lord Woolf recommended in 2005 to apply more often to ombudsmen's services and other methods of alternative dispute resolution.¹⁹⁸ In case of serious violations and in order to prevent future violations, the punishment of perpetrators or their obligation to compensate, in whole or in part, the amounts paid by the state under the ECtHR procedures, can be justified. This chapter shortly analyzes the evolution of these mechanisms in Moldova starting with 2013.

5.1 The compensatory remedy for the violation of the reasonable time requirement

In its judgment *Olaru and others v. Moldova*, the ECtHR found that in 2009 the non-enforcement of final judicial decisions was the main problem of Moldova on account of the number of pending applications before the Court. At the date of that judgment, more than 300 such applications were pending before the ECtHR. In the judgment *Olaru and others*, the ECtHR stated the following.

„58. ... the State must introduce a remedy which secures genuinely effective redress for violations of the Convention on account of the State authorities' prolonged failure to comply with final judicial decisions concerning social housing delivered against the State or its entities. Such a remedy... must conform to the Convention principles”

In *Scordino no. 1 v. Italy* (29 March 2006), ECtHR described the requirements to which the compensatory appeal mentioned in the judgment *Olaru and others* should comply.¹⁹⁹

¹⁹⁸See pag. 4 of the Report, available at <http://www.echr.coe.int/NR/rdonlyres/40C335A9-F951-401F-9FC2-241CDB8A9D9A/0/LORDWOOLFREVIEWONWORKINGMETHODS.pdf>.

¹⁹⁹Similar requirements to the remedy introduced for excessive length of the proceedings are provided in the Recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2010)3

Therefore:

- a) the procedure for examining applications for compensation must be fair (para. 200);
- b) the action must be examined within reasonable time (para. 195 *in fine*), however faster than the usual procedure for compensation of the damage;
- c) the compensation awarded must not be unreasonable in relation to the fair satisfaction awarded by the ECtHR in similar cases (para. 202-206 and 213);
- d) the rules regarding legal fees should not put an excessive burden on the applicant (para. 201);
- e) the payment of the compensation must be made promptly, but not later than 6 months since the judgment became enforceable (para. 198).

In order to enforce the *Olaru and others* judgment, on 21 April 2011, the Parliament adopted the Law no. 87 regarding reparation by the state of the damage caused by violating the right to examination in a reasonable time, or of the right to have the court judgment executed in a reasonable time (Law no. 87), that entered into force on 1 July 2011. By this law every individual or legal person is entitled to claim pecuniary or non-pecuniary damages for the breach of the reasonable time requirement during the criminal investigation, the trial or the enforcement of the judicial decision. The law provides that such complaints should be filed against the Ministry of Justice²⁰⁰. These actions should be examined by the Buiucani Court mun. Chişinău²⁰¹ and they must be examined by the first instance court within maximum 3 months since they are lodged. The judgment of the first instance court is not enforceable. It can be challenged with appeal and appeal on points of law²⁰², and the law does not prohibit sending these cases for re-examination²⁰³. The law does not set specific time limits for examination of appeals or appeals on points of law in cases initiated under the Law no. 87.

of 24 February 2010, available at <https://wcd.coe.int/ViewDoc.jsp?id=1590115&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

²⁰⁰By 6 October 2012, these applications were filed against the Ministry of Finance. By the Law no. 96 of 3 May 2012, the Law no. 87 was amended indicating that the applications shall be filed against the Ministry of Justice.

²⁰¹By 6 October 2012, the complaint regarding the non-enforcement or delayed enforcement of judicial decisions had to be submitted to the Rîşcani District Court, mun. Chişinău (based on the location of the Ministry of Finance), and after that date, to the Buiucani court mun. Chişinău (see Law no. 96, of 3 May 2012). Until 30 November 2012, the complaints concerning the violation of the reasonable time requirement during criminal investigation or court trial were submitted to the Chişinău Court of Appeal. By the Law no. 155 of 5 July 2012, the competence of the courts of appeal to examine complaints as first instance court was excluded and all complaints are now examined by the district courts.

²⁰²Filing an appeal suspends the execution of the judgment until the delivery of the decision of the court of appeal. The appeal on points of law is not suspensive by its nature, but art. 6 para. 1 of the Law no. 87 provides that these judgments shall be executed after they become final. Moreover, art. 6 para. 4 of the Law no. 87 provides that the Ministry of Finance shall execute the writs within the time limit set by the Law no. 847 of 24 May 1996 on the budgetary system and budgetary process. Art. 36¹ of this law prohibits forced execution of these writs for a period of 6 months from the date when the judgment becomes final.

²⁰³By 1 December 2012, when the amendments to the Civil Procedure Code entered into force, the decision of the trial court was challenged only by the appeal on points of law, and the re-examination of the case was not allowed. The Law no. 155 of 5 July 2012 provides that all judgments are examined in the first instance court by district courts, and that the judgments of those courts can be challenged with appeal and appeal on points of law. Starting with 1 December 2012, the Civil Procedure Code does not prohibit re-examination of cases initiated based on the Law no. 87.

The remedy introduced by the Law no. 87 clearly meets two out of the five rigors listed in the judgment *Scordino (no. 1)* (those under letter a) and e) above). The procedures are examined in court, according to the rules that appear to be sufficiently fair. Also, according to art. 36¹ of the Law on budget system and budget process, the Ministry of Finance has six months to execute the enforcement warrant. Otherwise, the bailiff may proceed to forced execution, which, apparently, happens seldom. In the decision *Balan v. Moldova* (24 January 2012), the ECtHR accepted, *prima facie*, that the remedy introduced by the Law no. 87 is effective, suggesting that this remedy needs to be exhausted by the persons who want to complain to the ECtHR concerning the violation of the reasonable time requirement. According to the most experienced Moldovan lawyer from the Registry of the ECtHR, the ECtHR has given Moldova the benefit of the doubt, however the ECtHR opinion may be reviewed in the future depending on the capacity of the national courts to generate a case law consistent with the requirements of the ECHR²⁰⁴, a fact also underlined in p. 27 of the decision *Balan*.

After the *Balan* decision, more than 300 Moldovan applications concerning the reasonable time requirement, which were pending at the ECtHR on 28 July 2009 (the date of the judgment *Olaru and others*) or which were lodged subsequently, have been declared inadmissible by the ECtHR for the failure to exhaust domestic remedies. The applicants were suggested to initiate actions under the Law no. 87.

On 1 June 2012, over 11 months after the Law no. 87 entered into force, the Ministry of Finance was aware of 634 applications submitted under this law, which represents about 1% of all civil actions submitted in the courts that year. The large number of these applications can be explained by the fact that over 300 applications, where the reasonable time was invoked, were declared inadmissible and that they were submitted to the national courts. Apparently, the number of these applications gradually decreased. However, according to official statistics, in 2014, 479 of such applications were submitted, and at the end of the year, 140 of them were still pending before the first instance court.²⁰⁵

In 2014, the LRCM assessed the efficiency of the mechanism introduced by the Law no. 87. Judgments issued in 262 cases initiated under the Law no. 87 were analyzed. These cases represented more than 90% of all proceedings instituted under the Law no. 87 and where a final decision was adopted in the period September 2012 - October 2013. The LRCM findings were reflected in a policy document²⁰⁶.

The results of the analysis of the judicial practice carried out by the LRCM²⁰⁷ raise doubts regarding the efficiency of the mechanism for compensating damage caused by the violation

²⁰⁴ Radu Panțiru made these declarations on 27 March 2012 during a conference organized by the Council of Europe at the National Institute of Justice. His speech was later published on the web page of the Supreme Court of Justice [which is available at http://SCJ.md/news.php?menu_id=460&lang=5](http://SCJ.md/news.php?menu_id=460&lang=5).

²⁰⁵ Ministry of Justice: Statistical Report available at http://justice.gov.md/public/files/file/rapoarte/2015/executarea_legii_87_pentru_12_luni_2014.pdf.

²⁰⁶ See LRCM, Policy document "The mechanism for compensation of damages caused by the violation of reasonable time requirement — is it efficient?", September 2014, available at: <http://LRCM.org/wp-content/uploads/2014/09/Document-de-politici-nr1-web.pdf>

²⁰⁷ More than 262 cases were examined, 143 out of them referred to the length of the judicial proceedings and 119 – to non-enforcement or late enforcement of judgments.

of the reasonable time requirement. There are serious problems both in what concerns the speed of examination of the actions initiated under the Law no. 87, as well as the quality of reasoning the judgments and the amount of compensations awarded for pecuniary and moral damage. Also, the expenses for legal assistance are usually incurred entirely or mostly by the applicants, even if the application is entirely admitted and the involvement of the lawyer does not seem to be excessive.

The length of examination of cases initiated based on the Law no. 87

The Law no. 87 provides that the action shall be examined by the first instance court within maximum 3 months since it was submitted. In practice, this term is not observed²⁰⁸. Neither the Law no. 87 nor any other legislation establishes special time limits for examination of appeals or appeals on points of law in cases initiated under the Law no. 87. The latter are examined according to the general order. In practice, appeals are examined at least 3-4 months, and appeals on points of law are examined another 3-4 months, and the time limit for submitting appeals on points of law represents 2 months. Details about the 262 cases initiated based on the Law no. 87 and which were analyzed by the LRCM are presented in the following table:

Table 15: Information on the length of examination of cases initiated based on the Law no. 87 (including examination of cassation)

	Studied cases	Until 6 months		6-12 months		13-15 months		16-18 months		18 months +	
Length of judicial proceedings	143	22	15,4%	79	55,2%	18	12,6%	11	7,7%	13	9,1%
Enforcement of court judgments	119	11	9,2%	53	44,5%	20	16,8%	10	8,4%	25	21,0%
total	262	33	12,6%	132	50,4%	38	14,5%	21	8,0%	38	14,5%

According to the data from the table, out of the 262 cases analyzed by the LRCM, the examination of 12.6% finalized in less than 6 months after the application was lodged with the court, 50.4% - within 6 to 12 months, 14.5% - within 13 to 15 months, and 22.5% - within more than 15 months, and 14.5% - within more than 18 months. Long examination of applications initiated under the Law no. 87 is also confirmed by the information received from the Ministry of Finance. Towards the end of 2014, more than 50 applications submitted by October 2012 were still pending before the courts.

The LRCM conducted an analysis of official statistics related to the length of examination of cases in the Republic of Moldova²⁰⁹. They confirm that out of approximately 69,000 civil

²⁰⁸ According to official statistics (see footnote no. 13), on 1 January 2014, 111 actions initiated under the Law no. 87 were pending before the courts. In the first 3 months of 2014, 28 applications were submitted, and the examination of 39 applications was finalized, and on 31 March 2014, 100 actions were still pending. In other words, out of 111 applications submitted until 31 December 2013, on 31 March 2014 at least 72 of them (if we presume that none of 28 applications filed in the first semester of 2014 were examined) were still pending before the first instance court.

²⁰⁹ Ministry of Justice, "Statistical report on the activity of the first instance court in examination of

cases pending before the district courts, on 1 October 2013, only 2,699 cases (3.9%) were pending for more than 12 months, 1,803 cases (2.6%) from 12 to 24 months, 503 (0.7%) from 24 to 36 months, and 373 (0.5%) more than 36 months. If we assume that the appeal in 262 cases was examined within 3 months, it results that 22.5% of the cases initiated under the Law no. 87 were examined by the first instance court within more than 12 months, as opposed to the national average of 3.8% in civil cases²¹⁰. These figures suggest that civil cases are examined by judges more quickly than cases initiated under the Law no. 87, although it should be vice versa.

The table above presents a better situation than the *de facto* situation. Many of the cases studied by the LRCM were examined by the courts according to the legislation existing until 1 December 2012, when these cases could not be examined in appeal. Starting from 1 December 2012, these cases are examined also in appeal²¹¹. Moreover, the term for submitting an appeal on points of law was extended from 15 days to 2 months and the parties often use this remedy. Consequently, after 1 December 2012, the period for examining the applications under the Law no. 87 was extended by at least 4–6 months. The examination of a case lodged under the Law no. 87 for longer than 18 months, in conjunction with the execution of the judgment during another six months, seems to be problematic in the light of the ECtHR standards. Moreover, since 1 December 2012 the applications submitted under the Law no. 87 may be sent for re-examination and this happens occasionally, sometimes even repeatedly.²¹²

Compensation of non-pecuniary damage

According to the ECtHR standards, the compensation awarded at the national level in respect of non-pecuniary damage needs to be reasonable in comparison to the compensations awarded in similar cases, namely in cases where a comparable violation by the same or another state with a similar level of economic development was found. In *Burdov no. 2 v. Russia* (15 January 2009), the ECtHR noted the following with regard to non-pecuniary damage:

"100. There exists a strong but rebuttable presumption that excessively long proceedings will cause non-pecuniary damage. The Court considers this presumption to be particularly strong in the event of excessive delay in enforcement by the State of a judgment delivered against it, given the inevitable frustration arising from the State's disregard for its obligation to honour its debt and the fact that the applicant has already gone through judicial proceedings and obtained success."

civil cases during 9 months of 2013", available at http://justice.gov.md/public/files/file/rapoarte/Judecarea_cauzelor_civile_9_luni_2013din-12-12-2013.xlsx.

²¹⁰ According to statistical data from the first 9 months of 2013.

²¹¹ See footnote no. 11.

²¹² Ex. the case *Ciorici Constantin v. Ministry of Finance* was twice sent for re-examination by the Supreme Court of Justice. The last decision of the SCJ is available at http://jurisprudenta.SCJ.md/search_col_civil.php?id=5415.

Awards of EUR 400,000 in damages for the violation of the length of proceedings, as awarded by the Chişinău Court of Appeal in the *Sandulachi*²¹³ case, is not characteristic for the judicial system of the Republic of Moldova. On the contrary, there is a widespread opinion among Moldovan judges that human rights violations should not automatically lead to compensation of non-pecuniary damage, or that the amount of non-pecuniary damage should not be very high. The small amount of non-pecuniary compensation was always widely discussed among the lawyers from the Republic of Moldova. When asked about the amount of compensations, judges said that when they grant it they take into account the realities of the Republic of Moldova, which is the poorest country in Europe, also considering that the judges' salaries are low. They also draw attention to SCJ jurisprudence, which until recently granted small compensations. Some judges were reluctant to the idea of granting big compensations to avoid being suspected of corruption or because "traditionally, they cared for the state budget"²¹⁴. Nevertheless, the judges were more generous when applicants in the proceedings were their colleagues or members of judges' families²¹⁵.

Apparently, the judges consider that calculating the amount of non-pecuniary compensation is not a legal matter, and depends on judge's discretion. For this reason, the reasoning of judgments in this part is usually very brief and does not allow individuals to understand how the amount of compensation was calculated and why in similar cases judges awarded different non-pecuniary compensations.

Non-pecuniary compensations awarded by Moldovan judges vary considerably in size. By 2013, usually, judges from district courts were awarding larger amounts for non-pecuniary damage, which however were substantially reduced in appeal or cassation. The compensations which were finally awarded were considerably lower than those awarded by the ECtHR²¹⁶. For this reason, until 31 December 2014, Moldova lost seven cases to the ECtHR²¹⁷.

Apparently, the SCJ recognized that the level of non-pecuniary compensations awarded for violation of ECHR is too small and that the judicial practice in this area is not uniform. On 23 July 2012, a joint opinion of the chairperson of the SCJ and the Governmental Agent on the just satisfaction which should be awarded for the violation of the ECHR was published on the SCJ website²¹⁸. This Opinion mentions the following:

²¹³ Decision of the Chişinău Court of Appeal of 23 January 2012 in the case *Pantelei Sandulachi v. Ministry of Finance*. This decision was later quashed by the SCJ, and the compensation was reduced to EUR 1,000.

²¹⁴ LRCM Report of 2012, p. 55.

²¹⁵ In 2006, in the case *Grosu and others v. Moldova* (dec. ECtHR of 13 July 2007), the SCJ awarded EUR 9,500 for non-pecuniary damage to the applicant who was a former judge for improper quashing of a final judgment. In 2007, in the cases *Guranga and Cumatrenco* (dec. ECtHR of 20 March 2007), the SCJ awarded EUR 4,400 to the judges or families of the deceased judges and, respectively, EUR 4,850 for non-pecuniary damage for improper quashing of final judgments. The amounts awarded by the ECtHR for non-pecuniary damage in comparable cases are much smaller.

²¹⁶ LRCM Report of 2012, p. 55.

²¹⁷ See Judgment ECtHR *Ciorap no. 2*, 20 July 2010; *Ganea* (17 May 2011); *Avram and others* (5 July 2011); *Cristina Boicenco* (27 September 2011); *G.B. and R.B.* (18 December 2012); and *Pietriş S.A.* (3 December 2013); *Ciorap no. 4* ().

²¹⁸ Joint opinion of the chairperson of the SCJ and the Governmental Agent on the just satisfaction which should be awarded for the violation of the ECHR, available at <http://SCJ.md/admin/public/uploads/Opinie%20privind%20satisfac%C5%A3ia%20echitabil%C4%83.doc>.

„... after analyzing the ECtHR case law in the cases of non-enforcement, one could conclude that the amount [of non-pecuniary damages awarded by the ECtHR in Moldovan cases] is of approximately EUR 600 for 12 months of delay and EUR 300 for each of the following period of 6 months of delay”.

Out of 262 analysed cases, 143 related to excessive length of judicial proceedings. 91 of the 143 cases were upheld. The detailed information about the 91 cases and the compensations awarded to the applicants are presented in the following table. According to this table, although in 40% of the upheld requests procedures lasted longer than 4 years, only in 3% of cases compensations of EUR 2,000 and larger were awarded for non-pecuniary damage. On the other hand, although only 18% of the upheld applications referred to the procedures that lasted up to one year²¹⁹, in 73% of cases the awarded non-pecuniary compensations represented less than EUR 500. In 14 out of 91 the upheld applications, a violation of the ECHR was found without, however, awarding non-pecuniary compensation. The largest compensation for non-pecuniary damage represented MDL 50,000, which was awarded to an advocate for criminal proceedings against him which lasted six years and six months. The average amount of non-pecuniary compensation awarded in 77 upheld applications represented MLD 7,084 (EUR 442 at that moment), although the average length of the proceedings for which compensation was granted was 2 years and 11 months.

Table 16: Information on non-pecuniary compensations awarded under the Law no. 87 for excessive length of examination of cases

Examined files											
143		Upheld actions						91		64%	
		Requested non-pecuniary damage						91		100%	
UPHELD CLAIMS						REJECTED CLAIMS					
77						14					
DURATION OF THE MAIN PROCEEDINGS											
Up to 1 year		1-1.5 years		1.5-2 years		2-3 years		3 years - 4 years		4 years and more	
14	18%	7	9%	4	5%	12	16%	9	12%	31	40%
AMOUNT OF NON-PECUNIARY DAMAGE AWARDED BY A FINAL JUDGMENT											
Up to € 500		€ 500 - 750		€ 750 - 1,000		€ 1,000 - 1,500		€ 1,500 - 2,000		€ 2,000 and more	
56	73%	14	18%	2	3%	2	3%	1	1%	2	3%
The smallest amount awarded		MDL 500		20.03.13		File. no. 2ra-794/13		Liubovi Constantinova v. Min. Fin.		6 months	
The largest amount awarded		MDL 50,000		20.09.12		File. no. 2r-703/12		Tuhari Igor v. Min. Fin.		6 years, 6 months	
The average length of the proceedings where the application was upheld								2 years and 11 months			
The average amount awarded								MDL 7,084 (EUR 442 in that period)			

²¹⁹ Admission of such applications is in itself problematic since the ECtHR usually rejects as manifestly ill-founded claims on the length of proceedings shorter than two years. 32% of the admitted applications related to the procedures that lasted up to two years. This can be indicative of a rather poor knowledge of the ECtHR standards by judges.

Out of the 119 studied cases on non-enforcement or late enforcement of judgments, 91 were upheld. In 88 out of 91 applications, the applicants claimed moral damages, out of which 82 applications were upheld. Detailed information about these 82 applications and compensations awarded to the applicants are presented in the following table. Although only 4% of these applications referred to the length of the proceedings of less than 1.5 years, in 67% cases the amount of awarded non-pecuniary damage represented up to EUR 750. Although 39% of applications related to proceedings longer than 4 years, non-pecuniary damage of EUR 2,000 and more was awarded only in 7% of cases²²⁰. The largest awarded compensation represented 60,000 MDL for non-enforcement of a judgment for 12 years. Although the average length of non-enforcement or delayed enforcement in the 82 admitted applications represented 3 years and 6 months, the average compensation awarded represented only 11,961 MDL (EUR 747 at that time). According to the Joint opinion of the chairperson of the SCJ and the Governmental Agent of 23 June 2012, which was formulated based on the ECtHR practices, the compensation for delays or non-enforcement with the length of 3 years and 6 months should represent EUR 2,100.

Table 17: Information on non-pecuniary compensations awarded under the Law no. 87 for non-enforcement or late enforcement of judgments

Examined files											
119		Upheld applications						91		76%	
		Requested non-pecuniary damage						88		97%	
UPHELD CLAIMS						REJECTED CLAIMS					
82						6					
LENGTH OF THE MAIN PROCEEDINGS											
Up to 1 year		1-1.5 years		1.5-2 years		2-3 years		3 years - 4 years		4 years and more	
2	2%	2	2%	10	12%	16	20%	20	24%	32	39%
THE AMOUNT OF NON-PECUNIARY DAMAGE AWARDED BASED ON FINAL JUDGMENT											
Up to € 500		€ 500-750		€ 750-1,000		€ 1,000-1,500		€ 1,500-2,000		€ 2,000 and more	
37	45%	18	22%	9	11%	5	6%	7	9%	6	7%
The smallest amount awarded		1,000 MDL		25.9.12		nr. 2r-1442/12		Bodarev Ion v. Min. Fin.		3 years	
The largest amount awarded		60,000 MDL		25.9.13		nr. 2ra-2030/13		Svetlana Turcanu v. Min. Fin.		12 years	
The average length of the proceedings where the application was upheld								3 years and 6 months			
The average amount awarded								11,961 MDL (EUR 747 in that period)			

²²⁰ Apparently, this represents the minimum compensation awarded by the ECtHR for non-enforcement that lasted 4 years

The information in the two tables above clearly confirms that the moral compensations awarded under the Law no. 87 are considerably lower than the compensations awarded by the ECtHR in comparable cases. We tried to analyze to what extent the SCJ observes the Joint opinion of the chairperson of the SCJ and Governmental Agent of 23 June 2012. Most of the examined cases finalized with a decision of the SCJ. Unfortunately, no reference to this recommendation was found in the SCJ decisions. This did not happen even in cases where the applicants justified their claims for non-pecuniary damage based on this Opinion. The level of compensations awarded by the SCJ clearly confirms that the recommendations of the Joint opinion were not taken into account by the SCJ when establishing the amount of non-pecuniary damage awarded for the violating of the reasonable time requirement. Lately, however, the judicial practice of the SCJ confirmed a slow increase of the non-pecuniary compensations in all categories of cases.

Compensation of the legal costs related to the case

The court proceedings initiated under the Law no. 87 are not subject to the court fees. However, they often include legal costs. High legal costs incurred by applicants may reduce to zero the effectiveness of the remedy introduced by the Law no. 87. Taking into consideration that the applicants usually use the services of an advocate, it is possible to prove that, if legal costs are not compensated except for a small amount, the applicants would ultimately receive in the final judgment a little more or a little less than the fee paid to the advocate. In other words, even if s/he wins the court trial, in the end, de facto, the applicant receives only very little compensation or no compensation at all.

The Union of Advocates from the Republic of Moldova approved the recommended rate of attorney's fees, where the minimum rate per hour represents EUR 50 and the maximum rate represents EUR 150²²¹. From the examined files we could conclude that only in 46 out of the 182 admitted applications, the compensation of legal costs was requested. This could suggest that, as a rule, the applicants do not rely on compensation of the fees paid to the advocate or require only partial compensation of these costs. Apparently, this attitude is determined by the existing judicial practice, where only a small part of legal costs was compensated, even if the action was fully admitted, the time spent on the case was justified and the fee charged was close to the minimum recommended by the Union of Advocates. Judges usually do not explain the reasons behind the total or partial dismissal of the claim for compensation of legal costs. This may be explained by the poor justification of these claims by the parties. However, few Moldovan judges examine to what extent the amount claimed for legal expenses was necessary and reasonable, although this is required by art. 96 para. 1 of the CiPC. The amount awarded for non-pecuniary damage seems to be determined by the discretion of the judge, without taking into account the circumstances of each case. Following the examination of the 46 cases where compensation of legal costs was sought, it was established that only in 35 out of 46 cases, these claims were upheld. The average amount of compensation awarded represented MDL 3,705 (EUR 238 at that time), and the largest amount represented MDL 19,242.

²²¹The Council of the Union of Advocates from the Republic of Moldova, Decision no. 2 of 30 March 2012, available at <http://www.avocatul.md/files/documents/Recomandarii%20onorarii%202012.pdf>.

Table 18: Information on compensating legal costs incurred in cases initiated based on the Law no. 87

Examined files				
262	Upheld applications			182
	Requested legal costs			46 25%
UPHELD CLAIMS			REJECTED CLAIMS	
35			11	
<i>Totally</i>	<i>Partially</i>			
21	14			
The smallest amount awarded	MDL 200	27.11.12	2r-2118/12	Mihai Voloc and others v. Min. Fin.
The largest amount awarded	MDL 19,242	25.9.13	2ra-2030/13	Svetlana Țurcanu v. Min. Fin.
The average amount awarded				MDL 3,705 (EUR 238 in that time)

Recommendations:

- Introducing in the courts of a functional mechanism for prioritizing urgent cases, a mechanism which is currently missing. This would involve reformulating the manner of how judges operate, so that each of them reserves sufficient time on a weekly basis for urgent hearings, regardless if the case refers to the Law no. 87 or to other actions;
- Solving, through a law or judicial practice, the issue related to sending cases initiated under the Law no. 87 for re-examination;
- Thorough training of judges from the Buiucani court and civil panels of the Court of Appeal and SCJ in applying the ECtHR standards on the reasonable time requirement;
- Application by the SCJ of a practice that ensures adequate compensation for the violation of the reasonable time requirement;
- Close monitoring by the SCJ and SCM of the manner how cases related to the Law no. 87 are examined and an annual analysis of the judicial practice in this field, at least until it complies with the ECtHR standards.

5.2 The constitutional remedy and the Ombudsman

The Constitution of the Republic of Moldova (art. 135) does not grant powers to the Constitutional Court to examine claims of individuals or legal persons. In 2004 the Parliament tried to amend the Art. 135 of the Constitution and to introduce the individual appeal to the Constitutional Court. On 16 December 2004 the Constitutional Court (opinion no. 1) authorized the initiation of the procedure of amending the Constitution. Nevertheless, in December 2005 this initiative²²² did not meet the required number of votes,

²²²The legislative initiative no. 142, of 13 January 2005

because it did not define clearly the powers of the Constitutional Court when dealing with individual appeals. The Justice Sector Reform Strategy for 2011-2016, approved by the Law no. 231 of 25 noiembrie 2011, provides in p. 6.1.3. the revision of the spectrum of subjects with the right to notify the Constitutional Court. Until March 2015 no draft law on this subject was made public and it is not clear whether the Moldovan authorities support the introduction of individual appeal to the Constitutional Court.

On 23 April 2014, the Ministry of Justice announced on its webpage²²³ the initiation of the process of drafting of a "normative framework aimed at creating a national mechanism to filter the amount of requests" lodged with the ECtHR. The announcement gives little information about the desired mechanism, however it mentions the elaboration of a new legal framework and the desired mechanism will need to be "invested with the power of examining individual complaints related to the alleged violations of the Convention, before complaining to the European Court". The LRCM tried to find out from the Governmental Agent and the Minister of Justice the models that are considered for the new mechanism. The responses received suggest that, for now, no certain models are examined. The LRCM requested the Minister of Justice to include representatives of the organization in the working group that will develop the new mechanism, however this request remained unanswered. Nevertheless, LRCM was invited to "come up with proposals".

On 13 March 2015, in his speech at the Annual General Meeting of Judges, the SCJ chairman said he supported the introduction of an "internal filter after the SCJ" before addressing the ECtHR, which could be a constitutional appeal or a special panel of 5 judges within the SCJ to determine whether, by final judgments, the rights guaranteed by the ECHR were not violated.

By 30 March 2015, no draft law or public policy proposal on introducing a new domestic remedy was made public. Introducing an additional remedy before addressing the ECtHR is too important not to have transparency in the process of elaboration of this initiative and to work on this issue just within one institution.

The LRCM believes that it is not appropriate to create a filter within the legal system of the Republic of Moldova before submitting applications to the ECtHR. The SCJ practice is not uniform enough, even if it is declared as one of the priorities of the SCJ. The national courts, including the SCJ, often overlook the ECHR standards or apply them improperly. It is unclear how a new mechanism, which will be composed of the same judges, will offer alternative solutions to the solutions provided by the current judicial system. The Republic of Moldova has sufficient mechanisms for protecting human rights, however their application is inadequate. Therefore, the main recommendation is to focus on the proper functioning of the existing mechanisms, rather than inventing new mechanisms with uncertain prospects.

The ombudsman institution has existed in Moldova since 1998. On 3 April 2014, the Parliament adopted a new Law on the People's Advocate (Ombudsman)²²⁴, which provides that

²²³See announcement here: <http://justice.gov.md/libview.php?l=ro&cid=4&id=1913>, accessed on 23 March 2015.

²²⁴Law no. 52 on People's Advocate (Ombudsman) of 3 April 2014, in force since 9 May 2014. Although the law was adopted in April 2014, on 31 March 2015 the two people's advocates were still not elected by the Parliament.

there are two ombudspersons in Moldova (and one of them is responsible for children's rights). The LRCM Report of 2012 concluded that in the case of Moldova, the contribution of the Ombudsman in reducing the number of complaints to the ECtHR may not be very effective, because most of the people who submit applications to the ECtHR complain against solutions offered by Moldovan courts and the Ombudsman cannot act as a body that reviews decisions of the courts. Nevertheless, the Ombudsman could contribute to reducing the number of complaints addressed to the ECtHR by his/her involvement in strategic litigation or presentation of conclusions in some pending cases where issues of ECHR violation are raised. Also, the institution of Ombudsman has an important role in preventing and combating torture, given that this institution coordinates the activity of the National Mechanism for Prevention of Torture. By the visits and opinions expressed, the National Mechanism for Prevention of Torture could contribute to identifying problems existing in places where people deprived of their liberty are or can be detained and request early intervention by the authorities. Finally, the Ombudsman has an important competence and namely to address the Constitutional Court. By the notifications addressed to the Constitutional Court, the People's Advocate could prevent convictions that largely rely on issues of unclarity or incompatibility of national laws with the ECHR.

Even though the institution of the Parliamentary Advocate has been instituted in Moldova more than 16 years ago, it is still not perceived by the society as a mechanism capable to remedy ECHR violations at the national level. The parliamentary advocates could diminish the number of applications filed with the ECtHR. However, in Moldova their contribution in this respect cannot be very effective because most of applications filed with the ECtHR against Moldova are related to decisions of the courts of law. It is unlikely that any parliamentary advocate would agree to act as an institution which reexamines court decisions.

Recommendations:

1. Initiating public debates concerning the necessity to introduce an individual appeal to the Constitutional Court or another remedy before addressing the ECtHR;
2. Active involvement of the Ombudsmen in the examination of the reasons that are leading to violations of the ECHR, particularly in terms of conditions of detention, torture and compatibility of the national legal framework with the ECHR.

5.3 Regress action

According to Art. 17 of the Law no. 353 of the Governmental Agent of 28 October 2004 (GA Law), the state can initiate regress actions for compensating money paid by the state based on the ECtHR judgments and decisions against persons whose actions, intentionally or by serious negligence, represented the basis for adoption of ECtHR judgments or decisions. The Governmental Agent is obliged to inform the General Prosecutor and the SCM about all cases where Republic of Moldova must undertake payments, following an ECtHR judgment or a friendly settlement agreement. The information shall be presented within 30 days after the final judgment of the Court becomes final or after the friendly settlement agreement is signed.

The LRCM is monitoring the CSM hearings since 2012. We noted that the SCM is informed about ECHR violations in a superficial manner by the GA, without thoroughly discussing the reasons that led to ECHR violation and the liability that might be involved. This finding is also present in the LRCM Report of 2012. Also, until March 2015, there was no practice established on initiation of disciplinary proceedings against judges who committed, intentionally or by serious negligence, disciplinary violations based on the ECtHR judgments, although the law provides the possibility of applying disciplinary sanction within one year after the final national or international judgment becomes final.²²⁵

Art. 17 para. 3 of the GA Law provides that the initiation of the regress actions is an exclusive competence of the General Prosecutor. The initiation of the regress actions by the General Prosecutor seems strange because as of 1 December 2012, the prosecution office does not longer have the competence to reopen civil proceedings based on ECtHR judgments, and the Ministry of Justice has created a division responsible for representing the state's interests in the proceedings initiated according to the Laws no. 1545 and no. 87.

Art. 17 para. 2 of the GA Law provides that the regress action may be admitted only if the damage was caused "intentionally or by serious negligence". According to the General Prosecutor's Office, courts are admitting regress actions only in cases where persons were convicted by a final criminal or administrative decision. We consider that the regress action against a judge or a prosecutor should be initiated only if their guilt has been already found in an administrative, disciplinary or criminal proceeding. Apparently, the General Prosecutor had the intention to initiate regress action against a judge only once, based on the ECtHR judgment in the case of *Tocono și Profesorii Prometeiști*. In this case, the ECtHR has found a violation of Art. 6 of the ECHR because the judge did not refrain from examining a case, although it has been subsequently found that he was in conflict with one of the parties. The Prosecutor General asked the permission of the SCM to initiate the regress action, but the request was denied.²²⁶

According to art. 17 para. (4) of the GA Law, the regress action can be initiated within one year after the time limit for the payment set by the ECtHR judgment or decision expired. Apparently, the regress action cannot be initiated unless the domestic decision is quashed. The one year period may be too short if the procedure for quashing the decision of the domestic court will last more than a year. Surprisingly, the regress actions in other categories of cases can be initiated by the state within three years.

By the end of 2014, the General Prosecutor's Office initiated 11 regress actions under the GA Law. Most of the regress actions related to the ECtHR findings concerning the violation of art. 6 of the ECHR, and namely non-enforcement or late enforcement of domestic judgments. Therefore, out of the total number of 11 initiated regress actions, only six actions were admitted. All six admitted actions related to the non-enforcement or late enforcement of the judgments. Four regress actions were dismissed by a final judgment, and one case is still pending. The detailed information on the regress actions is presented in the table below.

²²⁵ See art. 5 of the Law no. 178 on the disciplinary liability of judges of 25 July 2014 (until 1 January 2015, see art. 23 of the Law no. 544 on the statute of the judge).

²²⁶ According to the legislation in force at that time, regress action against a judge could not be initiated without the CSM consent.

Table 19: Information about the regress actions initiated under art. 17 of the GA Law²²⁷

ECtHR judgment/decision	Relevant violations	The defendant in the regress action	The requested amount (EUR)	Information about the regress action procedure
Ungureanu (27568/02) Judgment 06/09/2007	Art. 6 § 1 ECHR and Art. 1 Prot. 1 – non-enforcement by the Ministry of Transportation of a judicial decision on reinstatement.	Anatolie Cuptov, former Minister of Transportation and Communication	500	On 1 July 2008, the Rîșcani District Court mun. Chișinău admitted the action. This decision has been maintained by the decisions of the Chișinău Court of Appeal from 1 October 2008 and of the SCJ from 22 April 2009.
Bița ș.a. (25238/02, 25239/02 and 30211/02) Judgment 25/09/2007	Art. 6 § 1 ECHR and Art. 1 Prot. 1 – non-enforcement by the Ministry of Transportation of a judicial decision on the payment of certain amounts of money.	Anatolie Cuptov, former Minister of Transportation and Communication	2,997	On 12 March 2008, the Rîșcani District Court mun. Chișinău admitted the action. On 3 June 2009, the Chișinău Court of Appeal admitted the defendant's appeal on points of law and quashed the decision of the first court. On 25 November 2009, the SCJ declared the Prosecutor General Office appeal on points of law inadmissible.
Corsacov (18944/02) Judgment 04/04/2006	Art. 3 ECHR – ill-treatment, inadequate investigation of ill-treatment	Valeriu Dubceac, Anatolie Tulbu, former employees of the Hîncești Police Commisariat	21,000	On 25 October 2010, the Hîncești District Court has partially admitted the action, and both defendants paid EUR 10,500. On 31 March 2011, the Chișinău Court of Appeal dismissed the defendants' appeals and dismissed the action. On 5 October 2011, the SCJ dismissed the Prosecutor General Office appeal on points of law.
Guțu v. Moldova (20289/02) Judgment 07/06/2007	Art. 5 § 1 ECHR – the administrative arrest of the applicant without any legal grounds; Art. 8 ECHR – the police officers entered into the applicant's courtyard without any legal grounds.	Iurie Bivol and Radu Dari former employees of Strășeni Police Commisariat	6,500	On 8 July 2009, the Strășeni District Court dismissed the action. On 18 November 2009, the Chișinău Court of Appeal dismissed the General Prosecutor Office appeal, and on 9 June 2010, the SCJ dismissed the General Prosecutor Office appeal on points of law.

²²⁷The table was elaborated based on information received by the General Prosecutor's Office on 23 December 2014

ECtHR judgment/decision	Relevant violations	The defendant in the regress action	The requested amount (EUR)	Information about the regress action procedure
Frunze <i>(22545/05)</i> Decision 07/04/2009 (friendly settlement)	Art. 6 § 1 ECHR and Art. 1 Prot. 1 – non-enforcement of a judicial decision on delays in payment of salaries.	Ion Cebotari, Vladimir Doagă	800	On 30 November 2009, the Orhei District Court dismissed the action. On 12 May 2010, the Chişinău Court of Appeal dismissed the General Prosecutor Office appeal, and on 26 January 2011 the SCJ dismissed the General Prosecutor Office appeal on points of law.
Cazacu <i>(6914/08)</i> Decision 02/06/2009 (friendly settlement)	Art. 6 § 1 ECHR and Art. 1 Prot. 1 – non-enforcement by the Ministry of Education of a judicial decision on reinstatement and the payment of certain amounts of money.	Victor Țvircun, Valentin Beniuc, Larisa Şavga, former ministers of education	3,000	On 2 February 2011, the Buiucani District Court mun. Chişinău admitted the action. On 20 September 2011, the Chişinău Court of Appeal admitted the defendants' appeals and dismissed the action. On 2 May 2012 the SCJ admitted the General Prosecutor's Office appeal on points of law, quashed both decisions and delivered a new decision by which it ordered Mr. Victor Țvircun to pay the amount of MDL 34,172.7 (EUR 2,136). The part from the action referring to Valentin Beniuc and Larisa Şavga was dismissed.
Cebotari ş.a <i>(37763/04 and others)</i> Judgment 27/01/2009	Art. 6 § 1 ECHR and Art. 1 Prot. 1 – non-enforcement of a judicial decision on the payment of the disability allowance by a private company.	Alexandru Ştirbu, former bailliff	10,000	The Ialoveni District Court admitted the action. The judicial decision was not appealed.
Lazo <i>(45602/07)</i> Decision 16/03/2010 (friendly settlement)	Art. 6 § 1 ECHR and Art. 1 Prot. 1 – non-enforcement by the Ministry of Education of a judicial decision on reinstatement and the payment of certain amounts of money.	Victor Țvircun, Valentin Beniuc, Larisa Şavga, former ministers of education	400	On 22 December 2011, the Buiucani District Court dismissed the action. On 25 October 2012, the Chişinău Court of Appeal admitted the General Prosecutor's Office appeal and partially admitted the action. It obliged Mr Victor Țvircun to pay the amount of MDL 6,326.4 (EUR 400). The part from the action referring to Valentin Beniuc and Larisa Şavga was dismissed.

ECtHR judgment/ decision	Relevant violations	The defendant in the regress action	The requested amount (EUR)	Information about the regress action procedure
Filimonova (21136/03) Decision 19/01/2010 (unilateral declaration)	Art. 6 § 1 ECHR and Art. 1 Prot. 1 – non-enforcement by Orhei municipality of a judicial decision on reinstatement.	Ion Șarban, former mayor of Orhei	620	On 28 June 2010, the Orhei District Court admitted the action. The judicial decision was not appealed.
Dimitrov (56555/07) Decision 25 ianuarie 2012 (friendly settlement)	Art. 6 § 1 ECHR and Art. 1 Prot. 1 – non-enforcement by the local authorities from Taraclia of a judicial decision on undertaking construction works and the payment of an amount of money.	Vitali Garanja, former manager of the Communal Service Company of Taraclia	3,700	On 19 June 2012, the Taraclia District Court admitted the action. On 23 October 2012, the Cahul Court of Appeal admitted the defendant's appeal and dismissed the action. On 20 February 2013, the SCJ admitted the prosecutor's appeal on points of law, quashed decision of the appeal court and upheld decision of the Taraclia Court.
Livădari (47619/10) Decision 17 September 2013 (friendly settlement)	Art. 3 ECHR – ill-treatment, inadequate investigation of ill-treatment, detention in poor conditions, lack of an effective remedy	Sergiu Perdeleanu, former Head of Security Service, Penitentiary no. 4 Cricova	EUR 28,000	The action is examined by the Rîșcani Court, mun. Chișinău.

Besides the regress action, the damages caused to the state can be also compensated after the re-opening of the civil proceedings, as a follow-up to the ECtHR judgments. For example, in the judgments delivered in the cases of *Flux*, the newspaper was obliged to pay the applicant in the domestic proceedings compensations for defamation; the ECtHR found subsequently that the judicial decisions were contrary to Art. 10 of the ECHR and obliged the Government to reimburse the applicant the amounts paid based on the domestic court decisions. The newspaper Flux successfully reopened the national proceedings, and the action submitted by the opponent was dismissed. The Government paid more than EUR 210,000 based on the judgment delivered in the case *Pirnău and others* (31 January 2012) due to the shortcomings found during the examination of a civil case that did not involve a state authority. In such situations, the GA could have requested the re-opening of the proceedings in order to reimburse at least the real damage from the opponent in the domestic proceedings. It seems that the authorities have not applied this procedure so far.

Recommendations:

- a. The SCM and the SCP should study more carefully the ECtHR judgments in order to ensure that any serious violations found in the ECtHR judgments are followed by disciplinary sanctions;
- b. The amendment of art. 17 of the Law on Governmental Agent and in order to grant the right to initiate regress action to the Ministry of Justice;
- c. After re-opening of the proceedings, the state authorities should request from the opponents within national procedures of the applicants in ECtHR procedures, the reimbursement of the real damage paid under the ECtHR judgments.

National mechanism for execution of judgments and decisions of the European Court of Human Rights in the Republic of Moldova

According to the LRCM Report of 2012, the mechanisms for the supervision of execution of ECtHR judgments are overlapping and offer insufficient tools for ensuring an effective execution. On the other hand, the report found that the GA does not have sufficient competencies and political weight to promote an effective execution, while the Department where he operates has insufficient staff. The report also noted *de jure* existence of some disfunctional bodies with responsibilities in the field of enforcement of ECtHR judgments and decisions. The Justice Sector Reform Strategy for 2011–2016 also admitted that the current mechanism for supervision of execution of ECtHR judgments is inefficient.

At the end of 2013, two documents were elaborated that intended to remove the main problems mentioned above, and increase the efficiency of the mechanism for enforcement of ECtHR judgments and decisions: the new draft Law on Governmental Agent (further „draft Law on GA”)²²⁸ and draft Rules on parliamentary control of the execution of ECtHR judgments and decisions (hereinafter the „draft Regulation”). The draft Law on GA was submitted for CoE expert review and was positively endorsed by the competent institutions in Moldova. In March 2015, the draft Law on GA is still waiting for Government’s approval. The draft regulation is still waiting to be adopted by the Parliament together with the draft law on GA.

The draft Law on GA could solve some of the problems identified in the current enforcement mechanism, however it has deficiencies that can still be removed before the law is adopted in the Parliament. For example, the draft law stipulates in art. 7 para. (3) the possibility of detaching prosecutors and other public officials for a limited period of time to work within specialized subdivision of the GA. This provision could solve the problem of the shortage of staff within the GA subdivision, however it is unclear why the detachment of judges in the GA subdivision is not allowed, as it was proposed in the initial draft law elaborated by the working group. Judges could have major contribution for the representation of the Government before the ECtHR, given that they know the judicial

²²⁸The draft law can be accessed at the following address: http://justice.gov.md/public/files/transparenta_in_procesul_decizional/proiecte_spre_examinare/December2014/Proiect_curat.pdf.

practice better than any other public official. At the same time, the detached judges could benefit from the experience gained within the GA subdivision. This experience could also be extremely useful for judges in the process of carrying out their duties after their detachment and could contribute to reducing the number of ECHR violations.

The draft law establishes an advisory council composed of representatives of public authorities, academia and civil society. The Council shall meet at the initiative of GA and help the latter to identify and implement general measures in order to ensure the enforcement of ECtHR judgments. This council will replace the current Government Commission responsible for enforcement of ECtHR judgments, which, according to the LRCM Report of 2012, was non-functional. This commission was established by a government decision, the persons delegated as members to this commission are no longer in office, it does not include representatives of the Parliament, its activity is not public and it rarely meets (twice in 2011-2012). After 2012, the work of this commission had no visible impact. Therefore, the establishment of a new advisory body by law is welcomed.

The draft law includes a number of positive provisions related to strengthening the mechanism of enforcement and implementation of ECtHR judgments. According to the draft law, individual measures related to compensation are binding and need to be paid unconditionally. GA has the responsibility to inform public authorities about the individual measures that they must undertake. Within three months after the ECtHR judgment becomes final, the GA shall also offer general measures to the public authorities and coordinate and monitor their implementation. The task of implementing general measures rests with all competent public authorities. The draft law proposes that all authorities involved in enforcement of ECtHR judgments and decisions need to submit to the GA annual reports on the enforcement of general or individual measures. Based on information received from the authorities, the GA shall elaborate a report on enforcement of ECtHR judgments and decisions, which shall be submitted to the Government for approval. After the approval, the report shall be submitted to the Parliament for information. The parliament will be regularly informed by the GA on the measures that need to be undertaken or that were undertaken in order to ensure the enforcement of ECtHR judgments and decisions. GA will also be responsible for communication with the CM about planned or adopted enforcement measures. Therefore, after the adoption of the draft law, the GA will have a central role in coordinating and monitoring the enforcement of ECtHR judgments and decisions. In addition to the tasks related to the enforcement of ECtHR judgments, the GA will also be responsible for keeping the register of ECtHR judgments and decisions, and for translating them into Romanian.

Besides GA, the Parliament also plays an important role in the enforcement of ECtHR judgments. As a public authority that ratified the ECHR, the Parliament has both the responsibility to adopt normative acts in order to adjust national legislation to the ECHR standards and to monitor the enforcement of the ECtHR judgments and decisions by other public authorities²²⁹. In order to facilitate the parliamentary control of the enforcement of

²²⁹ By the Resolution 1823(2001), of 23 June 2011, PACE encouraged members states of the CoE to establish appropriate parliamentary structures to ensure rigorous and regular monitoring of compliance

ECtHR judgments and decisions, draft rules were drafted. According to the draft rules, the legal commission for appointments and immunities will be responsible for the parliamentary control (further the „commission”). According to the draft rules, the GA shall quarterly inform the Commission about the amount of money and the time limit for paying just satisfaction in the period of reference. Within three months after the ECtHR judgment becomes final, the GA shall propose to the Commission the general measures that need to be taken in order to comply with the ECtHR judgment. The Commission will have one month in order to propose additional general measures. After this, the GA will submit an action plan for enforcement of the judgment and the time limits for the implementation of the general measures. After the Commission receives the action plan from the GA, the parliamentary control of enforcement of the judgment starts, and it is finalized after the adoption of the resolution on termination of monitoring of the enforcement of ECtHR by the CM. After receiving the action plan, the Commission shall develop a timetable for reporting on the implementation of the action plan proposed by the GA. The Parliament may consult the civil society in the process of monitoring the enforcement of ECtHR judgments. If the actions carried out within the enforcement process will not be sufficient to solve the problem found in the ECtHR judgment, the Commission may adopt a decision and propose solutions for redressing the remaining problems encountered during the enforcement process. The Commission shall receive from the Government the report on enforcement of ECtHR judgments and decisions on an annual basis. According to the draft rules, the Parliament shall publish the annual report and shall annually organize debates concerning the execution of ECtHR judgments. The responsible authorities and civil society shall be invited to debates. The draft rules also stipulate that based on the regular communication with the GA in the process of monitoring of the ECtHR judgments, based on the report received from the Government and the hearings, the Commission shall prepare a report which shall be made public and shall be discussed in the Parliament’s plenary session. After debating this report, the Parliament shall adopt a decision that shall include recommendations to the Government on the execution of ECtHR judgments and decisions. Within 3 months after adopting the respective Parliament’s decision, the Government shall inform the Parliament about the measures taken to comply with this decision.

The two mechanisms, of the government and parliamentary supervision, aim at a more effective enforcement of ECtHR judgments and decisions, but also at facilitating the work of the CM. Ideally, the process of supervising execution of a ECtHR judgment by the CM takes place as follows. After the ECtHR judgment becomes final, it is sent to

with and supervision of enforcement of international human rights obligations. It is also recommended to establish appropriate procedures for systematic verification of the compatibility of draft legislation with ECHR, including by monitoring of all ECtHR judgments that may affect the law system. The Resolution has also recommended to introduce the obligation for the governments to submit regular reports to the Parliament on the ECtHR judgments and their enforcement, and the right of the Parliament, and especially of the structure within the Parliament responsible for supervision, to request documents and hear witnesses. Commissions on human rights or other existing similar structures need to have access to the independent expert opinion in the field of human rights, and deputies and staff of the Parliament need to be trained in the field of human rights.

the CM. The case is proposed for a standard supervision procedure ("executed behind the curtain") or advanced supervision procedure (debated within the CM sittings). Within six months after the judgment becomes final, the Government shall send to the Department for execution of ECtHR judgments and decisions (DE) an action plan which shall indicate the mechanism of executing the respective judgment. The CM and the general public are informed about the Action Plan. Within six months after publication, the action plan is reviewed and can be complemented. In this period, the civil society representatives who have expertise and information on the subject of enforcement of ECtHR judgments may submit communications to the DE in order to facilitate the execution process. Once the action plan is complete, it shall be implemented within a reasonable time by authorities responsible for enforcement of the judgments. Once the action plan is implemented, the Government shall prepare a report that is sent to the DE and brought to the attention of the CM and the public. The civil society may also submit communications in relation to the enforcement report. After the report is reviewed and completed, a final draft resolution is elaborated that needs to be adopted by the CM. By the final resolution, the process of supervising execution of ECtHR judgments and decisions by the CM is closed.

Lately, the GA has increasingly communicated with the DE in order to facilitate the supervision of execution of ECtHR judgments and decisions by the CM. By April 2015, the CM took note of the action plans submitted by the GA on the group of cases *Eremia*, which refers to combating domestic violence, the group *Corsacov*, which refers to combating torture and ill-treatment in police custody and their inefficient investigation, *Șarban group*, which refers to the application of arrests and related rights, *Luntre group*, which refers to non-execution of court decisions and lack of an effective remedy, and the groups *Becciev, Ciorap and Paladi*, which refer to conditions of detention in various detention facilities in Moldova. The GA has also submitted action plans in individual cases such as: *Avram, Bordeianu, Ciubotaru, Dan, I.G., Fomin, G.B. and R.B., Genderdoc-M, Ghimp and others, Gorobet, Levința (no. 2), Manole and others, Plotnicova, Eduard Popa and Taraburcă*. The GA has also submitted activity reports to the DE where it proposed to close supervision of execution of ECtHR judgments in the cases *Asito (no. 2), Bordeianu* and *Ghinea*. The GA has also taken other measures to execute ECtHR judgments and decisions at the national level. According to the GA report for 2013,²³⁰ in 2011, the CM adopted final resolutions where it discontinued supervision of execution of five Moldovan cases, in 2012 the CM issued nine final resolutions, and in 2013 – 21 final resolutions. According to the GA, this progress is explained, inter alia, by strengthening the dialogue with all national actors involved in the process of execution and the CM secretariat, by harmonizing the national legislation, by increasing the accountability of the Moldovan officials, but also by including final resolutions on the agendas of ordinary meetings of the CM. The GA has also highlighted in the 2013 report his involvement in the inter-governmental committees of the Committee of Ministers. As a result of their activity, a [Guide on best practices concerning](#)

²³⁰Government of the Republic of Moldova, Governmental Agent, Annual Report of the Governmental Agent for 2013, of 5 February 2014, Chișinău.

remedies and a Guide on informing public officials about obligations of the states in relation to the Convention were developed. In 2013, the Governmental Agent Department has published on the ECtHR search (HUDOC) 162 translations of ECtHR judgments and 154 translation of ECtHR decisions.²³¹

Recommendations:

1. To introduce the possibility in the draft law on GA of the temporary detachment of judges to the GA subdivision, by preserving their social guarantees, in order to ensure the efficiency of the GA work and of its department, and improve the knowledge of judges in the field of ECHR;
 2. Urgent and parallel adoption of the draft law on GA and draft Rules on parliamentary control of execution of ECtHR judgments and decisions by the Parliament;
- Representatives of civil society who have important information and expertise in the field of enforcement of ECtHR judgments need to submit communications and observations to the action plans and reports submitted by GA to the DE. Action Plans and reports can be accessed at: http://www.coe.int/t/dghl/monitoring/execution/Themes/Add_info/MDA-ai_en.asp.

²³¹Government of the Republic of Moldova, Governmental Agent, Annual Report of the Governmental Agent for 2014, of 15 February 2015, Chişinău.

The Legal Resources Centre from Moldova is a not-for profit non-governmental organization based in Chişinău, Republic of Moldova. LRCM strives to ensure a qualitative, prompt and transparent delivery of justice and effective observance of civil and political rights in Moldova. In achieving these aims, LRCM combines policy research and advocacy in an independent and non-partisan manner.

Legal Resources Centre from Moldova

A. Şciusev street, 33,
MD-2001 Chişinău,
Republic of Moldova
Tel: +373 22 843601
Fax: +373 22 843602
Email: contact@crjm.org
www.crjm.org

Facebook - <https://www.facebook.com/pages/Centrul-de-Resurse-Juridice/192147737476453>

Twitter - <https://twitter.com/CRJMoldova>