

EXECUTION OF JUDGMENTS of the European Court of Human Rights by the Republic of Moldova

1997–2012



LRCM

LEGAL
RESOURCES CENTRE
FROM MOLDOVA

Execution of judgments of the European Court of Human Rights
by the Republic of Moldova, 1997-2012.

Responsible of the edition: *Vladislav Gribincea*

This study appeared with financial support of the Human Rights and
Governance Grants Program of the Open Society Foundations and of
the United States Department of State.

Copyright © 2012 - Centrul de Resurse Juridice din Moldova

Cover, layout design: *Alexei Dimitrov*

Descrierea CIP a Camerei Naționale a Cărții

Executarea hotărârilor Curții Europene a Drepturilor Omului de către
Republica Moldova, ... = Execution of judgments of the ECtHR by the Republic
of Moldova, 1997-2012 / resp. ed.: Vladislav Gribincea ; Centrul de Resurse
Juridice din Moldova. – Ch. : S. n., 2012 (Tipogr. "Imprint Plus"). – 196 p.

Tit., text paral.: lb. rom., engl. – Paginație paral. – Carte-valet – 500 ex.

ISBN 978-9975-4170-9-9.

341.231.14(4)+342.72/.73(478)(094.57)

E 97

EXECUTION OF JUDGMENTS of the European Court of Human Rights by the Republic of Moldova

1997–2012

This research was funded by a grant from the Human Rights
and Governance Grants Program of the Open Society Foundations.

Publication of the study was funded by a grant
from the United States Department of State.



The opinions, findings, conclusions and recommendations stated herein
are those of the author and do not necessarily reflect
those of the Human Rights and Governance Grants Program
of the Open Society Foundations or of the United States Department of State.

Table of contents

Preface and acknowledgments	7
Abbreviations	9
Executive Summary	11
Chapter 1.	
Introduction	23
<i>1.1 Context and scope of the study</i>	23
<i>1.2 Methodology of the study</i>	24
Chapter 2.	
Brief description of the justice system of the Republic of Moldova	27
<i>2.1 Brief information about the Republic of Moldova</i>	27
2.1.1 General information about the Republic of Moldova	27
2.1.2 Legislative process	28
<i>2.2 Judiciary</i>	28
<i>2.3 Prosecutor's system</i>	31
<i>2.4 Legal profession</i>	33
<i>2.5 Appeal system</i>	34
2.5.1 Criminal cases	34
2.5.2 Administrative offences	37
2.5.3 Civil cases	37
Chapter 3.	
Status of the European Convention on Human Rights in the legal system of the Republic of Moldova	41
<i>3.1 Legal framework</i>	41
3.1.1 Constitution and jurisprudence of the Constitutional Court	41
3.1.2 Codes of procedure	43
3.1.3 Jurisprudence of the Supreme Court of Justice	45
<i>3.2 Application of the European Convention on Human Rights</i>	46

3.2.1 Application of standards of the European Court of Human Rights	46
3.2.2 Compensations granted for violations of the European Convention on Human Rights	51
3.3 Conclusions	57
3.4 Recommendations	59

Chapter 4.

Republic of Moldova at the European Court of Human Rights	61
<i>4.1 Introduction</i>	61
<i>4.2 Submitted applications</i>	61
<i>4.3 Communicated applications</i>	65
<i>4.4 Delivered judgments</i>	66
4.4.1 Analysis of statistical data	66
4.4.2 Most important Moldovan judgments	69
<i>4.5 Supervision of execution of judgments</i>	70
<i>4.6 Conclusions</i>	71

Chapter 5.

Execution of judgments of the European Court of Human Rights: individual measures	73
<i>5.1 Introduction</i>	73
<i>5.2 Payment of just satisfaction</i>	73
<i>5.3 Reopening of domestic proceedings</i>	78
5.3.1 Criminal proceedings	79
5.3.1.1 Reopening of the proceedings following judgments of the Court	80
5.3.1.2 Reopening of proceedings following communication of the application to the Government	89
5.3.2 Contravention proceedings	89
5.3.2.1 Reopening of the proceedings following judgments of the Court	90
5.3.2.2 Reopening of proceedings following communication of the application to the Government	90
5.3.3 Civil proceedings	92
5.3.3.1 Reopening of the proceedings following judgments of the Court	93
5.3.3.2 Reopening of proceedings following initiation of friendly settlement procedure	98
5.3.4 Other procedures	103
<i>5.4 Conclusions</i>	103
<i>5.5 Recommendations</i>	106

Chapter 6.

Execution of judgments of the European Court of Human Rights: general measures	107
<i>6.1 Introduction</i>	107
<i>6.2 Raising awareness about European Convention of Human Rights</i>	107

6.2.1 University education	107
6.2.2 Professional training of judges and prosecutors	108
6.2.2.1 Initial training	108
6.2.2.2 Continuous training	109
6.2.3 Training of advocates	110
6.2.4 Translation of the case-law of the European Court of Human Rights	111
6.2.5 Periodical information of specialists about the case-law of the European Court of Human Rights.....	112
6.2.6 Conclusions	114
6.2.7 Recommendations	115
6.3 Measures taken in respect of violations of the European Convention on Human Rights found in Moldovan cases	115
6.3.1 Articles 2 and 3 of the Convention	115
6.3.1.1 Ill-treatment	116
6.3.1.2 Deficient investigation of death and ill-treatment	120
6.3.1.3 Lenient punishment for ill-treatment	128
6.3.1.4 Poor conditions of detention	130
6.3.1.5 Other violations of Art. 3	137
6.3.1.6 Recommendations	138
6.3.2 Article 5 of the Convention	139
6.3.2.1 Deprivation of liberty contrary to the national legislation	139
6.3.2.2 Apprehension or arrest without reasonable grounds to suspect that the person has committed a crime or a contravention.....	140
6.3.2.3 Insufficient reasoning of arrest	142
6.3.2.4 Refusal to hear a witness when dealing with appeal on points of law against arrest	146
6.3.2.5 Refusal of the court to provide access to the materials submitted in support of the request for arrest	147
6.3.2.6 Other violations of Art. 5	148
6.3.2.7 Recommendations	149
6.3.3 Article 6 of the Convention	150
6.3.3.1 Access to court	150
6.3.3.2 Deficiencies in the summoning to courts	151
6.3.3.3 Excessive length of judicial proceedings	152
6.3.3.4 Insufficient reasoning of judgments	154
6.3.3.5 Violations of the principle of <i>res judicata</i>	155
6.3.3.6 Conviction in appeal on points of law without direct examination of evidence	157
6.3.3.7 Non-enforcement of court judgments	157
6.3.3.8 Other violations of Art. 6	160
6.3.3.9 Recommendations	160
6.3.4 Article 8 of the Convention	160
6.3.5 Article 9 of the Convention	162
6.3.6 Article 10 of the Convention	163
6.3.7 Article 11 of the Convention	165
6.3.7.1 Refusal to authorize peaceful assemblies or interruption of peaceful assemblies	166
6.3.7.2 Sanctioning for active participation and organizing of peaceful assemblies	166
6.3.7.3 Suspension of a political party	166

6.3.8. Article 13 of the Convention	166
6.3.9. Article 34 of the Convention	167
6.3.10. Article 1 of the Protocol no. 1 of the Convention	167
6.3.11. Article 3 of the Protocol no. 1 of the Convention	168

Chapter 7.

National mechanism of execution of judgments of the European Court of Human Rights	169
<i>7.1 Introduction</i>	<i>169</i>
<i>7.2 Governmental Agent</i>	<i>169</i>
<i>7.3 The governmental commission for organizing execution of judgments of the European Court of Human Rights</i>	<i>172</i>
<i>7.4 Parliamentary control</i>	<i>173</i>
<i>7.5 Supreme Court of Justice</i>	<i>177</i>
<i>7.6 General Prosecutor's Office</i>	<i>178</i>
<i>7.7 Conclusions</i>	<i>178</i>
<i>7.8 Recommendations</i>	<i>179</i>

Chapter 8.

Contribution to reducing the number of applications to the European Court of Human Rights	181
<i>8.1 Introduction</i>	<i>181</i>
<i>8.2 Constitutional appeal and the ombudsman</i>	<i>181</i>
<i>8.3 Compensatory remedy for the breach of the reasonable time requirement</i>	<i>182</i>
<i>8.4 Proceedings against perpetrators and the regress action</i>	<i>190</i>
<i>8.5 Conclusions</i>	<i>195</i>
<i>8.6 Recommendations</i>	<i>196</i>

Preface and acknowledgments

This study is the first product developed by the team of the Legal Resources Centre from Moldova (LRCM). We wanted to undertake this study for several reasons. Firstly, because of the high number of applications submitted to the European Court of Human Rights against Moldova and the high number of judgments concerning Moldova. Secondly, two of the LRCM team members that worked on the study have extensive experience in representing applicants before the European Court of Human Rights. After more than 10 years of representation, inevitably the question appears if the representation strategy, without an adequate promotion of execution of the European Court's judgments at national level, is an effective one. Thirdly, the level and the quality of execution of judgments at the national level and the role of the national authorities in ensuring the rights provided by the European Convention on Human Rights are topics of high interest at the Council of Europe level and the findings of this study could enrich those discussions with new information from the Republic of Moldova.

This study was also a chance for the LRCM team to prove its credibility, strength and capacity. We did not envisage at the beginning the adventure we were embarking on. Working on the study we have had several pleasant surprises, as well as less pleasant ones. Still, after several sleepless nights (and here I am not exaggerating) and heated debates, the study has reached the final stage, and our team is more united and more confident.

The development of the study would not have been possible without the financial support of the Human Rights and Governance Grants Program of the Open Society Foundations. We are deeply grateful for the Program's trust in our team's capacity, as our first donor, and we hope that we have met the expectations.

The publication and launch of the study was possible with the financial support of the U.S. Embassy in Moldova, for which we are very grateful. Although the execution of the European Court's judgments is a very actual topic and of interest for various international institutions, it appears that funding for research in this area is not very popular. We could not predict that, for more than 12 months, we will not be able to find a modest contribution for publishing and launching the study. We are grateful to the U.S. Embassy in Moldova for openness and promptness with the funding.

The study would not have been possible without the openness and dedication of judges, advocates, prosecutors, public officials from the Ministry of Justice, Ministry of Finance and Ministry of Internal Affairs, as well as the experts that had the benevolence to discuss

with the members of the LRCM and share their opinions and experience regarding the applicability of ECHR in Moldova. We are particularly grateful for the valuable information you have offered.

We would like to express our sincere gratitude and appreciation to the Head of the Section on analysis and implementation of ECHR within the General Prosecutor's Office, Alexandru Cladco, who has offered the information regarding the measures undertaken by the General Prosecutor's Office for executing the European Court's judgments, the Head of the Section on Combating Torture within the General Prosecutor's Office, Ion Caracuian, for understanding and cooperation for collecting information. We are particularly grateful to the interim-Governmental Agent, Lilian Apostol, who has peer reviewed the majority of the chapters of the study and has shown openness.

We are very glad that we had the chance to see the true Norwegian kindness. We are very grateful to Harald B. Ciarlo, advocate, expert within the Norwegian Mission of Rule of Law Advisers to Moldova (NORLAM), who has kindly accepted to proof read the English version of the study in a very short timeline. Undoubtedly, without his contribution, many of those who do not speak Romanian would not have been at all impressed with the study. We are also grateful to Alexei Dimitrov for the layout and design of the text, working in extremely short timelines and responding to our numerous requests.

LRCM team that has developed the study, including legal research, data collection and review of translation, has consisted of Vladislav Gribincea, chairman of LRCM, advocate, with more than 10 years of experience in representing applicants before the European Court; Nadejda Hriptievshi, researcher and founding member of the LRCM, advocate, with more than 10 years of experience in research projects in the justice field and legal aid reform in Moldova and in the region; Sorina Macrinici, coordinator of projects at the LRCM, advocate, with more than 6 years of experience in representing applicants before the European Court; Ion Guzun, coordinator of projects and founding member of the LRCM, with more than 7 years of experience in human rights in Moldova; and Aurelia Celac, financial manager of the LRCM.

We hope that we will not be too criticised because we were not considered enough when using in the text only „he”, while the equality rules require the use of „she”.

Using this occasion, we apologise once more to our beloved ones for the time that we have not spent with them, working on the study. We hope we will soon compensate this flaw.

4 December 2012

On behalf of the LRCM team,

Vladislav Gribincea

Abbreviations

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

CC – Contravention Code of the Republic of Moldova

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

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

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

OG – Official Gazette of the Republic of Moldova

NHRAP – National Human Rights Action Plan for 2011-2014

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

UA – Union of Advocates of the Republic of Moldova

Executive Summary

This study was thought as an instrument for analysis of the violations found by the European Court of Human Rights (ECtHR), of the measures taken in order to remedy these 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 if 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 these were sufficient to exclude the causes which lead to violations of the European Convention on Human Rights (ECHR).

The study was developed by the team of the Legal Resources Centre from Moldova (LRCM) between June, 2011 and November, 2012 and it assessed the measures undertaken by the Moldovan authorities to comply with the judgments delivered by ECtHR in cases concerning Moldova until 31 December 2010. The study reflects the situation by the autumn of 2012, including the amendments to the procedural codes which entered into force during the second half of 2012. The study puts an emphasis on facts. Although we tried to be precise, the information presented in the study may not be exhaustive or detailed enough. The study does not refer to the ECtHR judgements concerning Transnistria.

In the study we tried to identify the main reasons that have determined the violation of the ECHR and the measures undertaken to overcome them. The study makes reference to both successes and failures, as we wanted the study to be useful for the improvement of the execution of ECtHR judgments. For this reason, 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 to implement these recommendations. The study was also conceived as a useful instrument for the CM in the process of monitoring the execution of ECtHR judgments by the Republic of Moldova.

In order to facilitate a better understanding, especially by foreigners, of many technical aspects from the subsequent chapters, the study begins with a short overview of the justice system of the Republic of Moldova. Chapter 3 refers to the Moldovan legislation concerning the ECHR and analyzes how the ECHR has been applied by the Moldovan authorities. In chapter 4 we tried to analyze the Moldovan applications submitted to the ECtHR. The payment of just satisfaction and the reopening of domestic proceedings based on ECtHR

proceedings are analyzed in chapter 5. Chapter 6 refers to the level of knowledge of the ECHR amongst legal professionals, and the general measures deriving from ECtHR judgments. The assessment of the national mechanism concerning the execution of the ECtHR judgments is presented in chapter 7. The last chapter refers to measures carried out on the national level in order to reduce the number of applications submitted to the ECtHR.

a) The Republic of Moldova at the ECtHR

The Republic of Moldova is among the first countries with regards to the number of applications submitted to the ECtHR, with about 1,000 applications submitted every year. Out of 7,406 Moldovan applications registered between 1998 and 2011, by 31 December 2011, the ECtHR has completed examining just 42% of them. On 1 January 2012, the Republic of Moldova was among the top eight countries with the highest number of pending applications before the ECtHR, ahead of countries like France, Germany, Great Britain or Bulgaria. The high number of applications submitted to the ECtHR against Moldova may be due to a good awareness of the Moldovan society about the activity of the ECtHR, but also due to serious deficiencies of the justice system.

Until 31 December 2011, ECtHR has delivered 227 judgments in Moldovan cases. Only in two judgments no violation of ECHR was found. Comparing to other countries with a high number of ECtHR judgments, where most of the judgments refer to one or two systemic problems, the Moldovan judgments refer to more than 50 types of violations of the ECHR. These figures suggest that there were many human rights problems in the Republic of Moldova. The majority of situations for which Moldova has been convicted by the ECtHR have culminated at the domestic level with a judicial decision or a decision of the prosecutor, which means that the respective situations are attributed to the judicial system or the prosecution office.

Based on the 227 judgments, the Government of the Republic of Moldova paid more than EUR 12.8 mil. in compensations. More than EUR 9.2 mil. were awarded in two judgments delivered in 2008. The amount paid after these two judgments is larger than the total budget of Moldovan courts for 2008. Despite the fact that Moldova is the poorest country in Europe, in 2009 it held the first place amongst the Member States of the Council of Europe with regards to the amount of just satisfaction to be paid based on ECtHR judgments.

The length of the execution of ECtHR judgments by Moldova is quite long, and many important judgments have not been fully executed yet. At the end of 2011, Moldova was on the sixth place amongst the states with the highest number of important ECtHR judgments which had to be executed.

b) Application of the ECHR in the Republic of Moldova

Main findings

Although according to the national legislation the state authorities are obliged to apply directly the ECHR, so far judges, prosecutors and advocates have applied it with reservations. An increase in references to the ECHR in the judgments of lower courts and a positive change in the activity of the Supreme Court of Justice (SCJ) regarding the application of the ECHR have been noted in the recent years. The SCJ has periodically updated its

explanatory decisions as a follow-up to the ECtHR judgments in the cases concerning Moldova and has developed new explanatory decisions to ensure the appropriate application of ECHR. In 2012 the SCJ has initiated the practice of developing recommendations on unifying the judicial practice, including on the direct application of ECHR. In this sense, the SCJ recommended the direct application of ECHR in cases related to the change of sex. In the summer of 2012, the President of the SCJ and the Governmental agent (GA) issued a joint recommendation on compensations for non-pecuniary damages, which should be awarded for the violations of the rights guaranteed by the ECHR.

The SCJ jurisprudence was not sufficiently uniform and that influenced the appropriate application of ECHR by other judges. Due to the specificity of the Moldovan legal system, many cases do not ever reach the SCJ, as for example the cases on applying preventive arrests. The courts of appeal have not proved so far that they are in favour of applying ECHR.

Although judges state that the national legislation does not expressly provide that the compensation for non-pecuniary damages may be awarded for the violations of all rights guaranteed by the ECHR, the SCJ started to award such compensations by applying directly the ECHR. Usually, the compensations for non-pecuniary damages are smaller than those awarded by the ECtHR in cases concerning Moldova.

Main recommendations:

- a) The SCJ must have a uniform judicial practice; its judgments must be clearer in order to ensure that the judges from other courts apply better the ECtHR standards. The decisions of the Plenary of the SCJ should be more explicit. Their adjustment to the ECtHR standards should not be resumed to supplementing them with ECtHR standards;
- b) The tolerance by the courts of appeal of practices of insufficiently motivated arrests must be ceased, in order to send a clear message to the investigative judges that the ECHR is an integral part of the Moldovan legal system and must be applied accordingly;
- c) The practice of the SCJ of awarding compensations by applying directly the ECHR must be expanded, and judges must be informed that this is the practice which should be followed in the future;
- d) Judges must understand that their role is to ensure the respect for the human rights and not the protection of the state's resources. The actions filed under the Laws no. 87 and 1545 should be given priority when examined by judges to ensure that the compensations are paid in acceptable terms, and the compensations for non-pecuniary damages awarded should be in compliance with those given by the ECtHR in cases concerning Moldova.

c) Payment of just satisfaction and the reopening of the proceedings

Main findings

Generally, the Moldovan authorities pay the just satisfaction resulting from the ECtHR judgments and decisions on time. From 111 payments made in 2011 based on ECtHR judgments and decisions, in 93 cases (84%) the payments were made within three months. 18 payments (16%) were made later than three months. These delays were due to late submission by the applicants of their bank requisites. However, the Ministry of Finance does not pay the bank fees charged from the beneficiary of the just satisfaction upon receipt of the just satisfaction in the bank account.

The main shortcomings regarding the payment of just satisfaction are due to legislation. It does not regulate expressly the methodology of taxation of the amounts received following judgments and decisions of the ECtHR, and the legislation allows the state to charge the debts of the applicants towards the state on the account of the compensations given by the ECtHR as non-pecuniary damages and the third parties to charge as debts the amounts of money given by the ECtHR as costs and expenses and which are due to the applicant's representative.

Both in criminal and administrative cases and in civil cases, the Moldovan legislation authorises the reopening of domestic proceedings based on the ECtHR proceedings. The grounds for reopening of domestic proceedings based on ECtHR judgments seem to be in accordance with the Recommendation of the CM R(2000)2. The domestic legislation goes even further, allowing the reopening of the domestic proceedings based on ECtHR stricken out decisions and even on communication of applications to the Government by the ECtHR.

In 22 criminal cases criticised in the ECtHR judgments delivered until 31 December 2010 it was re-examined if the reopening or the continuation of the proceedings is justified. Six out of these cases refer to the criminal proceedings against the applicants, and 17 cases refer to the ill-treatment of the applicants and/or the inadequate investigation of ill-treatments or deaths. All the six criminal proceedings against the applicants were reopened by the SCJ. In five cases on investigation, the prosecutors decided that the reopening of the proceedings was not justified. In the majority of cases, the decisions on the reopening of criminal proceedings have been taken with delays. Even if the proceedings were reopened until 1 September 2012 in none of the 12 cases concerning ill-treatments or deaths a person was convicted. Only two cases were sent to court. In one case the criminal proceedings were discontinued on the ground of expiration of the statute of limitations, and in the second case a judicial decision has not been taken yet. These figures suggest that although the domestic proceedings were reanimated, many prosecutors did not treat these proceedings seriously.

Based on the ECtHR judgments adopted by 31 December 2010, the SCJ admitted 18 out of 20 requests for reopening the civil proceedings. All solutions of the SCJ, except one, were compatible with the ECtHR judgments. However sometimes the reasons of the SCJ were different from the position of the ECtHR expressed in the judgment. Until 2009 it was also clear that the SCJ wanted to limit the potential benefits that could have been brought to applicants or third parties through the reopening of the proceedings based on the ECtHR judgment.

More than 30 civil and administrative proceedings have been reopened after the communication of the application to the Government. The reopening of judicial proceedings as a result of the communication of the application to the Government, without taking into consideration the circumstances of the case, may be contrary to the ECHR, because it could result in an unjustified annulment of a final judicial decision.

Main recommendations

- a) The bank fees charged upon receipt of the just satisfaction awarded by the ECtHR in the applicant's bank account shall be paid by the Government. It shall be paid together with the just satisfaction;

- b) The Fiscal Code shall be complemented with provisions to exclude the taxation of the amounts awarded by the ECtHR or an efficient mechanism for compensation of taxes charged on the amounts awarded by the ECtHR judgments should be created. The Moldovan legislation shall be complemented with provisions to exclude the possibility for the state to cover the applicant's debts to the state from the sums awarded by the ECtHR for non-pecuniary damages. The legislation should also be complemented with provisions prohibiting the attachment of the amounts awarded by the ECtHR for costs and expenses due to the applicant's representative;
- c) Prosecutors and judges shall decide without delay on reopening of criminal proceedings based on ECtHR judgments or decisions. Decisions concerning the refusal to reopen investigations related to ill-treatment, discontinuation or suspension of these criminal investigations shall be well justified. Reopening shall not be refused, or investigation shall not be discontinued, in cases where there is at least a possibility, at least in theory, to identify perpetrators and bring them to justice;
- d) The reopening of judicial proceedings following the communication of the application by the Government shall take place only when provided by Recommendation CM R(2000)2 and only in cases of clear violation of the ECHR.

d) Knowledge and awareness raising on ECHR

Main findings

The ECHR is studied insufficiently within bachelor studies at the universities both from the point of view of hours allocated and the methodological approaches. The ECHR is included in the curricula for the initial and continuous training of judges and prosecutors at the National Institute of Justice (NIJ). The ECHR is included in the subjects for the examination to be accepted at the apprenticeship program; however it is not included in the topics for the admission examination to the legal profession. Neither the Union of Advocates nor the universities organize periodic trainings for advocates and advocates-interns.

Few judges, prosecutors and advocates know the official languages of the Council of Europe. The entire jurisprudence of the ECtHR concerning Moldova until 2001 has been translated in Romanian by the Department of the Governmental Agent (GA) or by the non-governmental organizations. These translations are available free of charge on internet in two-six months after the judgments or decisions become available. The GA communicates periodically to judges and prosecutors information on the ECtHR judgments concerning Moldova and on the applications that were communicated to the Government. Nevertheless, during the last years such communications became rare. All interviewed persons declared that, due to available translations, they do not encounter linguistic difficulties in studying the ECtHR jurisprudence, and judges and prosecutors recognized that translations are sufficient for them. However, they declared that they do not have enough time to study them.

Main recommendations

- a) A higher attention should be paid to the ECHR within the bachelor studies at the law faculties. At the same time, during the process of admitting candidates to the profession of advocate, prosecutor or judge more emphasis should be made on studying the ECHR;

- b) The NIJ should plan its continuous legal education in the field of ECHR based on the needs of judges and it should improve its teaching methodology. The Union of Advocates should periodically organize trainings in the field of ECHR for advocates and advocates-interns;
- c) The GA should intensify its efforts aimed at ensuring communication of information concerning cases communicated by the ECtHR to the prosecutors and judges and concentrate on translating the jurisprudence of the ECtHR in cases concerning Moldova which is not promptly translated by the non-governmental organizations;
- d) In order to ensure systematization of the large volume of information received by legal specialists, elaboration of periodic bulletins about the activity of the ECtHR in Romanian would be welcome, with the emphasis on case-law relevant for the Republic of Moldova.

e) Measures undertaken regarding the violations found by the ECtHR in Moldovan cases

The main findings regarding Art. 2 and 3 of the ECHR

The lawyers interviewed for this research have mentioned that after 2009 they had fewer complaints from their clients regarding the use of force. However, the number of registered cases of ill-treatment confirms that torture is still persistent in the Republic of Moldova. During 2009-2011, the registered cases of ill-treatment have remained at the same level. In 2011, the prosecution office has registered 958 cases, which was only with 34 requests (3%) fewer than in 2009, when hundreds of persons were abused by police during April events. The constant number of registered cases in 2009-2011 could be explained by the fact that, starting with 2010, the registration of ill-treatment cases has improved, until 2009 many persons were not complaining to the prosecution office, as well as due to manifestly ill-founded complaints.

The authorities have undertaken several measures for reducing the incidence of ill-treatment cases. In May 2010 the Section for combating torture within the Prosecutor's General Office was created, and the territorial prosecution offices were obliged to assign a prosecutor to investigate ill-treatment cases. These measures were intended for ensuring the quality of investigations, for combating torture; in 2012 the UNDP has donated the MIA 44 sets of video surveillance equipment, which should be installed in all IDPs throughout the country. Starting with 27 October 2012, the apprehended person within a criminal case has the right to independent medical assistance, which should diminish the risk of situations of failure to provide medical assistance.

Although the first ECtHR judgment that found the problem of too mild sanctions for torture was issued in 2009, the judges have continued the same vicious practice of convicting with suspended sanctions. On 8 November 2012 the Parliament adopted amendments to the Criminal Code, meant to reduce these shortcomings and in particular the criminal sanctions for torture were hardened, in order to make impossible the application of Art. 90 of the Criminal Code in case of torture (suspended sanction), the statute of limitations for torture was excluded and the amnesty of people convicted of torture was prohibited.

Detention conditions were poor both in penitentiaries and in IDPs. The IDP of the General Police Commissariat (the biggest in the country) was entirely renovated (capital renovation) and brought in line with international norms with the support of the European

Commission. Other 30 IPDs were cosmetically renovated and it is not clear if the detention conditions there have been improved substantially. The ECtHR judgments against Moldova noted problems with only one penitentiary, namely Penitentiary No. 13. The Moldovan authorities have recognized that this penitentiary institution cannot be renovated due to its deplorable situation and, respectively, construction of a new penitentiary is necessary. However, resources for this purpose have not been yet allocated.

The main recommendations:

- a) The law that regulates the police activity needs to provide an unconditional obligation of the police to report in writing about the use of force by police. Also, the law should introduce the obligation of the policemen that know about the abuse, to report it. Sanctions should be applied where there is evidence that policemen have not reported and have tried to cover up ill-treatment cases;
- b) The persons apprehended should be brought directly to the IDPs. The practice through which the apprehended person is held in the criminal police or criminal investigation officer's offices until the apprehension protocol is drawn up should be prohibited;
- c) IDPs should be transferred under the authority of the Ministry of Justice as soon as possible and irrespective of the building of arrest houses;
- d) 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;
- e) The practice regarding the opening of a criminal investigation and in particular cases that are not prima facie absurd should not be investigated without opening the criminal investigation if procedural actions, which cannot be undertaken without opening the criminal investigation, are necessary;
- f) An independent body to investigate all complaints regarding the law enforcement bodies shall be created;
- g) The Criminal Procedure Code (CPP) should be amended to authorize criminal investigation bodies to periodically inform the victim about the development of the criminal investigation and to adequately involve the victim in investigating ill-treatment, which prosecutors need to be trained on;
- h) The intervention of the SCJ is necessary for establishing a judicial practice that would exclude too mild sanctions for ill-treatment;
- i) The legislation needs to be amended to provide for automatic suspension from office of policemen that have been accused of ill-treatment. Also, during the suspension period, the salary needs to be paid;
- j) The authorities should respect the 4 m² of space per detainee in all IDPs and penitentiaries throughout the country. The allocations for detainees' food should be increased. The persons detained in the IDPs should benefit from at least one-hour daily walks outside.

The main findings regarding Art. 5 of the ECHR

The main violations found by the ECtHR regarding Art. 5 refer to deprivation of liberty without a legal ground, insufficient reasoning of arrest, deprivation of liberty without a

reasonable suspicion, doubts regarding the confidentiality of client-lawyers meetings, unjustified refusal to hear witnesses that could challenge the arguments for arrest and state's failure to ensure the access of the defence to materials presented by prosecution for reasoning the arrest.

Deprivation of liberty without a legal ground was found because the applicants were held in arrest during the examination of the case in court without a valid arrest warrant. On 28 July 2006 the CPP was amended, obliging the prosecutors to reason the necessity of arrest during the examination of the case in court. The judges that examine the case, at the prosecutors' request, can allow arrest during the examination of the case in court. According to the Ombudsman for the Psychiatric Hospitals, the Chişinău Psychiatric Hospital hospitalizes annually more than 500 persons for treatment without their consent. After the hospitalization of the person to the hospital, these persons are convinced by the staff of the hospital to give their consent for their detention in the hospital. According to the medical staff, only in about 30 cases the court judgment for forced detention is requested.

Insufficient reasoning of arrest continues to be a serious problem, generated both by the shortcomings in prosecutors' and judges' performance. Judges continue refusing hearing of witnesses in arrest proceedings, in the summer of 2012 lawyers were not provided access to all materials examined by the judge in arrest proceedings. The Law no. 66 (in force from 27 October 2012) amended the CPP in order to ensure the access of the defence to all materials examined by the judge in arrest proceedings.

Main recommendations

- a) End the practice of forced hospitalization in psychiatric institutions without a court judgment;
- b) The investigative judges' performance should be evaluated, from the perspective of its quality and workload, in order to exclude negative influence of their work. Appeal courts shall radically revise their practice, by providing exemplary reasoning to their judgments and annulling any decision on arrest that is insufficiently reasoned, in order to give a clear signal to the investigative judges that any deprivation of liberty must be well reasoned. Without the firm involvement of the SCJ this phenomenon will be difficult to eradicate;
- c) The SCJ should provide clear explanations that during the examination of the appeals on points of law against the arrest decisions, it is admissible to hear witnesses that could provide information relevant to arrest proceedings;
- d) Within the arrest proceedings, the judge should give up the practice of examining/getting acquainted with materials to which the defence does not have access. The SCJ should take firm measures to eradicate this practice.

The main findings regarding Art. 6 of the ECHR

The main violations of Art. 6 found by the ECtHR refer to non-enforcement of court judgments, improper cassation of final court judgments, excessive length of court proceedings, breach of the right to defence due to shortcomings in the summoning procedure, breach of the right to access to a court and poor quality of the court judgments. Even after the ECtHR judgment, many of these problems have not fully disappeared.

The right to access to a court was infringed mainly due to legislative shortcomings. These were overcome and currently it appears that there are no serious problems in this regard.

Deficient summoning has always been a problem. It appears that this problem is due both to lack of financial resources in the state budget and to the failure of the courts to effectively plan the costs necessary for the summoning procedures. The Moldovan authorities have recognized this problem and, through the Action Plan for the implementation of the Justice Sector Reform Strategy for 2011-2016, have undertaken the obligation to consolidate the court summoning procedures.

Generally, the Republic of Moldova did not have and does not have chronic problems regarding the length of court procedures. Long examination of a case is rather an exception. The persistent problem in the Moldovan legal system is the frequent use of postponements of court hearings and sending the case for re-examination. As a result, the examination of simple cases gets prolonged and complex cases are examined superficially. The amendments to the Civil Procedure Code (CPC) of 5 July 2012 have provided the conditions for preventing postponements of cases, and the competence of courts to send cases for re-examination was substantially limited.

Insufficient reasoning of court judgments, irrespective of the court, was and remains a serious problem of the Moldovan judicial system. This shortcoming could be explained by the high workload of some judges, poor performance of some trial participants, failure of judges to examine in detail all circumstances of the case, lenience of hierarchically superior courts towards the insufficiently reasoned judgments, as well as by poor professional qualification of some judges. In order to help judges with their workload, the Law no. 153 of 5 July 2012 provided for assignment of a judicial assistant for each judge and 3 for judges of the SCJ.

As a consequence of the ECtHR judgments, the number of applications for revision procedures submitted to the SCJ and the percentage of applications declared admissible by the SCJ has decreased. Even though the number of revision applications declared admissible by the SCJ has diminished from 11.9% in 2006 to 2.7% in 2011, it appears that sometimes the applications for revision declared admissible by the SCJ in 2012 are difficult to justify. At the same time, the percentage of applications for revision in civil cases that were declared admissible in 2009 by the lower courts was very high.

The vast majority of ECtHR judgments regarding the non-enforcement of court judgments were delivered before 2008. The cases regarding the non-enforcement of court judgments can, conventionally, be divided in three categories: those regarding the payment of a certain monetary amount by the state authorities, those regarding the obligation of the public authorities to act and those against private persons. If regarding the first and the second categories of judgments no major problems have been noted, the judgments regarding the provision of social housing remain non-enforced even after three years since the judgment *Olaru and Others* was delivered.

Main recommendations

- a) Judges should be trained in the area of reasoning of court judgments, the SCJ should serve as an example for all judges through the level of motivation of its judgments;
- b) The system for ensuring the presence of third parties (witnesses, experts etc.) at trials should be strengthened;
- c) The SCJ should evaluate its own practice and the practice of the courts of appeal, so that they do not declare admissible any poorly reasoned cassation in annulment in criminal cases and applications for revision in civil cases;

- d) The state authorities should take firm and concerted measures to implement the judgments regarding social housing provision.

Main findings and recommendations regarding Art. 8-11 of the ECHR

The main problem regarding Art. 8 of ECHR is the way the telephone tapping is conducted. Although in 2009 the ECtHR stated in *Iordachi and Others* that telephone tapping is used too often in the Republic of Moldova, the number of telephone tapping and the number of refusals of the judges has remained at the same level.

The main problem regarding Art. 9 of ECHR referred to the resistance of public authorities to register. The monitoring procedure for the execution of cases *Mitropolia Basarabiei* and *Biserica Adevărat Ortodoxă din Moldova* was closed by the CM in March 2010. It appears that the CM was satisfied with the measures taken by the Republic of Moldova for executing the respective judgments.

As far as Art. 10 of ECHR is concerned, the ECtHR has criticised in several judgments the way defamation cases were examined by the judges from the Republic of Moldova. In order to remedy these problems, a new Law on freedom of expression was adopted on 23 April 2010. Nevertheless, the journalists maintain that judges do not know this law very well, while statistics show that the percentage of defamation claims declared admissible has increased.

Although the Republic of Moldova has been found in violation of Art. 11 of ECHR several times for infringing the right to freedom of peaceful assembly, after the change of power in Chişinău in the fall of 2009, it appears that no cases have been registered when peaceful protesters were apprehended by police. It appears that the administrative barriers for organizing protests and other peaceful assemblies have been annulled by the Law no. 26 of 22 February 2008 regarding assemblies.

f) National mechanism for the supervision of execution of ECtHR judgments

The main findings

In the Republic of Moldova, the mechanisms for the supervision of execution of ECtHR judgments are overlapping and offer insufficient tools for ensuring an effective execution. Hence, the activity of the Governmental Commission for the organization of execution of ECtHR judgments has not been visible, nor too efficient. The GA Department is not permanently consulted regarding the compatibility of the draft laws with the ECHR, and its human resources are insufficient for adequately responding to the assigned competences. On the other hand, the GA does not have sufficient competences to promote an effective execution, while the parliamentary control is not exercised in a continuous and coherent manner.

The main recommendations

- a) The capacity of the GA Department shall be strengthened by creating a mechanism for delegating judges and prosecutors, for a minimum period of 12 months, to work within the Department. The GA Consultative Council shall be activated;
- b) For improving the communication between the GA and the CM and for establishing action plans for the execution of judgments, the GA should be able to communicate directly with the CM;
- c) The GA should have the obligation to formulate proposals regarding the measures that need to be undertaken for the execution of each ECtHR judgment and to

elaborate an annual report on execution of ECtHR judgments, submitted to the Parliament;

- d) A new mechanism for the supervision of the execution of ECtHR judgments should be created. The supervision of the execution should be assigned to a permanent parliamentary commission or a special commission created by the Parliament. The Commission should supervise the process of execution of ECtHR judgments and present an annual report to the Parliament on this issue;
- e) The SCJ and the PG should introduce a mechanism for periodic evaluation of the impact of the measures undertaken within their competence for executing the ECtHR judgments.

g) Contribution to reducing the applications submitted to the ECtHR

Beside the measures that need to be undertaken for the execution of each judgment and the strengthening of the mechanisms for the supervision of the execution of ECtHR judgments, introduction and strengthening of a few general measures is recommended, which should contribute to reducing the number of applications submitted to the ECtHR.

Art. 16 of the Law on parliamentary advocates should be amended to allow the parliamentary advocates to examine more situations of ECHR violations. In parallel, the institution of the Parliamentary Advocates shall be strengthened for inspiring confidence to the people.

The SCJ should intensify its efforts for ensuring that all courts in Moldova examine promptly the civil claims initiated on the basis of the Law no. 87 and award adequate moral damages for breach of the reasonable time requirement.

After the reopening of the domestic proceedings, the state authorities should request from the applicant's opponent in domestic proceedings the reimbursement of the real damages paid as a result of the ECtHR judgment. The Superior Council of Magistrates and the Superior Council of Prosecutors should study more carefully the ECtHR judgments in order to ensure that any serious offence that results from the respective judgments is sanctioned through disciplinary proceedings.

The individual appeal to the Constitutional Court for examining individual complaints regarding violation of ECHR should be introduced.

Priority actions

The study contains more than 70 recommendations. Prompt and parallel implementation of all these recommendations is not possible. However, the following actions should be prioritized:

- a) Strengthen the mechanism for supervision of the execution of the ECtHR judgments in Moldova;
- b) Increase the SCJ efforts in order to ensure the adequate application of ECHR by judges;
- c) Improve the quality of the court judgments, especially of those issued by the investigative judges;
- d) Improve the quality of prosecutors' acts regarding investigation of ill-treatment, special procedures and special measures.

Introduction

1.1 Context and scope of the study

With about 1,000 applications submitted every year, the Republic of Moldova is among the “leading” countries with regards to the number of applications submitted to the European Court of Human Rights (ECtHR). Out of 7,406 Moldovan applications registered between 1998 and 2011, by 31 December 2011, ECtHR had completed examining just 42% of them. On 1 January 2012, the Republic of Moldova was among the top eight countries with the highest number of pending applications before the ECtHR. In this respect, Moldova was nominally ahead of countries like France, Germany, Great Britain or Bulgaria, states with substantially larger populations than Moldova.

By the end of 2011, ECtHR had delivered 227 judgments in Moldovan cases. Only in two judgments no violation of the European Convention on Human Rights (ECHR) was found. Comparing to other countries with a high number of ECtHR judgments, where most of the judgments refer to one or two systemic problems, the 227 judgments refer to more than 50 types of violations of the ECHR. These figures suggest that there were many human rights problems in the Republic of Moldova.

Based on the 227 judgments, the Government of the Republic of Moldova paid more than EUR 12.8 mil. in compensations. More than EUR 9.2 mil. were awarded in two judgments delivered in 2008. This amount is larger than the total budget of Moldovan courts for 2008. Despite the fact that Moldova is the poorest country in Europe, it held first place with regards to the amount of just satisfaction to be paid based on ECtHR judgments in 2009.

The high number of ECHR violations found by the ECtHR in Moldovan cases, the nature of those violations and the amounts paid as a result of the ECtHR judgments raises 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 vast number of applications pending with 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 concerning the 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 questions of 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 ECtHR judgments by the Republic of Moldova. The main purpose of the study is to contribute to adequate execution of ECtHR judgments by the Republic of Moldova.

The study is envisaged to represent an instrument for analysis of the violations found by the ECtHR, of the measures taken in order to remedy these violations and avoid similar violations in the future, as well as of the existing mechanisms for executing ECtHR judgments in the Republic of Moldova. The author of the study made recommendations to remedy the identified deficiencies. The study was also envisaged to be an 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.

Information from the study might be of interest for authorities of the Republic of Moldova, particularly in order to ensure fulfilment of obligations towards the CoE and implementation of the 2011-2016 Strategy Plan to reform the justice sector. We hope that the study also will 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. The study can hopefully be of interest to the European institutions and other international organizations that monitor the situation of justice and human rights Moldova, as well as for donor institutions that are providing financial support to in the field of justice and human rights.

1.2 Methodology of the study

The methodology of the study has been developed by the designated team of the Legal Resources Centre from Moldova (LRCM). When developing the methodology, the LRCM team sought to analyze 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 at the domestic level and national regulations concerning application of the ECHR, as well as specific aspects that follows from the main ECtHR judgments in Moldovan cases.

The study begins with a short presentation of the judicial system of the Republic of Moldova. This chapter was introduced in order to facilitate understanding, in particular amongst foreigners, of the many technical aspects to be found in the subsequent chapters. Chapter 3 refers to the Moldovan legislation concerning the ECHR, and analyzes how the ECHR has been applied by authorities of the Republic of Moldova. In chapter 4, we have tried to analyze Moldovan applications submitted to the ECtHR. Payment of just

satisfaction and reopening of domestic proceedings based on ECtHR proceedings are analyzed in chapter 5. Chapter 6 refers to the level of knowledge of the ECHR amongst legal professionals, and general measures deriving from ECtHR judgments. Evaluation of the domestic mechanism concerning execution of ECtHR judgments is presented in chapter 7. The last chapter refers to measures carried out on the national level in order to reduce the number of applications submitted to the ECtHR.

Within the research conducted for the study, an analysis of all ECtHR judgments delivered in Moldovan cases until 31 December 2010 was carried out in order to identify all violations of the ECHR found in these judgments. Data on payment of just satisfaction and reopening of domestic proceedings were collected, relevant legislation and practices were analyzed in order to contribute to the reduction of future violations of the ECtHR, official statistical data concerning activities within the judicial system was collected and analyzed, and more than 30 semi-structured interviews with judges, prosecutors, advocates, employees of the Ministry of Internal Affairs, especially concerning general measures - were conducted.

Data concerning individual and general measures were collected by the CRJM 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 the Governmental Agent. In this regard, collaboration agreements were signed with the General Prosecutor's Office and the Ministry of Justice. Also, the case-law of the Supreme Court of Justice published on its web page was analyzed.

The interviews were primarily aimed at establishing a perception of the justice sector actors' views regarding the statute of the ECHR in the legal system of the Republic of Moldova, the level of the specialists' knowledge of the ECHR, the level of implementation of general measures that follow ECtHR judgments, and of the efficiency of domestic mechanisms concerning execution of ECtHR judgments. The interviews were conducted based on guidelines for interviews that contained questions following ECHR violations found by the ECtHR in cases against Moldova. The interviews are confidential. However some of the interviewees agreed to make public parts of their statements.

The study has been subject to peer review. The study has been reviewed by a member of the CRJM team and by a legal specialist in the field. Most of the study has been subject to comments by the interim Governmental Agent and head of Department on analysis and implementation of the ECHR from the General Prosecutor's Office.

In the study we have evaluated measures carried out for execution of judgments delivered by the ECtHR in Moldovan cases by 31 December 2010. The study was done between June 2011 and November 2012, and the conclusions are based on the current situation by the autumn of 2012. The study also refers to the amendments to the procedural codes that entered into force during the second half of 2012.

Brief description of the justice system of the Republic of Moldova

2.1 Brief information about the Republic of Moldova

2.1.1 General information about the Republic of Moldova

The Republic of Moldova is located in south-eastern Europe, neighboured by Romania to the west and Ukraine to the north, east and south. It appeared as an independent state in 1991 as a result of the collapse of USSR. It covers a land mass of 33,843 square kilometres, divided into 32 regions known as raions, four municipalities and one autonomous administrative unit (Găgăuzia). Transnistria, a part of the territory of the Republic of Moldova, is located to the east of the river Nistru, bordering with Ukraine. Since 1991, this territory is under the control of a separatist regime. Its independence has not been recognised by any state.

According to official data, in January 2012, the Republic of Moldova had a population of 3,559,500 inhabitants, not counting the population of Transnistria, which is approximately 500,000. Chişinău, the capital of Moldova, is home to approximately 785,000 people.

The Constitution of the Republic of Moldova was adopted in 1994. It was drafted taking into account the ECHR. 40 out of 143 articles of the Constitution refer to human rights and fundamental freedoms. The Constitution protects all the rights guaranteed by the ECHR, although the definition in the text of the Constitution of some of these rights is not identical to the text in the ECHR. Thus, the Constitution does not contain an article regarding the right to a fair trial, but the elements of this right can be found in articles 20 (access to justice), 21 (presumption of innocence) and 26 (right to defence) of the Constitution.

According to the Constitution, in the Republic of Moldova the legislative, executive and judicial powers are separate. The Parliament is the legislative authority of the country. It is unicameral and consists of 101 members elected for a four-year mandate. The President is the head of state. He is elected by the vote of at least 3/5 of elected members of the Parliament. The prime minister heads the Government. The President of the country will nominate the candidate for the prime minister, who is to form the Government. Within 15 days from the nomination of the prime minister, the constituted Government shall be approved by the Parliament.

Between 2001 and 2009, the Communists Party of the Republic of Moldova held the majority in the Parliament, its leader has been the President of the country and the governments in that period consisted of persons supported by that party.

2.1.2 Legislative process

The Parliament has the right to adopt laws for amending the Constitution, organic laws and ordinary laws. The law amending the Constitution is adopted by vote of 2/3 of the elected MPs. Organic laws, meaning laws that regulate issues of a particular importance (mentioned in Art. 72 of the Constitution) are adopted with the vote of at least 52 MPs. The Codes, legislation on the judicial organisation or the Budget Law are organic laws. The ordinary laws are adopted with the vote of the majority of the MPs present in the sitting of the Parliament. Those laws regulate social relations which are not regulated by Constitution or organic laws. The president should promulgate the laws voted by the Parliament. He may refuse to promulgate a law and return it to the Parliament. If the Parliament upholds its decision, the President is obliged to promulgate the law.

To exercise his powers, the president issues decrees. The president has powers in the fields of foreign and internal affairs and is the commander in chief of the armed forces. In order to ensure the enforcement of laws, the Government adopts decisions, ordinances and dispositions. Neither the President's decrees, nor the Government's acts can run contrary to the laws.

The laws, president's decrees and documents issued by the Government shall be published in the Official Gazette of the Republic of Moldova. The laws, the normative decrees and normative acts of the Government cannot enter into force before the date of publication in the Official Gazette.

2.2 Judiciary

The judiciary consists of district courts, courts of appeal and the Supreme Court of Justice (SCJ). The judiciary has a self-administrating body – the Superior Council of Magistracy (SCM).

The SCM was created to organize and ensure the functioning of the judiciary and is the guarantor of its independence. In September 2012, it comprised of 12 members, five judges elected by their fellows, four professors appointed by the Parliament, the president of the Supreme Court of Justice, the prosecutor general and the minister of justice (Art. 3 of the Law on the SCM, no. 947, of 19 July 1996). According to a law which entered into force on 1 September 2012, starting from the fall of 2013, the number of elected judges in the SCM will increase to six and the number of the professors will decrease to three.¹ The elected members of the SCM have a four-year mandate. The SCM elects its president from its members. The SCM is responsible for selecting the candidates for the position of judge, for the transfer and promotion of judges, as well as for applying disciplinary sanctions against judges.

The candidates for the position of judge should study for 18 months at the National Institute of Justice or practice several legal professions over the last five years. The latter category should pass a special exam. The judge is initially appointed for a term of five years,

¹ Law no. 153 of 5 July 2012, in force as of 31 August 2012, amended many laws on judicial organization, including the provisions on the composition of the SCM. According to this law, the new composition of the SCM shall be established upon the expiry of the mandate of the current SCM's elected members during fall 2013.

after which he can be reconfirmed until the age of 65. At the proposal of the SCM, the President of the Republic of Moldova appoints and reappoints judges of district courts and courts of appeal. In the same way the presidents and deputy presidents of the district courts and courts of appeal are appointed; a four-year mandate. The judges of the Supreme Court of Justice (SCJ) are appointed by the Parliament at the proposal of the SCM. The president and two deputy presidents of the SCJ are appointed by the Parliament, at the proposal of the SCM. If undisputable evidence of incompatibility of the candidate with the proposed function is found, the President, or the Parliament, may refuse the proposal of the SCM once. The repeated proposal of the SCM is mandatory for the President or for the Parliament.

In August 2012, the Law on judicial organization (no. 514, of 6 July 1995) provided that in the Republic of Moldova's courts there were 460 positions of judges. From 1 January 2013, there will be 504 positions of judges in the judiciary. According to the data distributed at the SCM's sitting from 12 June 2012, at the end of May 2012, there were 444 judges in courts. The remaining places were vacant.

According to the Law on judicial organization, there should be 48 district courts, including two specialized courts (District commercial court and Military court) in the Republic of Moldova. However, four district courts (Grigoriopol, Rîbnița, Slobozia and Tiraspol) do not exist de facto, because their premises had to be located in the Transnistrian region.

According to the Law on judicial organization, in August 2012 there were 308 positions of judges in district courts, each judge being appointed in a certain court. Out of 44 existing district courts, 27 had five or fewer judge positions. According to the amendments to the procedure codes adopted by the Parliament in 2012, from 1 December 2012, district courts will examine all the civil and criminal cases.² Usually, district courts examine cases in a one-judge panel.

Starting March 2012, the District commercial court examines appeals against arbitration decisions, issues enforcement warrants for the execution of arbitration decisions, decides on the reorganization or dissolution of legal entities and examines cases related to protection of commercial reputation.³ The military court examines only criminal cases against military personnel and employees of the penitentiary institutions.

In each district court, except the specialized ones, there is at least one investigative judge. The investigative judge examines complaints against the criminal investigation bodies, decides upon pre-trial arrest, authorises search and communication tapping etc. Since 2003, investigative judges are permanently appointed in this position. Due to special requirements put forward to the candidates, the great majority of the investigative judges are

² By Law no. 66 of 5 April 2012, in force as of 27 October 2012, the Criminal Procedure Code was amended, and by Law no. 155 of 5 July 2012, in force as of 1 December 2012, the Civil Procedure Code was amended. Before these amendments, some criminal and civil cases were examined in first instance by the courts of appeal.

³ Until March 2012, there was a specialised system of commercial courts in Republic of Moldova, comprising District Economic Court, Economic Court of Appeals and Economic Division of the SCJ. These courts have been accused of being very corrupt. By Law no. 29 of 6 March 2012, the Economic Division of the SCJ and the Economic Court of Appeal were liquidated. The District Economic Court was renamed into District Commercial Court and its competence was substantially reduced.

former prosecutors or criminal investigators. According to the Law no. 153 of 5 July 2012, the investigative judge's duties shall be fulfilled by one or more judges annually appointed by the SCM from among the judges from that court. The investigative judges who were on duty in August 2012 will have to pass, within three years, an examination in order to be appointed as common law judges. According to the data distributed at the SCM's sitting from 12 June 2012, in May 2012 there were 41 investigative judges in courts and three positions were vacant. In case of unavailability of an investigative judge or for the reason of heavy workload, other judges from the same court can also examine the arrest motions. These judges should be authorised by the SCM at the beginning of each year.

There are five courts of appeal in Moldova.⁴ According to the Law on judicial organization, there are 87 positions for judges in those five courts. The largest one is the Court of Appeal of Chisinau, with 41 judges, and the smallest ones are Comrat and Cahul Courts of Appeal, with seven judges each. In order to run for the position of judge of a court of appeal, the candidate must have worked previously as a judge for at least six years. The courts of appeal mainly examine appeals and appeals on a point of law in panels of three judges.

The Supreme Court of Justice is the state's supreme court. In August 2012, there were 49 positions of judge in the SCJ. According to the Law no. 153 of 5 July 2012, which entered into force 31 August 2012, the number of judges in the SCJ was reduced from 49 to 33. Only persons with work experience as a judge of at least ten years can become a judge on this court. The judges of the SCJ work in one of the two divisions; criminal division, and the division that examines civil cases and claims against administrative acts. The main tasks of the SCJ are to ensure uniform and correct application of the legislation by all the courts and to solve disputes arising from enforcement of the law. The greatest part of the SCJ's activities consists of examining appeals on the points of law against the decisions of the courts of appeal. The SCJ examines cases in panels of three or five judges.

In August 2012, the law did not impose a general obligation on judges to follow the interpretation given to a law in the judgements of the SCJ on specific cases. However, the non-compliance with this interpretation is a ground for appeal on the points of law in criminal cases (Art. 427 para.1 p. 16 Criminal Procedure Code (CrPC)). In order to ensure uniform interpretation and application of the legislation, starting October 2012, the Criminal Division of the SCJ can issue judgements that would explain how the criminal and criminal procedure legislation should be applied. Those judgements are mandatory, but do not have any effect on cases that have been decided already (see Art. 465¹ - 465⁴ CrPC). According to the new amendments to the Civil Procedure Code (CiPC) (Law no. 155, of 5 July 2012, in force as of December 2012), upon request of the judge who examines the civil case, the Plenary of the SCJ may issue mandatory opinions on the interpretation of the law to be applied to that specific case (Art. 12² CiPC). The Plenary of the SCJ may adopt explanatory decisions related to the application of the legislation in certain fields, which, however, do not refer to concrete cases and are not formally binding for judges. Until 2012, the Plenary CSJ adopted more than 40 explanatory decisions.

⁴ Until March 2012, there were six courts of appeal in Republic of Moldova. The Economic Court of Appeal was liquidated by Law no. 29 of 6 March 2012.

According to the SCM's activity reports, during 2009-2011, the courts of the Republic of Moldova dealt with a lower number of cases but the workload per judge increased. Statistical data in this respect is presented in the table no. 1.

Table no. 1
Number of case-files examined and of the workload of judges during 2009-2011

Year	Examined case-files	Fluctuation as to the previous year	Average monthly workload per judge
2009	246,283	+0.05%	58.5 case-files
2010	235,592	-4.3%	57.3 case-files
2011	232,605	-1.26%	67 case-files

The Constitutional Court is not part of the judiciary. It decides whether laws and decisions of the Parliament, decrees issued by the President, the Government's decisions and ordinances and other official documents, as well as of the ratified international treaties comply with the Constitution. It also interprets the Constitution and confirms the results of republican referendums and of the elections in the Parliament and of the President of the country. A procedure before the Constitutional Court can be initiated by the President of the Republic, Government, minister of justice, Supreme Court of Justice, prosecutor general, members of the Parliament and parliamentary groups, ombudsman or People's Assembly of Găgăuzia. The Constitutional Court is not competent to deal with applications submitted by individuals or legal entities.

The six members of the Constitutional Court must have a work experience of at least 15 years in the legal field, legal education or scientific activity. They are elected as follows: two by the Parliament, two by the Government and two by the SCM for a mandate of six years, with the possibility of re-election for another six-year mandate.

The Corruption Perception Index, calculated yearly by Transparency International, indicates that the Moldovan population and the international community perceived the Republic of Moldova as a country where corruption is very widespread. According to the Global Corruption Barometer 2010 carried out by Transparency International, 37% of the respondents from the Republic of Moldova mentioned that during the last 12 months they gave a bribe (average for the CIS states being 32%, and for EU – 5%). According to the same barometer, on a scale from one to five, the most corrupt institutions are the police – 4.1, the judiciary – 3.9, and political parties and civil servants – 3.8. Justice has been seriously affected by corruption. A study performed in 2010 showed that approximately half of the persons who appeared in court gave bribes.⁵ According to this study, in average, a judge, asked for - or accepted a bribe - four times per month. Despite these statistics, between 2001 and 2011 no judge was convicted for corruption.

2.3 Prosecutor's system

According to the Law on the prosecutor's office (no. 294, of 25 December 2008), the prosecutor's office is an autonomous institution within the judiciary. The prosecutor's system

⁵ Redpath Jean, Victimization and public confidence survey: Benchmarks for the development of criminal justice in Moldova, Soros Foundation Moldova, Chişinău 2010, p.31, available at <http://www.soros.md/files/publications/documents/Victimisation%20Survey.pdf>

is centralised and hierarchic. It is composed of General Prosecutor's Office, prosecutors' offices at the level of courts of appeal (five), specialized prosecutors' offices (anticorruption and transport) and district prosecutors' offices (42). There are also the Prosecutors' Office of Chişinău municipality and the Prosecutors' Office of the Găgăuzia administrative territorial unit, which are superior to the district prosecutors' offices from their circuit. There are five district prosecutors' offices in Chişinău municipality and three in Găgăuzia ATU. According to the activity report of the prosecutors' office for 2011, at the end of 2011, there were 748 prosecutors working in the prosecutors' office.

The Superior Council of Prosecutors (SCP) is the self-administrating body of the prosecutors. It is composed of 12 members, five prosecutors elected by their fellows, four professors appointed by Parliament, the general prosecutor, the president of the SCM and the minister of justice. Its president runs the activity of the SCP. SCP elects the president from the elected prosecutors or professors appointed by the Parliament. The main functions of the SCP are: to make proposals to the general prosecutor for the appointment, promotion or dismissal of prosecutors, appointment of the members of the Selection and Disciplinary boards of the prosecutors and examination of complaints against decisions of these boards, and examination of complaints regarding the prosecutors' ethics.

General Prosecutor's Office is the hierarchically supreme body in the prosecutors' service. It organizes and coordinates the activity of the prosecutors. It is headed by the general prosecutor, who is appointed by the Parliament at the proposal of the speaker of Parliament for a mandate of five years. The main tasks of the general prosecutor are: appointing subordinated prosecutors at the proposal of the SCP, approving regulations and guidelines for prosecutors, annulling any act of the prosecutors that is contrary to the law, and the management of the assets of the prosecutor's service. The general prosecutor is assisted by three deputies and by a Board of Prosecutor's Office consisting of nine prosecutors. The deputies of the general prosecutor are appointed by Parliament, at the proposal of the SCP, for a mandate of five years. The deputies of the general prosecutor are prosecutors with an experience of at least ten years. The composition of the Board of Prosecutor's Office is proposed by the general prosecutor and approved by the Parliament. Its *ex officio* members are the general prosecutor and his deputies and the prosecutor of Găgăuzia ATU. None of the five general prosecutors appointed between 1998 and 2009 have exercised their mandate until the end.

The candidates for the position of prosecutor must study 18 months at the National Institute of Justice or practice certain legal professions for the last five years prior to being appointed. The last category must pass a special exam. If selected, upon the proposal of the SCP, by the general prosecutor's order, the individual is appointed as prosecutor until the age of 65. The heads of the subdivisions of the prosecutors' offices are appointed by the general prosecutor, at the SCP's proposal, for a mandate of five years.

Prosecutors direct and conduct criminal investigation, prosecute cases in courts, oversee the observance of the legislation in the detention facilities and armed forces, as well as in the process of enforcement of judgments in criminal cases. Prosecutors may also take civil actions in the interests of vulnerable persons and of the state to court. In criminal proceedings, the superior prosecutor can invalidate the decisions of the lower prosecutor. The prosecutors'

actions or inactions in criminal cases can be brought before the superior prosecutor and thereafter further to the investigative judge.

2.4 Legal profession

The advocates are required by law to be members of the Bar Union, which is the self-administrating body of the profession. In 2010, the internal organization of the legal profession was changed.⁶ As a result of this reform, at the level of courts of appeal there are five bars, including all advocates who are located in that circuit. A dean elected by its members runs every Bar. According to the register of advocates kept by the Ministry of Justices, at the beginning of 2012 there were more than 1,600 practicing advocates in the Republic of Moldova.

The governing bodies of the Bar Union are the Congress, the Council of the Union, the president of the Union and the secretary general of the Union. The Congress shall gather at least once a year and is composed of advocates' delegates. It elects the members of the Union's Council and president of the Union and approves the budget of the Union. It also approves the Code of Ethics and Rules of the legal profession. The Council of the Union meets every month and is the representative and deliberative body of advocates. The law does not provide the number of Council's members. However, it consists of the five deans of the bars, the president of the Council and other members elected by the Congress for a mandate of four years. In 2012, the Council consisted of 14 members. Between the sessions of Congress, the Council deals with issues related to the practicing of the legal profession. The Congress elects the President of the Council for a mandate of two years from among advocates with at least five years of experience. He or she represents the Union before individuals and legal entities and chairs the sittings of the Council. The Council, on competition basis for a five years mandate, elects the Secretary General. He is responsible for the organizational and financial activities of the Union. Although the secretary general should have been elected in 2010, he was still not elected by September 2012, and the president of the Council exercised his powers. Since 1996, the president of the Council remains the same individual.

Within the Bar Union there are licensing, ethics and discipline, and audit commissions. The licensing commission is composed of 11 advocates and examines the candidates for the Bar traineeship and receives the bar exam. The ethics and discipline commission is composed of 11 advocates and is responsible for examining complaints and for applying disciplinary sanctions against advocates. The audit commission consists of five advocates. It is controlling the financial and economic activity of the Union.

Any Moldovan citizen that has a law degree and has completed an 18 months traineeship next to an advocate with at least 5 years experience can become an advocate. To be eligible for traineeship, applicants pass an exam before the Licensing commission of the Union. After completing the traineeship, trainees will pass an exam before the same commission. Persons who have been prosecutors or judges for ten years and those who have a PhD degree in law are admitted to the bar without completing the traineeship and passing

⁶ Before the amendment, there were no bars in the circuits of the courts of appeal and no position of secretary general of the Union and the Congress was composed of all advocates and not only of the representatives of the advocates.

the bar exam. Based on the decision of the Licensing commission, the Ministry of Justice issues the advocate's license. After obtaining the license, an advocate can practice. More than half of all advocates have received their licences over the last five years.

Only advocates may represent defendants in criminal proceedings. In civil proceedings, parties are not required to have a representative. However, if the individual decides to have a representative, he can only hire an advocate or a trainee-advocate. Trainee-advocates cannot plead before the SCJ. A legal entity may be represented by its employees in civil cases.

State guaranteed legal aid is provided in criminal, contravention and civil cases, as well as in judicial procedures where administrative acts are challenged.⁷ Only advocates provide this aid, after nomination by the territorial office of the National Council of State Guaranteed Legal Aid.

2.5 Appeal system

The legislation of the Republic of Moldova provides for different appeals depending on the nature of the case. Criminal cases are examined according to the CrPC (Law no. 122-XV, of 14 March 2003), in force from 12 June 2003. Contravention cases, namely minor violations of the law, are examined according to the Contravention Code (CC) (Law no. 218-XVI, of 24 October 2008) in force from 31 May 2009. Civil cases are examined according to the CiPC, (Law no. 225-XV, as of 30 May 2003), in force from 12 June 2003. Appeals against acts or inactions of public authorities are examined according to the CiPC, with the exceptions provided by the Law on administrative litigation (Law no. 793-XIV, of 10 February 2000), in force from 18 August 2000.

2.5.1 Criminal cases

According to Art. 298 of the CrPC, complaints against actions of the criminal investigation body, when the prosecutor does not carry out the criminal investigation, shall be submitted to the prosecutor in charge of oversight of the criminal investigation. The Law does not provide a time limit for submitting the complaint to the prosecutor. If the prosecutor carries out the criminal investigation, his actions can be challenged by the hierarchical superior prosecutor within 15 days. The prosecutor shall examine the complaint within 15 days upon receipt. These complaints do not suspend the enforcement of the challenged actions. Under Art. 299² CrPC, the prosecutor, through a written motion, can change the ground, amend or annul the procedural act.

Prosecutor's motions that violate fundamental human rights and freedoms can be brought before the investigative judge within 10 days. The complaints are examined according to the procedure described in Art. 313 CrPC. The examination takes place in a court hearing, with the participation of the prosecutor and the person who filed the complaint. The failure of the person who filed the complaint to appear in court does not prevent the examination of the complaint. The prosecutor is obliged to submit to the court the materials on which he issues the challenged decision. If the investigation judge finds the complaint well founded, he issues a court order obliging the prosecutor to remedy the violations found

⁷ State guaranteed legal aid in contravention, civil and cases regarding challenging administrative acts is offered from 1 January 2012.

and, if it is the case, declares the challenged act or procedural action null and void. The judge cannot order the opening of a criminal investigation. The copy of the court order shall be sent to the person that filed the complaint and to the prosecutor. This court order is final.

Art. 25 para. 4 of the Constitution states that arrest shall be based on a warrant issued by a judge, at the request of the prosecutor. At the criminal investigation stage, the arrest warrant issued by the investigative judge cannot exceed 30 days and can be extended. The request is examined in a closed hearing where the prosecutor, the accused and his defender are present. The procedure of examination following the request for arrest is provided by Art. 307 and 308 of the CrPC. The court ruling on arrest can be appealed within 3 days to the court of appeal. The appeal is examined in a closed court hearing by a panel of three judges, in the presence of the prosecutor and the accused and his defence counsel. The procedure of examination of the appeal is provided by Art. 312 CrPC. If the appeal is allowed, the court can quash the decision on arrest and order the release of the accused, with or without ordering other preventive measures. The decision of the court of appeal is final.

As of November 2006, the question of detention in arrest pending trial shall be decided on the basis of an arrest warrant issued for up to 90 days by the judge who examines the criminal case. It can be appealed to the superior court, which will examine it based to the procedure provided by Art. 312 CrPC.

The judgment of the first instance court can be appealed within 15 days from the date of receipt of the motivated judgment. Judgments of the first instance court concerning crimes for which the law provides only non-custodial sanctions and the judgments of the SCJ issued as a first instance court, cannot be appealed. The CrPC does not provide grounds for appeal. The appeal court shall examine the legality and the merits of the contested decision, including issues not raised in the appeal. However, it cannot worsen the situation of the appellant (Art. 409 para 2 CPP). The appeal is examined by the court of appeal in an open hearing in a panel of three judges. New evidence can be presented in the court of appeal. If the statements of the accused heard in the first instance are challenged, those persons can be heard upon request of the persons that objects. The appeal instance can quash any judgment of the first instance court and issue a new ruling. It can re-evaluate the evidence.

The judgments issued on appeal can be appealed on point of law to the SCJ within 30 days from the delivery. The party who did not appeal is barred from lodging any appeal on grounds of law against the decision of the court of appeal upholding the judgment of the first instance court (Art. 420 para. 4 CrPC). Art. 427 CrPC provides 16 grounds for appeal on a point of law, including: wrongful legal qualification of the committed act, the court of appeal not ruling on all motives invoked in the appeal, lack of reasons for the delivered solution, or contradiction with prior judgments issued by the SCJ. The appeal on a point of law must contain the grounds mentioned in Art. 427 CrPC, but Art. 424 para. 2 CrPC entitles the SCJ to consider an appeal on a point of law in respect of aspects provided for by Art. 427 CrPC which have not been raised in the appeal request. A panel of three judges, without any hearing, can declare an appeal on a point of law inadmissible, if it does not meet the requirements of form and content, does not refer to the grounds mentioned in Art. 427 CrPC, is time-barred, is manifestly ill-founded, or does not raise legal issues of general

importance for jurisprudence. Appeals on a point of law, which are not declared inadmissible, are examined in court hearing, by a panel of five judges. Allowing the appeal on points of law, the court quashes the contested decisions and upholds the first court sentence, sends the case for retrial to the court of appeal, or issues a new judgment which does not aggravate the situation of the accused. The decision on the appeal on a point of law is final and should be handed over to the accused (Art. 449 para. 2 and Art. 399 CrPC).

According to the SCJ Activity report for 2011, the SCJ examined 983 appeals on a point of law against the decisions of the courts of appeal, of which 53% were declared inadmissible, 22.3% were rejected by a panel of five judges, and 24.7% were allowed.

Decisions of the district court related to crimes for which the law provides only non-custodial sentences can be appealed on a point of law to the courts of appeal. In cases of charges against the President of the country, which are examined in first instance by the SCJ, the appeal on point of law shall be filed at the SCJ, which will examine it in a panel of judges who did not adopt the challenged decision. The term for appeal for both categories of cases is 15 days from the date of delivery. There are 15 grounds for this type of appeal (Art. 444 para.1 CrPC), which mainly coincide with the grounds provided for the appeal against the decisions of the appeal instance. These appeals cannot be declared inadmissible and are examined in court hearings. The decision delivered on that appeal is final. According to the SCJ's Activity report for 2011, SCJ dealt with seven appeals of this type.

The final decision on appeal on a point of law and decision adopted by the investigative judge can be brought before the SCJ using the appeal for annulment. The purpose of this appeal is "to repair errors of law committed during the trial, where fundamental defects in the previous proceedings affected the challenged judgment" (Art. 453 CrPC), or if the ECtHR communicated the application to the Government. The appeal for annulment can be filed by the general prosecutor, his deputies and other participants in the trial, within six months from the date of the challenged decision or from the communication of the application to the Government. Without a court hearing, a panel of five judges can declare the appeal for annulment inadmissible if it does not meet the requirements of form and content, does not refer to the grounds listed in Art. 453 CrPC, is time-barred, manifestly ill-founded, or does not address legal issues of general importance for jurisprudence. Appeals for annulment that have not been declared inadmissible are examined by a panel of five judges or, if the decisions of the SCJ are challenged, by a panel of all judges of the Criminal Division of the SCJ. The examination takes place according to the rules provided for appeal on a point of law.

According to the SCJ Activity report for 2011, the SCJ examined 392 appeals for annulment, of which 8.1% were allowed. Moreover, the SCJ examined appeals for annulment of 246 persons lodged against the decisions of the investigative judges and upheld 15.8% of them.

The revision of the final court judgment can be requested: if it is established in a court decision that crimes have been committed during the criminal investigation or trial; if new circumstances which are essential for the case have been discovered; if two final judgments do not reconcile; if the Constitutional Court declared the law on which the court decision has been based unconstitutional; or if the ECtHR found a violation of the ECHR or stroke out an application based on friendly settlement and the applicant

continues to suffer severe consequences that can be remedied only by quashing the domestic judgment. Revision can be filed within one year by the prosecutor, the person whose right has been infringed, or by the relatives of a deceased offender. In case of discovery of new circumstances, the revision submitted in the interest of the convicted person is not limited in time. If a crime has been committed or new circumstances were found, the request for revision shall be filed with the prosecutor. He may refuse to send the request in court. His refusal can be appealed as provided by Art. 313 CrPC. If two final judgments cannot be reconciled or if the Constitutional Court declares the law applied to the case unconstitutional, the request for revision shall be filed with the court which examined the case in the first instance. If revision is requested on the basis of a ECtHR decision, the request will be examined by a panel of five judges of the SCJ.

2.5.2 Administrative offences

CC mentions more than 350 contraventions. These offences are examined under the principles governing the criminal procedure. The most common sanction prescribed by the CC is a fine, but for some offenses the individual may be sanctioned with imprisonment for up to 30 days. Administrative authorities examine the majority of contravention cases. Certain categories of offenses are examined by district courts.

The accused, victim or prosecutor may challenge the decision of the administrative body on a contravention case in the district court within 15 days. The judge examines the complaint in a court hearing. When verifying the legality and merits of the act, the judge can invalidate it. The decision of the judge on the application or annulment of the sanction can be appealed on a point of law to the court of appeal within 15 days. The Court of appeal examines the appeal in a court hearing. If the appeal is accepted, the court orders a retrial in the first instance (Art. 473 CC). The decision of the court of appeal is final upon delivery.

Final judgments can be quashed by revision only in favour of the defendant (Art. 475 para. 1 CC). The revision can be requested by the accused or the prosecutor if: in a court decision it is established that the public authority or prosecutor committed crimes at the investigation of the case or during trial; if the Constitutional Court declared the law applied to the case unconstitutional; if the new law does not provide for such contravention or provides for a milder sanction; if a procedure is initiated before an international body or if an international court found a breach of human rights that can be repaired by a re-examination of the case. The time limit for filing the revisions is six months from the date when the ground, or grounds, for revision appeared. The request is examined by the court that issued the final judgment. If the request for revision is admitted, the court quashes the challenged judgment and delivers a new one.

2.5.3 Civil cases

From 1 December 2012, all civil cases are heard by district courts. The parties to the proceedings can appeal the district courts' decisions within 30 days. The appeal is examined in a court hearing by a panel of three judges of the court of appeal. An appeal can be filed if important circumstances for the proceedings were not fully revealed or proven, if the findings from the challenged judgment are contrary to the facts of the case, or if the material or

procedural law has been violated or wrongfully applied. Evidence that could not be presented in the first instance can be presented in appeal. The court of appeal checks the merits and legality of the decision, but it is limited by the reasons and the grounds invoked in the appeal request. However, it checks on its own motion whether the procedure has been followed (Art. 388 para. 1 CiPC), without having the right to worsen the situation of the appellant without his consent (Art. 377 para. 6 CiPC). If the court of appeal allows the appeal, it can issue a new decision or send the case back for retrial. The case can be sent for retrial only if the court jurisdiction has been infringed, if the decision affected someone who was not party to the proceedings, or where the party was not duly summoned and the party requests it. The judgements of the courts of appeal are enforceable upon delivery, but are not final.

Within two months, the parties to the proceedings can lodge an appeal to the SCJ on a point of law against a decision of the court of appeal. The grounds for appeal are violations or misapplication of material law or procedural law and the assessment of evidence that led to violations of human rights and fundamental freedoms, or if the judgment is arbitrary (Art. 432 CiPC). At this stage no new evidence can be presented. A panel of three judges of the SCJ can decide in camera, by unanimous vote, than an appeal is inadmissible if it does not fit within the grounds mentioned in Art. 432 CiPC, is time-barred or is submitted repeatedly or by a person who is not entitled to lodge the appeal. A panel of five judges reviews appeals that have not been declared inadmissible, generally, in the absence of the parties.⁸ Allowing the appeal, the SCJ may issue a new judgment or send the case for retrial to the court of appeal or district court. The judgements of the SCJ are final upon deliverance. The judgments shall be delivered to the parties within five days from the day of deliverance (Art. 445 para. 4 CiPC). According to the SCJ Activity report for 2011, the SCJ considered 2,322 appeals on points of law, out of which 38.4% were declared inadmissible, 24.4% were rejected by a panel of five judges, and 37.2% were allowed.

Decisions on procedural matters are solved by the court through court orders. In the cases provided by law (eg. interim measures) or if it is impossible to conduct further proceedings (eg. striking out the action) the order of the district court and of the court of appeal can be appealed within 15 days. The other court orders can be challenged only together with the decision on the merits. A panel of three judges of the superior court will examine the appeal in the absence of the parties. If the appeal is allowed, the court sends the case back to retrial or decides on the issue from the court order. These decisions are final. According to the SCJ Activity report for 2011, the SCJ examined 450 appeals against court orders, out of which 54% were allowed and 46% rejected.

In order to challenge in court and administrative acts, the Law on administrative litigation requires the exhaustion of a pre-judicial procedure. Within 30 days, the person affected by an administrative act must request for the annulment of the administrative act concerned from the authority that issued the administrative act or from a superior authority. If the request is rejected or the person does not receive an answer within 30 days, he or she may file a request to the district court within 30 days. The court examines the case in a court hearing,

⁸ Until 30 November 2012, appeal on a point of law was examined in court hearing, by summoning all the parties.

in accordance with the procedure provided by the CiPC. If it finds that the administrative act is unlawful in substance, or has been issued by infringing the competence or the procedure, it annuls the administrative act. This decision can be appealed and subsequently appealed on a point of law. According to the SCJ Activity report for 2011, the SCJ examined 1,700 appeals on a point of law on cases of this kind, out of which 46.8% were allowed and 53.2% rejected.

Final judgments and court orders on civil matters can be appealed through revision if: it is established in a court judgment that crimes were committed at the examination of the case; if new circumstances that are essential for the case were discovered and that could have not been discovered previously; if the judgment affects the rights of persons who are not party to the proceedings; if the judgment on which the challenged judgment was based has been quashed or amended; if the Constitutional Court declared the law on which the judgment was based unconstitutional; if the Government initiated a friendly settlement procedure on an application submitted to the ECtHR; or if the ECtHR judgment or the unilateral declaration of the Government acknowledges a violation of the ECHR which can be corrected, at least partially, by quashing the judgment. The revision can be lodged by the parties in the proceedings, by the persons affected by the decision who were not party in the proceedings and, in case of ECtHR procedures, by the government agent (GA).⁹ As a rule, the request for revision must be filed within three months from the appearance of the ground for revision, but not more than five years from the day when the judgment became final. In case of friendly settlement of an application submitted to the ECtHR, the revision can be requested within the period of settlement, and in case of an ECtHR judgment - within six months from the delivery of that judgment. The request for revision shall be considered by the court which issued the latest decision in previous proceedings. In cases of ECtHR procedures, it is always examined by the SCJ. In case the revision is allowed, the court quashes the challenged judgment and orders a retrial. According to the SCJ Activity report for 2011, the SCJ examined 384 requests for revision, out of which only 10 (2.7%) were allowed.

⁹ Until 30 November 2012, revision in cases of friendly settlements could have been filed by the general prosecutor, upon AG's request. However, the general prosecutor did not have the right to request revision on the ground of ECtHR judgments.

Status of the European Convention on Human Rights of the Republic of Moldova

3.1 Legal framework

The legislation of the Republic of Moldova authorises direct application of international human rights treaties. This is provided by Art. 4 of the Constitution. The Constitutional Court has explained how this article is to be applied. The CiPC, CrPC and CC encompass more detailed provisions on the direct application of international treaties and on reopening of court proceedings following the procedures before international courts. In order to unify the legal practice, the SCJ adopted a judgment where it explained how the ECHR should be applied by judges. In line with this, the SCJ adjusted its explanatory judgments to ECtHR jurisprudence.

3.1.1 Constitution and jurisprudence of the Constitutional Court

The provisions of international treaties have been taken into account at the elaboration of the Constitution. It protects all the rights guaranteed by the ECHR. Art. 4 of the Constitution provides:

- “(1) Constitutional provisions concerning human rights and liberties shall be interpreted and applied according to [...] the international treaties Republic of Moldova is party to.*
- (2) In case of inconsistencies between human rights covenants and treaties to which the Republic of Moldova is party, and its internal law, priority shall be given to international regulations.”*

On 14 October 1999, the Constitutional Court adopted a judgment (no. 55) where it explained how Art. 4 of the Constitution is to be applied. The text of the judgment no. 55 suggests that international treaties to which the Republic of Moldova is party and the generally recognised norms and principles of international law, are part of the Moldovan legal system; that the law enforcement bodies can apply international law when examining concrete cases, with observance of the procedure provided by the national legislation; in case of inconsistency between international law provisions and the internal legislation, the law enforcement bodies shall apply international provisions, but this rule does not apply in case of inconsistency with the Constitution; that the Parliament is obliged to verify the conformity of the draft laws with international norms, while the adopted legislation which is contrary to the international norms shall be reviewed. Neither the Constitution, nor judgment no. 55 expressly refers to the ECHR. However, the above rules have been most frequently invoked to justify the direct application of the ECHR.

A procedure before the Constitutional Court cannot be initiated through an individual appeal, and this court cannot examine individual cases. Its main task is to check the constitutionality of the normative acts issued by the Parliament, Government and President. In its judgment no. 11, of 31 May 2011, the Constitutional Court noted that the normative act which contradicts an international norm can be declared unconstitutional „if the Constitution or the national laws do not provide for the principles and guarantees set forth in international treaties, or if the international treaties guarantee more comprehensive rights than the Constitution”.

In 2008 and 2009, in Parliament, the Communist Party promoted the legal prohibition for Moldovan citizens holding other citizenships to become Members of Parliament, which constituted an issue of heated political debates. On 18 November 2008, a chamber of the ECtHR delivered the judgement *Tănase and Chirtoacă v. Moldova*, finding that this prohibition is contrary to Art. 3 of Protocol 1 to the ECHR (right to free elections). Based on the ECtHR judgment, a procedure before the Constitutional Court has been initiated to declare this prohibition unconstitutional. In its judgment no. 9, of 26 May 2009, the Constitutional Court found that the prohibition is in line with the Constitution and ECHR. Although the arguments from the ECtHR judgment were invoked by the author of the request in the Constitutional Court proceedings, they were refuted in the Constitutional Court’s decision. The judgment of the Constitutional Court does not even make any reference to the ECtHR’s judgment. For such omissions, until December 2010, the Constitutional Court was often accused of being biased in favour of the Communist Party.

In other cases, the Constitutional Court referred to the ECtHR jurisprudence on its own initiative. For example, the Constitutional Court abandoned its previous jurisprudence according to which it refused to consider the constitutionality of non-normative acts issued by the Parliament or President (Judgments no. 10, of 16 April 2010). The reason advanced for changing the jurisprudence was the fact that the ECtHR, by its *Vilho Eskelinen v. Finland* judgment (19 April 2007) changed its previous jurisprudence. This adjustment of the practice of the Constitutional Court took place in the eve of considering the constitutionality of a decision of the Parliament dismissing the president of the Supreme Court of Justice.

In the majority of its judgments adopted since 2010 the Constitutional Court referred to the ECHR or to the ECtHR’s jurisprudence.¹

¹ In the judgment no. 25, of 9 November 2010, the Constitutional Court referred to the *Mathieu-Mohin and Clerfayt v. Belgium* ECtHR judgment (2 March 1987) in the context of examination of the need to suspend certain public officials from office for the period of the electoral campaign; in the judgment no. 26, of 23 November 2010, when dealing with constitutionality of the law which allowed repeated indictment, the Constitutional Court made reference to nine ECtHR judgments; in the judgment no. 27, of 25 November 2010, when ruling on the issue of whether the Law on money laundering is sufficiently detailed to prevent abuses, the Constitutional Court made reference to six ECtHR judgments; in the judgment no. 3, of 10 February 2011, the Constitutional Court referred to ECtHR *Meftah and Others v. France* (26 July 2002) and *Steel and Morris v. United Kingdom* (15 February 2005) judgments to justify the constitutionality of the provisions which introduced the exclusive right of the advocates to represent in courts; and in judgment no. 7, of 5 April 2011, the Constitutional Court, when deciding on the constitutionality of the legislation which allowed for the introduction of the interdiction for debtors not to leave the country, has made reference to the *Reiner v. Bulgaria* judgment (23 May 2006).

This phenomenon augmented, starting 2011 upon election of a new president of the Constitutional Court. He is a former advocate with experience in representing applicants before the ECtHR. In 2011, the structure of the judgments of the Constitutional Court was also changed, in the manner that it now follows the structure of the ECtHR judgments.

3.1.2 Codes of procedure

In its judgment no. 55, of 14 October 1999, the Constitutional Court mentioned that the Constitution authorizes the direct application of international law norms, provided that the procedure provided by the national legislation is observed. This procedure is set forth in the CrPC, the CC and the CiPC.

Art. 2 para. 2 of the CrPC provides that „general principles and international law norms and the international treaties to which Republic of Moldova is party, constitute a part of the criminal procedure legislation and give rise directly to human rights and freedoms in the criminal proceedings”. This provision is detailed in Art. 7 of the CrPC, the relevant part of which is the following:

“(1) Criminal procedures shall be conducted in strict compliance with the generally recognized principles and norms of international law, international treaties to which the Republic of Moldova is party and with the provisions of the Constitution of the Republic of Moldova and of this Code.

(2) Should there be an inconsistency between the provisions of this Code and the international treaties on human rights and fundamental freedoms to which the Republic of Moldova is party, the international regulations shall prevail.

(3) If during the examination of a case the court finds that the legal norm to be applied is contrary to the provisions of the Constitution and this provision is part of a legal act that can be subjected to a control of constitutionality, the hearing shall be suspended, the Supreme Court of Justice shall be notified and the latter shall appeal to the Constitutional Court.

...

(5) If during the hearing of a case the court finds that the domestic legal norm to be applied is contrary to the provisions of the international human right treaties to which the Republic of Moldova is party, the court shall apply the international regulations directly, motivate its judgment accordingly and notify the authority that issued the domestic norm concerned and the Supreme Court of Justice, respectively.”

An essential breach of rights and freedoms guaranteed by the ECHR and other international treaties amounts to a “fundamental flaw in the criminal proceedings” (see Art. 6 para. 44 CrPC). This is a ground for reopening criminal proceedings (Art. 287, para. 4 CrPC) or quashing the final judgment (Art. 453 para. 1 CrPC).

The CrPC allows for reopening criminal court proceedings following a judgment of the ECtHR and after the Government has been given notice of an application by the ECtHR. For more details in this regard, see Section 5.3.1 of the study.

The CC does not contain specific rules on direct application of international treaties. However, it establishes a procedure of revision of contravention court proceedings which are or can be contrary to the ECHR. For more details in this regard, see Section 5.3.2 of the study.

Art. 2 para. 3 of the CiPC refers to the direct application of international treaties in civil proceedings. It mentions that „if by an international treaty to which the Republic of

Moldova is party sets forth other norms than those provided by the civil procedural legislation of the Republic of Moldova, the norms of the international treaty shall apply ...” This provision is detailed in Art. 12 of the CiPC, the relevant part of which is the following:

“(1) The court shall settle civil cases based on ... international treaties to which the Republic of Moldova is party ...

...

(4) If an international treaty to which the Republic of Moldova is party sets forth other rules than those provided by the domestic legislation, when examining the case, the court shall apply the provisions of the international treaty.”

Art. 12¹ of the CiPC provides for a special procedure for solving conflicts between the law to be applied to a concrete case and the Constitution. The relevant part of it reads as follows:

“(1) If, when dealing with a case, it is established that the legal norm to be applied or which was already applied is in contradiction with the provisions of the Constitution of the Republic of Moldova and the Constitutional Court is competent to carry out the constitutionality control, the court shall make a request to the Constitutional Court, which should be sent through the Supreme Court of Justice.”

Art. 449 CiPC allows for reopening of civil proceedings following a ECtHR judgment finding a violation of the ECHR. Art. 449 CiPC does not allow for reopening following an ECtHR decision to strike out an application based on friendly settlement. Reopening can also be required after communication of the application to the Government. For more details in this regard, see Section 5.3.3 of the study.

Both the CrPC and the CiPC provide that international treaties have priority over domestic legislation and instruct judges to apply international treaties directly. 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. As provided by Art. 4 of the Constitution, the international human rights treaties are part of the Constitution. Therefore, apparently, any conflict of a law with an international treaty is a contradiction with the Constitution. However, in case of contradiction with international treaties, the last are to be directly applied by the judge, while in case of contradiction with the Constitution the judge is obliged to notify the SCJ in order to lift the exception of unconstitutionality. During the interviews, the majority of the judges said that they have not seen clear cases where the domestic legislation is contrary to the ECHR.² According to them, if the ECtHR jurisprudence requires an approach that is not regulated by the domestic law, the ECHR will be applied directly. The interviewed advocates and prosecutors said that the judges would rather lift the exception of unconstitutionality than disregard the provisions of the domestic legislation to apply the ECHR. Between 1995 and 2011, the Constitutional Court decided on 15 exceptions of unconstitutionality, out of which four cases were decided in 2010 and 2011. In all four cases, the SCJ invoked contradiction between national law and the ECHR as a ground for unconstitutionality .

² A judge mentioned that he dealt with such a situation. She applied the ECHR directly, disregarding the national legislation. Her decision has been upheld by the SCJ.

3.1.3 Jurisprudence of the Supreme Court of Justice

The Plenary of the SCJ further detailed the direct application of the ECHR through its explanatory judgments. On 19 June 2000, the Plenary of the Supreme Court adopted the judgment no. 17. It refers to the practical application of the ECHR by the courts of the Republic of Moldova. The most relevant excerpts of the judgment are the following:

- “1. ... [I]t is primarily for the domestic courts to apply the Convention and not for the European Court for Human Rights from Strasbourg.
 ... [F]or a proper application of the Convention, a prior study of the jurisprudence of the European Court for Human Rights from Strasbourg is necessary, which, through its decisions, is the only body entitled to give official and binding interpretation of the application of the ECHR. The courts are obliged to be guided by those interpretations.
 3. ... Where the national law does not provide for the right to an effective remedy in respect of violation of a specific right under the Convention, the court shall receive that complaint and examine the case under civil or criminal proceedings, applying the provisions set forth in the ECHR directly.”

Besides judgment no. 17, references to the ECtHR standards were introduced in most subsequent judgments of the Plenary.³ References to the ECtHR jurisprudence have also been added to several judgments adopted before judgment no. 17⁴, while several judgments adopted afterwards were adjusted, especially following the evolution of the ECtHR jurisprudence with respect to Moldova.⁵ Usually, the Plenary of the SCJ inserts in its judgments principles of interpretation from the ECtHR judgments concerning Moldova, without explaining in detail how to apply these principles in concrete situations. On 30 October 2009, the Plenary of the SCJ adopted judgment no. 8, on certain issues related to the application by the courts of the provisions of Art. 3 of the ECHR. On 26 December 2011, the Plenary of the SCJ adopted judgment no. 1, on application by the courts of certain provisions of the law on freedom of assembly and freedom of association in line with Art. 11 of the ECHR. These two judgments provide a description of ECtHR standards on Art. 3 and 11 of the ECHR, as well as on application of those standards by the domestic judges. Many judges acknowledged during the interviews that explanatory judgments are quite helpful to them,

³ Ex. All three explanatory judgments of the SCJ adopted in the first five months of 2012 make reference to the ECtHR jurisprudence.

⁴ Judg. no. 8, of 24 October 1994, was completed in 2008 with a paragraph where the SCJ explained, referring to the ECtHR *Sofman v. Russia* judgment, of 24 November 2005, that the time limitation of 1 year for contesting the paternity, provided by Art. 49 para. 2 of the Family code, is contrary to the ECHR and should not be applied.

⁵ Ex. Following judgments against Moldova on Art. 10 of the ECHR, on 14 November 2008 the judgment of the Plenary of the SCJ no.8, of 9 October 2006, on the application of the legislation regarding protection of honour, dignity and professional reputation of individuals and legal entities was amended; following judgments against Moldova on Art. 5 of the ECHR, on 22 December 2008, the judgment of the Plenary of the SCJ no.4, of 28 March 2005, on the application by courts of certain provisions of the criminal procedure on pre-trial detention and house arrest was amended; as a result of the *Mancevschi* judgment (7 October 2008), on 24 December 2010, the judgment of the Plenary of the SCJ no.7, of 4 July 2005, on the practice of ensuring judicial control by investigative judges during criminal investigation was amended; following the *Popovici* judgment (27 November 2007), on 24 December 2010, the judgment of the Plenary of the SCJ no.22, of 12 December 2005, on the practice of examination of the criminal cases in appeal was amended.

but they are rather general and sometimes contradictory⁶, while the practice of the Supreme Court was not uniform. Moreover, some judgments of the SCJ were contrary even to their own explanatory judgments.

The SCJ generalized the judicial practice and, in urgent cases, put explanations on the application of the ECtHR standards in certain situations on the SCJ website. However, these activities relate predominantly to the application of ECtHR standards, and are presented in the following paragraphs.

3.2 Application of the European Convention on Human Rights

3.2.1 Application of standards of the European Court of Human Rights

So far, judicial practice has not been sufficiently consistent. Therefore, a thorough analysis on how domestic judges apply the ECHR could not be carried out. However, all the interviewed respondents mentioned that the legal practice evolved towards a better application of the ECHR.

According to interviewees, in early 2000, judges considered the ECHR as a declarative tool and did not apply it. This is implicitly confirmed by the large number of ECtHR judgments where the final domestic decision was delivered by the SCJ. Thus, until the exclusion of the appeal for annulment from the civil procedure in 2003, following a request from the General Prosecutor's Office, the SCJ quashed by appeal for annulment the civil final judgments, although the parties often argued that this procedure is contrary to Art. 6 of the ECHR. They referred to the *Brumărescu v. Romania* judgment (28 October 1999). Judges knew about the *Brumărescu* judgment, but were considering that they were bound to apply the domestic law as long as it is in force. The same happened in cases when revisions were admitted without justification. Although in the *Popov (no. 2)* judgment (6 December 2005), the ECtHR found that this practice is contrary the ECHR, unjustified quashing of the final judgment continued.⁷ This confirms that, although the Plenary of the SCJ adopted judgment no. 17 in 2000, at least for several years the SCJ itself did not always comply with it. Judges started to pay more attention to ECHR after 2004-2005, when the ECtHR delivered more judgments on Moldovan cases.⁸

In 2007-2008, the SCJ took a position obviously favouring the state and disregarding the ECtHR solutions in cases concerning major financial claims against the state or outstanding political interests. Thus, in the judgment *Dacia SRL* (18 March 2008), the ECtHR found that there were no grounds for depriving the applicant of property. The just

⁶ Ex. p. 4 para. 2 of the judgment of the Plenary of the SCJ no.8 of 9 October 2006 states in absolute terms that „Freedom of expression can not infringe the honour, dignity or the right of other persons to their own opinion”. However, the SCJ states further that such an infringement can occur, if it is „necessary in a democratic society”.

⁷ After 2006, the SCJ has unjustifiably allowed revision requests which led to violation of the ECHR (see judg. *Eugenia and Doina Duca*, 14 September 2009, and judg. *Dragostea Copiiilor-Petrovschi-Nagornii*, 13 September 2011, which concerned revision requests allowed in 2007).

⁸ Between 1997 and 2003, the ECtHR delivered only one judgment against the Republic of Moldova – *Metropolitan Church of Bessarabia and Others*, in 2001. In 2004 and 2005, 24 judgments were delivered and these judgments were rather diverse in respect of the violations found.

satisfaction was reserved for an additional judgment. Based on the judgment from 18 March 2008, the applicant requested the reopening of domestic proceedings. After several postponements which were difficult to explain logically, the SCJ admitted the revision request and sent the case back for retrial, although it was clear from the ECtHR judgment that it left no alternative but to return the property taken from the applicant. After sending the case for retrial, Moldovan courts have not given a solution on the merits of this case until after the ECtHR judgment on just satisfaction (24 February 2009). The *Popovici* judgment (27 November 2007) concerned an applicant accused of being the leader of a criminal group. The ECtHR found that the applicant's conviction on appeal, after acquittal, without questioning him and without direct examination of the evidence, is contrary to Art. 6 ECHR, and suggested reopening of proceedings. The applicant filed a request for reopening. On 20 June 2008, the SCJ allowed the request and annulled both the conviction and the acquittal. In *Oferta Plus SRL* judgment (19 December 2006), the ECtHR found that the quashing of the final judgment, obliging the Ministry of Finance to pay the applicant EUR 1 mil., was arbitrary. The just satisfaction was reserved for an additional judgment. Until the judgment on just satisfaction, the applicant requested for the reopening of proceedings and restoring his right to receive the money. After more than ten months and several unexplained delays, the Plenary of the SCJ admitted his request, quashed the arbitrary decision, but rejected his claim to restore the right to receive money. In its judgment on just satisfaction (12 February 2008), the ECtHR noted the following about the solution of the Plenary of the SCJ:

“69. The Court notes that the revision procedure provided for by Article 449 of the Moldovan Code of Civil Procedure is not an effective remedy within the meaning of the Convention and therefore the applicant company was not under a duty to use it. However, the applicant company chose to do so, thus giving the Supreme Court of Justice a chance to finally resolve the case at the domestic level. The Plenary Supreme Court examined the revision request and on 29 October 2007 adopted a judgment. Having examined that judgment, the Court cannot but express serious concern that despite its abundant case-law concerning the principle of legal certainty and respect for res judicata in applications against Moldova and other countries, and regardless of its findings in the principal judgment, the Supreme Court of Justice adopted a solution which disrespects once again the finality of the judgment of 27 October 1999 in a manner incompatible with the Convention. Indeed, it appears that the order of non-enforcement of the judgment of 27 October 1999 (see paragraph 61 above), has the effect of setting at naught an entire judicial process which had ended in a judicial decision that was “irreversible” and thus res judicata and which had, moreover, been partly executed. The Court finds this situation particularly regrettable given that the judgment was adopted by the Plenary Supreme Court of Justice.”

The interviewees were asked to explain the apparent special attitude of the SCJ towards the state's interests. The majority of interviewees, including judges, declared that this is due to the Soviet mentality, where the interests of the state were put above the interests of the person. On the other hand, following unreasoned dismissals of a substantial number of judges in 2002-2004, many judges did not have the courage to oppose the state. At the same time, individuals loyal to the authorities were appointed to leading positions in the judiciary. According to interviewees, some judges are corrupt and this makes them vulnerable towards the state.

Apparently, after 2009 there were no cases in which the SCJ clearly took the position of the state. No serious misconducts similar to those found in *Popovici* or *Oferta Plus SRL* have been found, and the SCJ started to refer more frequently to the ECtHR jurisprudence. However, many respondents mentioned that the SCJ's references to the ECtHR jurisprudence were often formal and repeated in all judgments of the same type in a stereotyped manner. Occasions where references were adapted to specific cases and the SCJ explained the relevance of the ECtHR jurisprudence for the examined case, were rare.

In cases concerning minor damages, the SCJ awarded compensations applying the ECHR directly. It was previously refusing such claims on the grounds that there is no express legal provision in this regard. Thus, in 2007, in the *Ciorap (no. 2)* case (ECtHR judg. of 20 July 2010) the SCJ awarded compensation for violation of Art. 3 of the ECHR. The ECtHR welcomed this practice in its judgment. However, it appears that the SCJ was reserved in expanding this practice⁹ and judges were not informed about this change in the practice of the SCJ.

In addition to Plenary judgments and direct application of the ECHR, following 2009 the SCJ took other measures as well to ensure the correct application of the ECHR, such as: placing useful information on its website, developing rules on studying the ECtHR jurisprudence by the SCJ or generalization of the judicial practice.

In order to ensure uniformity of the judicial practice and a better implementation of the ECHR, the SCJ gave several explanations through its website. Thus, before July 2010, the CiPC did not authorise exemption of legal entities from paying court fees. In the *Tudor-Comerț* judgment (4 November 2008) ECtHR found that such a prohibition could be contrary to the ECHR. On 15 June 2009, the SCJ placed a statement on its website¹⁰ explaining that, although the law does not allow for exemption, the SCJ applied the ECHR directly and exempted a legal person of the obligation to pay court fees. On 22 May 2012 a presentation made at a seminar by the most experienced Moldovan lawyer at the ECtHR Registry appeared on the SCJ's website.¹¹ The presentation explains the ECtHR position regarding the non-enforcement of judgments after the *Olaru and Others* pilot judgment (28 July 2009). On 13 July 2012 a joint opinion of the president of the SCJ and of the GA on the just satisfaction to be awarded for the violation of the ECHR appeared on the SCJ's website.¹² Although

⁹ In 2008, the SCJ examined the case *Avram and Others* (ECtHR judg. of 5 July 2011). The Court has reduced the moral compensations awarded by the Chisinau Court of Appeal for the violation of Art. 8 of the ECHR, for the reason that Art. 7¹ of the Civil code provided for the maximum amount for moral compensation that could be awarded in such cases and which has been exceeded through the compensation offered by the Court of Appeal. The SCJ did not refute the argument that this limitation is contrary to the ECHR. The ECtHR found a violation of Art. 8 of the ECHR for this reason; in 2003, Mr. Iurie Lungu filed a request based on ECHR claiming compensation for detention under poor conditions, detention without a valid arrest warrant, and for violations against Art. 8 of the ECHR during detention. This case has been sent by the SCJ for re-examination four times, the last time in 2008. On 4 November 2010, the SCJ (case no. 2ra-1032/10) eventually admitted the claims from the action in part.

¹⁰ http://csj.md/news.php?menu_id=162&clang=5

¹¹ http://csj.md/news.php?menu_id=460&clang=5

¹² <http://csj.md/admin/public/uploads/Opinie%20privind%20satisfac%C5%A3ia%20echitabil%C4%83.doc>

the SCJ has used this procedure only three times, the trend seems to indicate an increasing frequency.

On 14 July 2011, the interim president of the SCJ issued order no. 70. It was issued to make the SCJ practice more uniform and to ensure a better application of the ECHR by the SCJ. The head of the legislation and computing Division of the SCJ was instructed to create, within three months, an archive of all ECHR judgments against Moldova and update it constantly. Meanwhile, when preparing the case-file for examination, assistants of SCJ judges were obliged to submit to them at least three ECtHR judgments relevant for the case under consideration.¹³ By September 2012, grouped according to the violations found by the ECtHR, the SCJ intranet system contained a file with ECtHR judgments and decisions against Moldova. SCJ judges could not say during the interviews whether order no. 70 was abided. This might suggest that the assistants do not prepare relevant ECtHR judgments for SCJ judges for the cases under consideration.

The SCJ analyzes judicial practice. Most of the documents drafted following this analysis are public. Following generalization of practice in a particular field, an analysis of several pages has been prepared, identifying key faults and recommendations to avoid similar faults in the future. This activity could have influenced the adjustment of domestic judicial practice to the ECtHR standards. In 2009, the SCJ analyzed the judicial practice on the participation of the prosecutor in civil proceedings, and on the suspension and revocation of licenses for commercial activity, in 2010 – on phone tapping, and in 2011 – on pre-trial and house arrest. Previously, the ECtHR found that Moldova violated the ECHR in these areas.¹⁴ The documents drafted based on the analysis refer to ECtHR jurisprudence. The documents on pre-trial detention and house arrest and on phone tapping found that, generally, the practices that led to violations of the ECtHR were still in place.

It seems that courts of appeal and district courts judges were more reluctant to apply the ECHR. They explained this phenomenon by the fact that they follow the SCJ jurisprudence and that they would prefer to apply the ECHR based on the SCJ jurisprudence. However, the SCJ jurisprudence was not sufficiently uniform. They did not want to take a risk and have their decisions quashed later on the ground of wrong application of the law.

The team that developed the study analyzed more than 50 judgments issued under Law no. 87¹⁵ and several hundred judgments on arrest delivered by investigative judges and courts

¹³ <http://csj.md/admin/public/uploads/Dispozitie%20privind%20uniformizarea%20practicii%20judiciare,%20sistemizarea%20si%20implimentarea%20hotararilor%20CEDO.doc>

¹⁴ In the judgment *Dacia SRL* (18 March 2008) a violation of Art. 6 of the ECHR has been found due to the fact that the prosecutor participated on the opponent's side in a case of civil procedure; in *Bimer SRL* (10 July 2007) and in the *Megadat.com SRL* (8 April 2008) judgments ECtHR found a violation of Art. 1 Prot. 1 as a result of unlawful deprivation of the applicants of the right to use licenses for commercial activity; in *Iordachi and Others* judgment (10 February 2009), the ECtHR found a violation of Art. 8 ECHR on the ground that the Moldovan legislation on phone tapping did not provide sufficient guarantees against abuse; while in *Becciev and Șarban* (both from 4 October 2005) judgments ECtHR found that Art. 5 § 3 of the ECHR has been violated due to insufficient reasoning of court judgments on remand.

¹⁵ 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, in force from 1 July 2011.

of appeal. The analysis confirmed that, when Law no. 87 was applied, the ECtHR jurisprudence was cited in the majority of cost judgments, but sometimes the jurisprudence was misinterpreted.¹⁶ After 2009, the ECtHR jurisprudence was invoked in most judgments of the investigative judges on the arrest proceedings, while judges from courts of appeal rarely referred to ECtHR jurisprudence. The references of the investigative judges were standardized and were reproduced in every arrest judgment, suggesting that these references were purely formal.

Insufficient application of the ECHR by judges during criminal investigation is implicitly confirmed by judicial practice on pre-trial detention and phone tapping. The majority of those cases are not considered by the SCJ. In 2005, in the *Becciev* and *Şarban* judgments, the ECHR found a violation of Art. 5 § 3 of the ECHR, for the reason of insufficient motivation of arrest. In 2007, the ECtHR noted in the *Muşuc* judgment (6 November 2007, § 43) that similar violations of the ECHR were still frequent. Moreover, in 2007, in the *Ignatenco* judgment (8 February 2011, § 45), the Chişinău Court of Appeal considered the references of the defence to ECtHR jurisprudence as an attempt “to undermine the normal conduct of the proceedings... [and]... indirectly influence the court to release the applicant”. In 2011, no significant changes in terms of reasoning with regards to decisions made pertaining to arrest have been observed, although judges try to draft lengthier judgments when authorizing arrest warrants (for more details see Chapter 6). In *Iordachi and Others* judgment (10 February 2009), ECtHR found a violation of Art. 8 of the ECHR because the Moldovan legislation on phone tapping did not provide sufficient safeguards against abuse. In its judgment, ECtHR emphasized that the institution of phone tapping was excessively used in Moldova. However, in 2010 and 2011, the number of phone tapping authorizations increased.

Interviewees maintained that, unlike SCJ judges, few courts of appeal and district court judges know the ECtHR jurisprudence well enough to apply it correctly in concrete cases. Lack of knowledge was determined by heavy workload, “toleration of the current situation by higher courts”, but also by the indifference of some judges. However, according to interviewees, the judges from Chişinău, who have the biggest workload, know the ECHR better than their colleagues from the regions.

Despite the general perception, the number of references to the ECHR in the lower court judgments is increasing. Some judgments were well-reasoned base on ECHR, but in most cases references to ECtHR jurisprudence were rather formal and the reasoning of the judgments confirms that the essence of the ECtHR jurisprudence has not been fully understood.

According to the interviewees, the prosecutors are more reserved than judges in the application of the ECHR. This phenomenon can be explained by the hierarchical subordination of the prosecutors and by the quasi-absolute trend among lower level prosecutors to abide by the established practices. Strict compliance with the ECtHR jurisprudence would considerably complicate the prosecutors' work and usually, in such cases, the majority of specialists are prone to let concerns sustaining their own comfort prevail. At the same time,

¹⁶ For more details in this regard, please see Chapter 8 of the Report.

judges still tolerate practices in criminal cases which are contrary to the ECHR. Interviewed investigative judges argued that arrest motions or motions authorizing investigation measures are not sufficiently reasoned by prosecutors. The prosecutors' motions challenged by the investigative judges were also poorly motivated, which explains why many of them were annulled by the investigative judges. Finally, prosecutors do not present to the defence the evidence on which they base their arrest motion, although Art. 68 of the CrPC contains this obligation and ECtHR found in two Moldovan cases that this practice contravened Art. 5 of the ECHR.¹⁷ Some improvements were still noticed, but they were not sufficient to change the situation decisively. The General Prosecutor's Office undertakes steps to change internal practices but, apparently, the resistance against change is still strong.

According to interviewees, advocates can be divided into three categories: 10-15 advocates who know the ECtHR jurisprudence and its application very well, several hundred advocates (15-20%) who participated in training courses and have some knowledge about the ECHR, and the remaining 80% of advocates who do not know much about the ECHR at all. The first category of advocates is or has been specialized in representing applicants before the ECtHR, and their references to the ECtHR jurisprudence are well-reasoned.¹⁸ The second category of advocates often refers in quite general terms to the ECtHR jurisprudence. Often, these references are not sufficiently convincing to be accepted by the judges. The last category of advocates makes no reference to the ECtHR jurisprudence whatsoever.

3.2.2 Compensations granted for violations of the European Convention on Human Rights

As a rule, a violation of the ECHR requires compensations to be granted to the applicant by the violating contracting state. Compensations can be awarded as pecuniary and moral damage, or costs and expenses. In the Republic of Moldova, the compensation for damage is done in civil proceedings. No monetary compensation of the damage caused can be awarded in criminal proceedings. In order to be compensated, it is necessary to prove the damage, the wrongful act and to establish a causal link between the wrongful act and the damage.

As to the pecuniary damage, the Civil Code allows the redress of both real damage and of lost revenue. For pecuniary obligations, Art. 619 of the Civil Code provides for a statutory interest. In relations with customers, the interest rate is 5% above the refinancing rate of the Moldovan National Bank. In other cases, default interest shall not be less than 9% above the refinancing rate of the Moldovan National Bank. The parties often calculate lost profits using this mechanism, including in ECtHR procedures and domestic judges usually grant the default interest calculated in this manner.

Art. 1398 para. 1 of the Civil Code provides that moral damage is to be repaired only in cases prescribed by law, while Art. 1422, para. 1 of the Civil Code states that the court is entitled to grant moral damages for breach of personal non-patrimonial rights. Although

¹⁷ Judg. *Țurcan and Țurcan* (23 October 2007) and *Muşuc* (6 November 2007).

¹⁸ Ten advocates have represented the applicants in more than 50% of the 227 ECtHR judgments against Moldova delivered by 31 December 2011. Five of them (Vitalie IORDACHI, Fadei NAGACEVSCHI, Vitalie NAGACEVSCHI, Vitalie ZAMĂ and Vladislav GRIBINCEA) have worked for the Non-Governmental Organization "Lawyers for Human Rights". This NGO has been supported by OSI since 2001 in activities of strategic litigation before ECtHR.

the provisions of the Civil Code are clear, until 2007¹⁹ Moldovan judges admitted claims for compensation for moral damages only if a particular law provided for this right.²⁰ In 2012, there were more than ten laws that expressly provided the right for compensation for moral damage. Laws no. 1545, of 25 February 1998,²¹ and no. 87 are most relevant for the purpose of this study. To claim compensation in criminal or contravention proceedings under the first law it is required to be found that the applicant did not commit crimes or misdemeanours. For proceedings initiated under Law no. 87, the judge examining the compensation claim will decide whether the requirement for reasonable time had been breached.

According to Art. 96 para. 1 of the CiPC, the court compensates legal expenses to the extent they were incurred, necessary and reasonable as to the quantum. Art. 96 para. 1 of the CiPC was amended in 2006 to allow judges to dismiss claims that were not necessary or reasonable. In this part, Art. 96 CiPC reproduces the ECtHR jurisprudence (see *Amihalachioaie*, 20 April 2004, § 47). Since 1 January 2012, legal expenses shall be compensated only if legal aid is provided by an advocate or by an intern-advocate.²²

In order to compensate properly, the case should be considered in reasonable time, the payment must be made within six months, the examination of the claims must follow a fair procedure, the compensation must not be unreasonable in comparison with the amounts awarded by ECtHR in similar cases, and the rules on legal costs should not place an excessive burden on the applicants (mutatis mutandis *Burdov (no. 2) v. Russia*, 15 January 2009, § 99).

In 2011, there was no systemic problem with the length of judicial proceedings or the payment of compensations by the Ministry of Finance in the Republic of Moldova. The vast majority of cases reached the SCJ within 2.5 years. However, this period can be too long for actions of compensation of damage caused by violation of the ECHR.²³

Although the law provides that certain categories of cases, such as labour disputes, should be given priority, there is no formal court mechanism to process those cases. All cases were appointed for examination under general order, but, usually, judges were more diligent in dealing with labour disputes. Actions filed under Law no. 1545 were not considered by

¹⁹ In 2007, in the case *Ciorap* (see ECtHR judgment no. 2, of 20 July 2010), the SCJ granted moral damages for violation of Art. 3 of the ECHR, through direct application of the ECHR, although the Moldovan legislation did not expressly provide for this right. It is not clear whether, after this judgment, the SCJ has firmly followed this interpretation.

²⁰ This fact results from the judgment of the Plenary of the SCJ no. 9, of 9 October 2006, which list in an exhaustive manner the cases where the moral damage is to be compensated, while p. 30 of the judgment mentions that the moral damage is to be repaired only if this right is expressly provided by the law.

²¹ The Law on the reparation of the damage caused by illicit actions of the criminal investigation bodies, prosecutor's office or court, in force from 4 June 1998.

²² Until 1 January 2012, the parties were able to be represented in civil cases by non-advocates, and the law did not forbid this, while the judges compensated the cost of services provided by non-lawyers. From 1 January 2012 only advocates and interns-advocates can represent individuals in civil cases. Legal entities can be represented by their employees, but, apparently, the costs for these employees cannot be compensated based on Art. 96 CiPC.

²³ In judgment *Öneryıldız v. Turkey*, of 30 November 2004, the ECtHR found that 20 months from starting the compensation procedure and until the receipt of the compensation is too much.

judges as requiring priority and were examined under general order. Law no. 87 provides that the first instance court shall consider the case within three months. In 2012, the majority of first instance judgments on actions filed under Law no. 87 were delivered after more than three months, while the final judgment was made after another three to five months. Art. 417 para. 1¹ CiPC does not allow for sending the actions made under Law no. 87 for retrial, but sometimes this provision was not respected (for more details see Chapter 6). Compensations under the Laws no. 1545 and no. 87 were paid by the Ministry of Finance within two to four months upon receipt of the enforcement warrant. Accordingly, if the appeal on a point of law was lodged, the applicants were paid compensations under Law no. 87 within 10-14 months, a term that could be considered acceptable. However, in case of compensations granted under Law no. 1545, the applicants usually received payment after more than two years, which can be considered too long.

Both compensations under Law no. 1545 and those under Law no. 87 were granted by judges. These procedures have to be fair. Otherwise, they could be challenged in higher courts. In 2012, legislation did not provide for maximum limits for pecuniary or moral damage.

Moral compensations granted by Moldovan judges vary significantly. It seems that Moldovan judges consider that setting the amount for moral compensation is not a legal matter, but something related to the judge's discretion. For this reason, usually, the reasoning of court judgments in this part was very brief and did not make litigants understand how the amount of the compensation was determined and why domestic judges grant different moral compensations in similar cases.

By 2011, usually, district court judges granted higher amounts, which were substantially reduced by the courts of appeal and by the SCJ. The final compensations were considerably lower than those awarded by the ECtHR. For this reason, until 31 December 2011, Moldova has lost four cases at the ECtHR.²⁴ In the *Mătăsarū and Savitichi* case (judg. of 2 November 2010, §§ 69-75), the ECtHR examined whether low moral compensation granted for violation of the ECHR render ineffective the remedy provided by Law no. 1545. The ECtHR found that there is insufficient evidence to conclude that the remedy is ineffective, but mentioned that it will further examine carefully the evolution of judicial practice and can change its practice if the consistently granted compensation will be manifestly incompatible with the compensation granted by the ECtHR.

Until 2011, the moral compensations awarded at the domestic level were generally small compared to the amounts granted by the ECtHR. The small amount of moral compensations was always a widely discussed issue among 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.²⁵ They also draw attention to SCJ jurisprudence, which until recently granted small compensations. The interviewees mentioned

²⁴ *Ciorap (no. 2)* (20 July 2010), *Ganea* (17 May 2011), *Avram and others* (5 July 2011) and *Cristina Boicenco* (27 September 2011)

²⁵ Several interviewed judges mentioned that, for a judge with a net monthly salary of 250 EUR, it is difficult to grant damages which are much higher than their own salary to persons the committed crimes or for procedural or minor shortcomings.

that 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.”²⁶

In 2011, the Ministry of Finance enforced 231 enforcement warrants, out of which 111 concerned enforcement of judgments and decisions of the ECtHR. The majority of the remaining enforcement warrants concerned the Law no. 1545. MDL 17.3 million (EUR 1.13 million) were paid under all enforcement warrants. Out of this amount, 67.3% (EUR 761,000) were paid under ECtHR judgments and decisions. In 2011, the average amount paid per ECtHR judgment or decision was EUR 6,855, while the amount paid per national judgment was EUR 3,075 on average. The average amount paid under domestic judgments represented only 44.8% of the average amount paid under ECtHR judgments or decisions.

Most of the domestic judgments enforced in 2011 concerned amounts not exceeding MDL 40,000 (EUR 2,614). However, in several cases the compensations were much higher. Thus, in 2010, Centru district Court of Chişinău delivered its judgment in case no. 2-3802/10, awarding under Law no. 1545 over MDL 252,000 (EUR 16,470). In the case no. 2-3713/10, in the same year, the Chişinău Court of Appeal granted MDL 200,000 (EUR 13,072) under the same law. The applicants in those cases were two high officials in respect of whom criminal investigation was discontinued. One of them was never deprived of liberty.

In the *Duca* case (ECtHR dec. of 23 December 2006), in 2004 the courts awarded MDL 150,000 (EUR 10,289) under Law no. 1545. In *Grosu and Others* (ECtHR dec. of 13 July 2007), the SCJ granted an applicant who was a former judge EUR 9,500 in 2006 in respect of non-pecuniary damage for an unwarranted quashing of a final judgment. However, in the *Oferta Plus SRL* case (ECtHR judg. of 12 February 2008), in 2007 the Plenary of the SCJ granted the applicant ex officio MDL 16,000 (EUR 969) for arbitrary quashing of a final judgment. On 22 March 2010, the SCJ dealt with a revision request in *Ipteh S.A.* (ECtHR judg. of 24 November 2009) and granted the four applicants, who were previously in business relations with the Prime Minister, a total amount of EUR 55,000 in respect of non-pecuniary damage for an unjustified deprivation of property. The SCJ also granted more than EUR 240,000 as pecuniary damage and more than EUR 21,000 for legal assistance costs.²⁷ At the same time, in *Dacia SRL* (ECtHR judg. of 18 March 2008) in the summer of 2008 a revision request submitted after the ECtHR judgment was accepted by the SCJ, which sent the case for retrial without granting compensations, although the just satisfaction was reserved by the ECtHR for an additional judgment. In none of the four cases where compensations were awarded judges reasoned why they actually granted those specific amounts. In all five cases domestic judgments were made while the ECtHR procedures were at an advanced stage of examination. Shortly after the SCJ judgments, in

²⁶ Many of the persons interviewed, including judges, have mentioned that the damages granted against private persons are bigger than those granted against the state. For example, in the case *Timpul Info-Magazin and Anghel* (ECtHR judg. of 27 November 2007) the SCJ has granted in 2005, against a newspaper, in a manifestly ill-founded defamation action, MDL 130,000 (EUR 8,430), while in 2007, in the case *Ciorap (no. 2)*, against the Ministry of Finance, the SCJ awarded MDL 10,000 (EUR 600) for detention in poor conditions and for the failure to provided medical assistance to a detainee.

²⁷ It appears that in the case of *Ipteh S.A.*, the SCJ granted the highest moral damages and costs of legal assistance in its history.

the cases *Grosu and Others* and *Ipteh S.A.*, the Government and the applicants asked the CtEDO to strike out the applications.

Judges of lower courts mentioned at the interviews that they did not understand how the SCJ determines the amount of moral damages. However, the vast majority of respondents confirmed that the amount of granted moral compensations has been increasing lately. SCJ judges acknowledged that their practice in this area was not uniform, but explained that they paid particular attention to the applicant's personality and specifics of each case. These explanations can explain the discrepancies between moral compensations granted in the aforementioned cases. Although the applicant's personality and specific elements of the case are relevant for the determination of the amount of moral compensation, in our opinion, the weight of these elements should not lead to compensations exceeding several times the average compensation awarded in ordinary cases. Moreover, moral damages awarded in *Grosu and Others* and *Ipteh S.A.* are substantially higher than those granted by the ECtHR in comparable cases. The excessive size of these compensations is also confirmed by the 2012 guidelines for judges on moral compensations (see the Table no. 2). It seems that the moral compensations granted in *Grosu and Others* and *Ipteh S.A.* were set as high as they were to ensure a final settlement.

In order to unify the legal practice on the application of the Law no. 87, the GA has developed a guide on the application of ECtHR jurisprudence on non-enforcement of court judgments and excessively long proceedings.²⁸ On 25 May 2012, it was put on the website of the Ministry of Justice. The guide contains an analysis of ECtHR standards, its jurisprudence regarding Moldova and a summary of pecuniary and moral compensations and costs and expenses granted by the ECtHR in Moldovan cases for the failure to enforce court judgments or excessively long proceedings.

It seems that the SCJ admitted that the moral compensations awarded for violation of the ECHR is small and that the judicial practice in this area was not uniform. On 23 July 2012, a joint opinion of the president of the SCJ and GA on just satisfaction to be awarded for violating the ECHR was placed on the webpage of the SCJ.²⁹ Largely, this document is a summary of the guide mentioned in the previous paragraph. At the end, it contains a table on moral damage to be awarded for violation of various articles of the ECHR. According to this document, judges may grant the following moral compensations:

*Table no. 2
The moral damage for the violation of the ECHR
recommended by the SCJ on 23 July 2012*

ECHR	The amount of the moral compensation (EUR)
Violation of Art. 2 (Right to life)	6,000 – 30,000
Violation of Art. 3 (Prohibition of torture)	3,000 – 5,000
Violation of Art. 5 (Right to liberty and security)	600 – 30,000
Violation of Art. 6 (Right to a fair trial)	1,000 – 7,000
Violation of Art.1 Prot. 1 (Protection of property)	1,000 – 6,000

²⁸ http://www.justice.gov.md/public/files/file/GHID_PRACTIC_DAG_MJ_mai_2012.pdf

²⁹ <http://csj.md/admin/public/uploads/Opinie%20privind%20satisfac%C5%A3ia%20echitabil%C4%83.doc>

Violation of Art. 7 (No punishment without law), 8 (Respect for private and family life), 9 (Freedom of conscience and religion), 10 (Freedom of expression) and 11 (Freedom of assembly and association)	1,000 – 10,000
Compensation under the Law no. 1545	0 – 10,000

Although the moral damage recommended in the common opinion of the president of the SCJ and GA is generally in line with the amounts awarded by the ECtHR in comparable cases, this is not so when it comes to the proposed maximum moral compensations for violation of Art. 3 of the ECHR. In the *Gurgurov* judgment (16 June 2009) the ECtHR granted EUR 45,000 as non-pecuniary damage, mainly for violation of Art. 3. For similar violations, the ECtHR awarded EUR 20,000 in the *Corsacov* judgment (4 April 2004). In the common opinion of the president of the SCJ and GA the maximum proposed amount is much smaller and can lead to errors.

Both the guide issued by the GA and the common opinion of the president of the SCJ and GA can influence judicial practices to ensure that sufficient compensations for breach of the ECHR are granted in the Republic of Moldova. However, it is still too early to assess the impact of these documents.

Actions under Law no. 1545 and no. 87 are not subject to court fees. Usually, judges compensate a small part of the cost of legal assistance. It seems that judges considered the fees charged by advocates to be excessive,³⁰ although, apparently, the ECtHR had a different opinion in this respect.³¹ Quite a few advocates justify in court the time spent on the case and most of them charge fees per action and not per hour. Often, legal fees are not claimed, the party being aware from the beginning that there is no chance for full compensation.

Even if complex procedures and cases take years to come to be considered by the CSJ, compensated legal assistance in domestic procedures rarely exceeds EUR 700. A tendency not to grant higher compensations for legal assistance than the amount of non-pecuniary damage was observed among judges. Sometimes, even if all the claims are found admissible, the total compensations awarded are less than the cost of legal services.

Judges usually do not motivate why they do not compensate a substantial part of the legal costs related to the hearing of the case. Apparently, judges consider, as it is the case of moral compensations, that the compensation of legal expenses is more a matter of judge's discretion, than a legal issue. Usually, judges do not analyze whether the time spent for the case was sufficient and whether the charged fee is reasonable. By 2012, judges took into account only the amounts already paid to the advocate and usually did not compensate the advocate's working time that has not yet been paid by the client for reasons of lack of funds.³²

³⁰ Apparently, it is difficult for the judges to offer damages for honorariums of several thousand Euros for a case of average complexity, when they themselves have a monthly salary of several hundred Euros and many pending cases. On the other hand, the quality of legal services offered by advocates is rather low.

³¹ In March 2012, the Council of the Lawyers' Union (The Bar) recommended advocates to charge fees ranging from 50 to 150 EUR per hour. It seems that the ECtHR compensates fees of 50-60 EUR per hour charged by Moldovan advocates. In 2008, the ECtHR fully compensated a fee of 100 EUR per hour in a complex case (see judg. *Oferta Plus SRL*, 12 February 2008).

³² According to p. 21 of the Judgment of the Plenary no. 25, of 28 June 2004, only costs related to legal assistance incurred shall be compensated.

This practice is not consistent with ECtHR jurisprudence (see judg. *Flux (no. 2)*, of 3 July 2007, § 60). Apparently, judges need training in the field of compensation of legal fees.

3.3 Conclusions

Rules on application of the ECHR in the legal system of the Republic of Moldova

- a) International treaties to which Republic of Moldova is party are part of the legal system of the Republic of Moldova. In case of inconsistency between international law and domestic regulations, the law enforcement bodies shall apply international law norms, while the Parliament must check the compliance of the draft laws with international regulations;
- b) In 2009, the Constitutional Court ruled on a sensitive political issue, disregarding the rulings from a judgment of the ECtHR. Since 2010, the Constitutional Court referred in most of its judgments to the ECHR or the ECtHR jurisprudence. This phenomenon has increased since 2011, when a new president of the Constitutional Court was elected. In 2011, the structure of judgments of the Constitutional Court was changed, and is now similar to the structure of the ECtHR judgments;
- c) The CrPC and the CiPC require the judge to apply the ECHR directly and to disregard domestic legislation which is contrary to the ECHR. The CC does not contain any specific provisions in this respect. Most interviewed judges said they did not encounter clear situations where the domestic legislation was contrary to the ECHR, however the ECtHR jurisprudence is applied directly if it requires an approach that is not covered by the domestic legislation.

Application of standards of the European Court of Human Rights

- a) The judgments adopted by the Plenary of the SCJ have contributed to the dissemination of the ECtHR jurisprudence. The judgments are quite useful for judges, but are presented in general terms and are sometimes contradictory, while the SCJ practice is not yet uniform. After 2009, the SCJ contributed to the application of the ECHR by placing recommendations on the website, developing internal rules on application of the ECtHR jurisprudence by the SCJ, as well as by analysing the judicial practice;
- b) In the early 2000s, judges considered ECHR as a declarative tool and did not apply it. The ECHR started to be considered more carefully after 2004–2005, when the ECtHR delivered judgments on a number of Moldovan cases. During 2007–2008, in sensitive cases, the SCJ took a position obviously favouring the state and disregarding the ruling of the ECtHR. The majority of the respondents argued that this attitude is due to Soviet mentality, where the state's interests were put above the person's interests, to unjustified dismissals of many judges in 2002–2004, and to the change of leadership in the judiciary, after which many judges did not have the courage to oppose the state, and to corruptibility of some judges, which made them vulnerable;
- c) In 2012, the SCJ was perceived as applying the ECHR more often than other courts. In 2007, the SCJ awarded modest compensations by direct application of the ECHR, but it was not proactive in expanding this practice;

- d) The SCJ references to the ECtHR jurisprudence looked stereotype and were repeated in all decisions concerning the same issue. There were rare cases when references were adapted to specific cases and when SCJ explained the relevance of the ECtHR jurisprudence for the particular case under consideration;
- e) District court and court of appeal judges are reluctant to apply the ECHR. They prefer to apply the ECHR in line with the SCJ jurisprudence, which is not sufficiently uniform. According to interviewees, few appellate courts and district courts judges know the ECtHR jurisprudence well enough to apply it appropriately in concrete cases. On the other hand, the number of references to the ECHR in the judgments of the lower courts is increasing;
- f) Prosecutors are more reluctant than judges in applying the ECHR. This phenomenon can be explained by internal hierarchy and by the tendency of lower level prosecutors to follow the existing practices;
- g) A small number of advocates are specialized in representing at the ECtHR, and their references to the ECtHR jurisprudence are well-reasoned. Several hundred advocates make often and general references to the ECtHR jurisprudence. The remaining advocates do not refer to the ECtHR jurisprudence;
- h) Moldovan law does not limit the possibility of judges to grant adequate compensation for violations of the ECHR. However, at least until 2007, Moldovan judges awarded moral compensations for the violation of the ECHR only in cases where domestic law expressly provided for such a right;
- i) Compensation for damages caused by violation of a right provided by the ECHR was primarily granted based on Laws no. 1545 and no. 87. Actions under Law no. 1545 were considered by the SCJ up to 2.5 years, which appears to be too lengthy. Actions under Law no. 87 are considered in appeal on points of law mostly for a maximum of 8-10 months, which is acceptable. Compensations are paid by the Ministry of Finance within two to four months, which is consistent with ECtHR jurisprudence;
- j) Moral compensations granted for ECHR violations are not uniform. Usually, the compensations are much smaller than those granted by the ECtHR. However, lately, the amounts granted as moral compensations have been growing. Usually, large compensations were granted to notorious persons and for subsequent settlements of cases at the ECtHR;
- k) In 2012, the GA and the president of the SCJ developed standards that can oblige Moldovan judges to grant sufficient compensation for breach of the ECHR. It is still too early to assess their impact;
- l) Actions filed under Laws no. 1545 and no. 87 are not subject to court fees, but judges compensate only a small part of the cost for legal assistance. Judges consider that the fees charged by advocates as exaggerated. Few advocates justify in court the time spent on the case and most of them charge fees per action and not per hour. Many legal fees are not claimed, the party being aware from the very beginning that there is no chance for full compensation;
- m) Usually, the judges do not motivate why a substantial part of the legal costs related to the hearing of the case is not compensated. Apparently, judges consider that the

compensation of legal fees is more an issue related to the discretion of the judge than a legal issue. Judges do not compensate the advocate's working time which has not been paid by the client. This practice is not in line with the ECtHR jurisprudence.

3.4 Recommendations

Regulations on application of the ECHR in the legal system of the Republic of Moldova

- a) The SCJ should explain to judges how to apply the ECHR directly in detriment of domestic law (Art. 7 para. 5 CrPC and Art. 12 para. 4 CiPC) as long as both the CrPC and the CiPC require judges to raise the exception of unconstitutionality.

Application of standards of the European Court of Human Rights

- a) Plenary SCJ judgments should be more explicit. Their adjustments to ECtHR standards should not be limited to inserting into them ECtHR standards. The provisions of the judgment which contravenes the ECHR should be excluded;
- b) The SCJ should unify its legal practice, while its judgments should be more explicit to ensure that judges from lower courts better apply ECtHR standards;
- c) Measures taken to change the mentality of judges should to be continued, in order to eliminate the perception that, in granting compensations, judges are biased toward the state. The implementation of the common opinion of the president of the SCJ and GA on just satisfaction could lead to rapid and appropriate results;
- d) Acceptance of practices contrary to the ECHR by courts of appeal, especially regarding arrest, should be urgently stopped, in order to send a clear message to investigative judges that any deprivation of liberty must be reasoned correspondingly. This phenomenon will be difficult to eradicate without involvement of the SCJ;
- e) A comprehensive assessment of the quality of the activities of investigative judges regarding the authorization of criminal investigation actions should be carried out in order to ensure that the existing deficient practices are not continuing;
- f) Actions under Law no. 1545 should be treated with priority in order to ensure that compensations are received within proper time;
- g) The SCJ practice of granting moral compensations through direct application of the ECHR should be extended and the judges should be informed accordingly;
- h) The trend of increasing moral compensation awarded for violations of the ECHR should be supported by the SCJ and courts of appeal. The common opinion of the president of the SCJ and the GA on just satisfaction is a step in this direction. However, it should be slightly adjusted to ensure that the recommended amounts are in line with the just satisfaction awarded by the ECtHR;
- i) Judges should be trained in the field of compensation of legal costs and expenses, they should reason their judgments in this part and the SCJ should exclude the practice of refusal to compensate the advocate's working time that has not been yet paid by the client.

Republic of Moldova at the European Court of Human Rights

4.1 Introduction

On 12 July 1995 the Parliament of the Republic of Moldova ratified the Statute of the CoE and Moldova became member of the CoE the following day. On 15 July 1995 the Moldovan representative signed the text of the ECHR, and the Parliament in Chişinău ratified it two years later, on 24 July 1997. The ECHR entered into force for Moldova on 12 September 1997.

The table no. 3 contains statistical data concerning applications submitted to the ECtHR against Moldova in 2007-2011¹.

Between 1996 and May 2012 three judges from the Republic of Moldova have served at the ECtHR: between 1996 and 2001 – Tudor PANȚÎRU, between 2001 and 2008 – Stanislav PAVLOVSKI and between 2008 and April 2012 – Mihai POALELUNGI. The latter withdrew from the position of judge to the ECtHR in order to take over the position of President of the Moldovan SCJ, starting 1 May 2012. In October 2012 Mr. Valeriu GRÎȚCO was elected by PACE as judge on the ECtHR.

At the beginning of 2012 four Moldovan lawyers were acting within the ECtHR Registry. Their main task is to assist the ECtHR judges in the examination of Moldovan cases. In July 2012 an additional three Moldovan lawyers took up positions at the Registry of the ECtHR. They were selected by the ECtHR from a list proposed by the Moldovan Government. The main task of the new lawyers is to contribute to the examination of Moldovan cases. They are remunerated by the Government of the Republic of Moldova. The lawyers are contracted for a period of 12 months, with the possibility of extension for another 12 months.

4.2 Submitted applications

Between 1998 and 31 December 2011 ECtHR registered 7,406 applications submitted against Moldova, out of which 1,025 in 2011. Moldova is among the leading countries according to the number of applications submitted per capita. In 2011 Moldova was in the 3rd place, with a coefficient of 2.88 applications per 10,000 residents. Applications to the ECtHR against Moldova are addressed 3.5 more often than the average for all contracting states.² The high number of applications submitted against Moldova could be explained by

¹ Data from the activity reports of the ECtHR.

² Average coefficient at the ECtHR in 2011 was 0.79.

*Table no. 3
Statistical data concerning the applications lodged with the ECtHR in 2007-2011 against Republic of Moldova*

	2007	2008	+/-2007	2009	+/-2008	2010	+/-2009	2011	+/-2010	1.11.98-31.12.11
Applications allocated to a decision-making body	887	1,147	+29%	1,322	+9.5%	945	-28.5%	1,025	+8.5%	7,406
Applications declared inadmissible or struck out	201	477	+137%	386	-19.3%	434	+12.4%	550	+26.7%	3,244
Applications communicated to the Government	73	126	+73%	216	+71.5%	135	-37.5%	118	-12.5%	946
Applications declared admissible	61	29	-54%	36	+17%	21	-41.6%	26	+23.8%	268
Applications struck out based on friendly settlements of the case or unilateral declaration of the Government	19	20	+5.3%	24	+20%	32	+133%	25	-18.7%	123
Judgments delivered	60	33	-45%	30	-9.1%	28	-6.6%	31	+10%	227
	31.12.07	31.12.08	+/-	31.12.09	+/-	31.12.10	+/-	31.12.11	+/-	
Applications pending before a decision-making body	11,830	22,442	+33%	33,349	+37%	33,826	+14.2%	4,261	+11.4%	

**This data have been taken from the annual activity reports of the ECtHR*

an increasing level of awareness in the Moldovan society with respect to the activities of the ECtHR, but also by serious dysfunctions in the justice system.

The number of applications submitted against Moldova increased continuously until 2009, when 1,322 applications were submitted. In 2010, the number of applications decreased to 945 (by 28.5% compared to 2009), and in 2011 it increased again, up to 1,025 (by 8.5% compared to 2010). According to the data provided by the ECtHR Registry, between 1 January and 30 June 2012, ECtHR registered 341 applications against Moldova, confirming a decrease in the number of submitted applications by more than 30% compared to the same period of 2011. The fluctuation of the number of applications submitted to the ECtHR over the last three years is difficult to explain. We cannot ascertain that a sudden improvement of the level of human rights protection has taken place, which would be in fact the most natural reason for a substantial decrease in the number of applications submitted. Probably, in 2010, after the change of Government in Chişinău, the hope of potential applicants that their situation will be redressed at the national level has probably grown stronger, while the decrease in the number of applications in 2012 could be explained by adoption of the Law no. 87³, Law on Assemblies⁴ and Law on Freedom of Expression,⁵ reticence of some lawyers⁶ to address the ECtHR after 2010 and 2011, when a high number of applications was declared inadmissible, as well as by the decrease within the first half of 2012 of the total number of applications submitted to the ECtHR.⁷

Out of 7,406 Moldovan applications registered between 1998 and 2011, by 31 December 2011 the ECtHR finalized examination of only 42.5% (3,145). According to the number of pending applications, on 1 January 2012, Moldova was on 8th place, with 4,261 applications. They amounted to 2.8% of the total number of pending applications (151,600). In this field, Moldova nominally surpassed countries like France, Germany, Great Britain or Bulgaria, with substantially larger populations than Moldova.

The number of pending applications against Moldova increased each year until 2012. This confirms the fact that the four lawyers at the ECtHR Registry were unable to process such a high number of received applications. According to statistical data published by the ECtHR, until 30 June 2012, the number of pending applications against Moldova was reduced by 6% compared to 1 January 2012, and amounted to 4,000. This decrease can be

³ Law no. 87, of 21 April 2011, in force from 1 July 2011, introduced the right to request compensation from the state for prolonged non-enforcement of court judgments and violations of the right to have the case examined within reasonable time. This Law was adopted following the ECtHR judgment in the case *Olaru and Others*, from 28 July 2009.

⁴ The Law on Assemblies (no. 26, of 22 February 2008, in force from 22 April 2008) substantially liberalized the rules concerning organization of assemblies.

⁵ The Law on Freedom of Expression (No. 24, from 24 April 2010, in force since 10 October 2010) introduced a mandatory pre-judicial procedure and short time limits for addressing the court with a defamation request.

⁶ According to data received from the ECtHR Registry, in more than 50% of Moldovan applications which were received by the Court, applicants are represented by a lawyer from the moment of submission of the application.

⁷ According to statistical data of the ECtHR, in the first six months of 2012, ECtHR registered 6% less applications (33,250) than in the same period of 2011 (35,550).

explained by enhanced efficiency of the ECtHR after introduction of Protocol 14.⁸ The number of pending applications against Moldova should substantially decrease in the near future, mainly due to the contribution of the additional three lawyers who took up their positions at the ECtHR Registry in July 2012.

Out of 4,261 applications pending by 1 January 2012, 1,093 (25.6%) applications were either communicated to the Government or were not communicated, but assigned for examination to a chamber of seven judges or to a committee of three judges.⁹ These are applications with high chances of success. This percentage is smaller than average with regard to files with high chances of success at the ECtHR (39.3%). The number of these applications has been decreasing lately. These numbers confirm that even though the number of applications against Moldova to the ECtHR increases, a high number of Moldovan applications submitted to the Court have poor chances of success. This phenomenon could be explained by a widespread perception in Moldova that ECtHR acts as a fourth instance. This perception is explained by insufficient knowledge of the ECtHR by Moldovan advocates and by the decrease, during recent years, of the number of applications submitted to the ECtHR by experienced lawyers.

According to statistical data presented in the Table no. 3, 92.3% of Moldovan applications examined until 31 December 2011 (3,145) were declared inadmissible or struck from the list of cases, and only in 7.6% of Moldovan applications the Court delivered judgments. Comparing to the average, the percentage of applications against Moldova where judgments were delivered by the ECtHR is high.¹⁰ The high number of judgments delivered against Moldova could be explained by prioritization of certain categories of cases by the ECtHR Registry, by existence of systemic problems in the Moldovan justice system, as well as by specialization of some Moldovan advocates in representation of cases at the ECtHR¹¹.

During interviews with ECtHR employees, it was mentioned that starting with 2010, the number of applications with high chances of success decreased. Applications concerning ill-treatment are few, and most of them are related to events that took place during the political unrest in April 2009. The number of applications concerning Art. 5 of the ECHR has also decreased. Applications concerning Art. 10 and 11 of the ECHR have practically disappeared. Until 2011 ECtHR continued to receive applications concerning non-enforcement of court judgments. Nevertheless, since Law no. 87 entered into force on 1 July 2011,¹² ECtHR declared most such applications inadmissible (for instance, dec. *Balan v. Moldova*, 24 January 2012), suggesting applicants to seek compensation at the domestic level.

⁸ According to statistical data of the ECtHR, in the first six months of 2012, the number of applications pending before the ECtHR decreased by 5% compared to 1 January 2012.

⁹ See http://www.echr.coe.int/NR/rdonlyres/11CE0BB3-9386-48DC-B012-AB2C046FEC7C/0/STATS_EN_2011.PDF, p. 41.

¹⁰ On average, ECtHR delivers judgments in 4-5% of applications.

¹¹ In more than 85 (37.4%) out of 227 judgments delivered against Moldova until 31 December 2011, applicants were represented by five lawyers (Mr. Vladislav GRIBINCEA, Ms. Janeta HANGANU, Mr. Vitalie IORDACHI, Mr. Vitalie NAGACEVSCHI and Mr. Alexandru TĂNASE).

¹² This Law introduced a compensation remedy for violation of reasonable term for judging cases or for enforcement of judgments.

4.3 Communicated applications

Starting from 2008 ECtHR is annually communicating more than 100 applications to the Moldovan Government. Between 1998 and 31 December 2011 ECtHR communicated 946 Moldovan applications. By 1 January 2012, 393 of them were still pending.¹³

Applications communicated in 2011 and 2012 mainly refer to legal issues which were already resolved in Moldovan judgments delivered until 2010, such as alleged ill-treatment by police, inadequate investigation of cases of ill-treatment and death, detention conditions, insufficient justification of preventive arrest, or examination of cases in appeal on point of law without informing the parties about the hearing. These applications refer to situations that ended in 2007–2009. Certain cases concerning Art. 3 of ECHR refer to situations that took place in 2009–2011. Even though it may be ECtHR policy to communicate certain categories of cases at certain periods of time, the subject of communicated applications confirms that many systemic problems underlined in the first ECtHR judgments were still valid several years later.

On 1 September 2012 the most important pending applications were the following: *Catan and Others v. Moldova and Russia* (No. 43370/04), where the applicants complained against obstruction of the activity of schools from the Transdniestrian region that studied according to a didactic curriculum elaborated by Chişinău; *Pavlicenco* (no. 41219/07), where the applicant alleged violation of Art. 6 of ECHR following the refusal of courts to examine a defamation action, relying on the immunity of the President of the country; *Munteanu* (34168/11), where applicants complained of the lack of an adequate reaction by authorities to their complaints concerning domestic violence; or *Pareniuc* (no. 17953/08), that refers to an alleged provocation to take a bribe.

Until 31 December 2011 ECtHR adopted 123 decisions on striking out Moldovan applications based on friendly settlement agreements, or on proposals of the Government which were not accepted by applicants. In about 75% of these decisions, cases are struck out as a result of friendly settlement. In the remaining 25%, the reasonable proposal of the Government was not accepted by the applicant, and ECtHR struck the case out based on a unilateral declaration by the Government. The first decision of this type was adopted in October 2005,¹⁴ and until the end of 2006 only three decisions of this type were adopted. Apparently, this was due to the reticence of Moldovan GA to use the friendly settlement mechanism. The number of friendly settlements and unilateral declarations increased substantially after December 2006, when GA changed. For instance, 81 out of 123 decisions were adopted in the period 2009–2011. The large majority of these cases refer to well-established jurisprudence of the ECtHR. Usually, the Government admits violations of ECHR and offers compensation.

¹³ A se vedea http://www.echr.coe.int/NR/rdonlyres/11CE0BB3-9386-48DC-B012-AB2C046FEC7C/0/STATS_EN_2011.PDF.

¹⁴ Dec. *Combustibil Solid SA*, of 25 October 2005. In this case, the applicant alleged non-enforcement by state authorities of a domestic judgment. Following a friendly settlement agreement signed in 2003, the court judgment was enforced and the applicant waived any further claims.

4.4 Delivered judgments

4.4.1 Analysis of statistical data

Until 31 December 2011 ECtHR delivered 227 judgments on Moldovan cases. According to the number of judgments delivered, Moldova is ahead of countries such as Belgium, Switzerland, the Netherlands and Spain,¹⁵ that became parties to the ECHR long before Moldova and have a much larger population than Moldova.

Out of the total number of 227 judgments, 60 judgments were delivered in 2007, 33 in 2008, in 30 in 2009, 28 in 2010 and 31 in 2011. During the first half of 2012, 16 more judgments were delivered. Despite the fact that the number of ECtHR judgments concerning Moldova has decreased after 2007, this does not necessarily mean that the respect for human rights in Moldova has improved significantly. Many judgments delivered in 2007 referred to the same problem – non-enforcement of domestic judgments. After 2007 ECtHR used the practice of delivering a single judgment in several similar cases. At the same time it concentrated on the most important violations and many repetitive applications are still pending examination. On the other hand, after 2007 many cases where judgments could be delivered ended with a friendly settlement or with acceptance by the ECtHR of unilateral declarations by the Government.

Out of 227 judgments, 16 judgments refer only to just satisfaction, applications were struck out by two judgments, and in three other cases two judgments were delivered on the cases, respectively. Out of 206 final judgments where the merits of the case were examined, only two judgments (0.97%) had the conclusion that Moldova had not violated ECHR.¹⁶ This percentage is much below the average of the ECtHR.¹⁷ This could be explained by the clear nature of violations and lack of reaction by Moldovan authorities, poor reasoning of court judgments,¹⁸ good knowledge of the ECtHR by some Moldovan advocates, and insufficient quality of representation of the Moldovan Government at the ECtHR.

In 204 Moldovan judgments adopted in applicants' favour, more than 300 violations of the ECHR were found¹⁹, which gives the following chart:

¹⁵ Belgium became party to the ECHR in 1955 and until 31 December 2011 ECtHR delivered 171 judgments involving the country; Switzerland became party to the ECHR in 1974, and in total 115 judgments were delivered involving the country; the Netherlands became party to the ECHR in 1954, and 134 judgments were delivered involving the country; Spain became party to the ECHR in 1979, and ECtHR delivered 79 judgments involving the country.

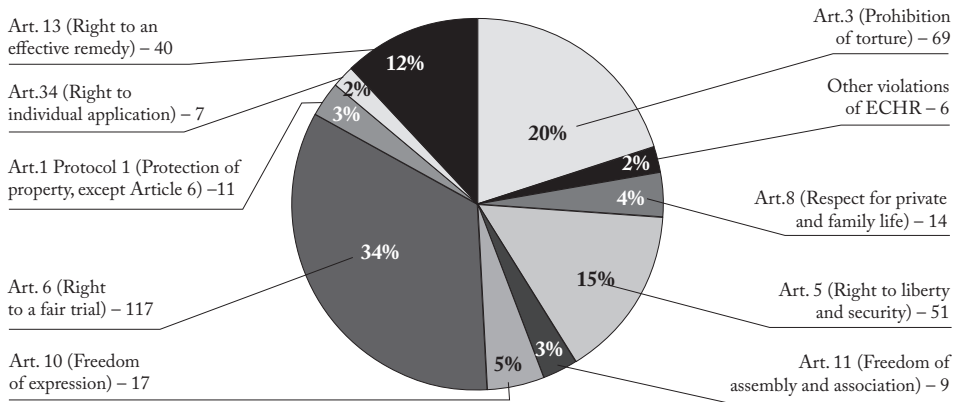
¹⁶ In the judgment *Flux (no. 6)*, of 29 July 2008, a Chamber of the ECtHR found, with the vote of four judges for and three against, that no violation of Art. 10 ECHR had taken place, and in the judgment *Ivanțoc and Others v. Moldova and Russia*, of 15 November 2011, ECtHR reached the same conclusion.

¹⁷ According to ECtHR data (http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/TABLEAU_VIOLATIONS_EN_2011.pdf), until 31 December 2011, it delivered 14,854 judgments, 13,341 of them referred to the merits of the case. In 916 judgments (6.86%) ECtHR did not find a violation.

¹⁸ When examining if interference was justified, ECtHR does not accept other grounds than those invoked by domestic courts (for instance judgment *Șarban*, 4 October 2005, § 102).

¹⁹ This number does not include violations of Art. 1 Protocol 1, when violation of Art. 6 of ECHR was found in cases concerning non-enforcement and illegal quashing of domestic judgments.

*Violations of ECHR found in the judgments concerning the Republic of Moldova
(1997-2011)*



As opposed to other states with many convictions at the ECtHR, where majority of judgments refer to one or several systemic or repetitive problems,²⁰ Moldovan judgments refer to a wide range of problems. In most cases where Moldova was convicted by the ECtHR, they were finalized on the domestic level with a court judgment or a decision of prosecutors, meaning that the ECtHR found shortcomings in the justice or prosecutor's system. Lack of adequate reaction in so many situations supports the notion that prosecutors and judges were not applying ECHR properly.

Out of 117 violations of Art. 6 of ECHR, 59 represent non-enforcement of domestic judgments, 19 refer to improper quashing of final court judgments, and nine judgments refer to lengthy judicial proceedings. The vast majority of ECtHR judgments concerning non-enforcement of court judgments were delivered before 2008. In 2011 seven judgments of this type were delivered, however they were quite different from judgments delivered earlier. In 2011 the Republic of Moldova was convicted four times for improper quashing of final court judgments through revision. Respect for reasonable time for case examination does not represent a systemic problem in Moldova. The total of nine convictions for non-observance of the demand for reasonable time for examination of cases refer to unusual situations or to repeated sending of cases for reexamination.

ECtHR has found 69 times that Moldova violated Art. 3 of ECHR, including 13 times in 2011. In 14 judgments it found that applicants were ill-treated, in 24 judgments that ill-treatment was not adequately investigated, in 16 judgments that applicants were detained in poor conditions, and in 12 cases detainees did not receive necessary medical assistance.

The right to liberty and security (Art. 5 of ECHR) was violated 51 times. In 15 cases, applicants were deprived of their liberty against provisions of domestic law, in 15 cases the arrest warrants were not sufficiently motivated and in six cases applicants were deprived of their liberty without a reasonable suspicion.

²⁰ For instance, more than half of the ECtHR judgments delivered concerning Italy or Poland by 31 December 2011, and where a violation of ECHR was found, referred to non-observance of reasonable time.

The right to an effective remedy (Art. 13 of ECHR) was violated 40 times. In 20 cases, applicants did not have legal remedies oppose to continuous violations of their rights, such as non-enforcement of court judgments, excessive length of judicial proceedings, or poor conditions of detention. In 20 judgments a violation of Art. 13 was found because the applicants could not receive compensations at the domestic level for non-enforcement of judgments, ill-treatment or excessive length of judicial proceedings.

In 17 judgments ECtHR found that the right to freedom of expression (Art. 10 of ECHR) was violated. 13 of them referred to incorrect examination of defamation actions or accusations.

The remaining articles of the ECHR were violated less than 15 times each and these violations refer to various issues. For more information in this regard, see chapter 6 of the Study.

Based on 227 judgments delivered by ECtHR, the Government of the Republic of Moldova has paid more than EUR 12.8 mil. More than EUR 10 mil. (78% of the total amount) was paid as a result of only three judgments.²¹ More than EUR 9.2 mil. was awarded in two judgments delivered in 2008.²² This amount is larger than the total budget of Moldovan courts for 2008. Until 31 December 2011 the Government of the Republic of Moldova paid more than EUR 1 mil. based on friendly settlement agreements or unilateral declarations.

ECtHR rarely awards compensations of more than EUR 1 mil. The three Moldovan cases where more than EUR 10 mil. was paid referred to economical relations with the state or with state companies, and the violations found by the ECtHR were particularly serious.²³ In all of these cases, SCJ delivered judgments in favour of the state, disregarding the ECHR.

According to the 2009 activity Report of the Committee of Ministers of the Council of Europe (CM) on supervision of the execution of ECtHR judgments,²⁴ Moldova held first place with regards to the amount of just satisfaction to be paid based on ECtHR judgments.²⁵ It looks like Moldova is among the top ten countries on this issue, even though it is the poorest country in Europe.

²¹ *Oferta Plus SRL* (just satisfaction), of 12 February 2008 (EUR 2.5 mil.), *Unistar Ventures GMBH*, of 9 December 2008 (EUR 6.7 mil.) and *Dacia SRL* (just satisfaction), of 24 February 2009, (EUR 0.9 mil.).

²² Judgments *Unistar Ventures*, where just satisfaction exceeded EUR 6.7 mil., and *Oferta Plus SRL*, of 12 February 2008, where just satisfaction exceeded EUR 2.5 mil.

²³ In the *Oferta Plus SRL* judgment, of 19 December 2009, ECtHR ruled that SCJ quashed a final court judgment delivered against the state in an arbitrary manner, and subsequently the director of the company was arrested because he did not want to withdraw his application from ECtHR; in the *Unistar Ventures* judgment ECtHR found that, for several years, central authorities failed to return several millions Euro to the applicant; and in the judgment *Dacia SRL*, of 18 March 2008, ECtHR found that an annulment of the right of the applicant to an immovable property could not be justified, and furthermore that the Government tried to prevent the applicant from submitting his claims on just satisfaction.

²⁴ http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2009_en.pdf, p. 56.

²⁵ Out of a total of EUR 53.6 mil, in 2009, Moldova had to pay EUR 14.2 mil.. EUR 14.2 mil. mainly included compensations awarded in the *Unistar Ventures* judgment (EUR 6.7 mil.) and the *Dacia SRL* judgment. In the last judgment, ECtHR obliged the Government to pay EUR 7.2 mil. or to return immovable property and pay EUR 0.9 mil. Government chose to return the property and pay EUR 0.9 mil.

4.4.2 Most important Moldovan judgments

Out of 227 Moldovan judgments delivered by 31 December 2011, four (1.8%) were adopted by the Great Chamber of the ECtHR.²⁶ These are cases that are considered to be particularly important from a legal point of view. This percentage is rather high, considering that since 2000 ECtHR delivered more than 13,800 judgments and only 211 (1.5%) of them were delivered by the Great Chamber. This percentage is very high compared to other countries from the region.²⁷

The four judgments delivered by the Great Chamber are *Ilaşcu and Others v. Moldova and Russia* (7 July 2004), *Guja* (12 February 2008), *Paladi* (10 March 2009) and *Tănase* (27 April 2010). In the *Ilaşcu* case, the main issue was to determine which state was responsible for violating human rights in Transdniestria, and in the *Guja* case, ECtHR examined for the first time the issue related to protection of whistleblowers. In the *Paladi* judgment, ECtHR clarified the limits of the obligation of the state to observe interim measures indicated by the Court, while in the *Tănase* judgment, ECtHR examined if the existing ban for Moldovan citizens with double and multiple citizenships to become Member of Parliament of the Republic of Moldova was justified. On 1 September 2012 the application *Catan and Others v. Moldova and Russia* (no. 43370/04), where applicants complained against hindrance of the activity of schools in Transdniestria based on a didactic curriculum elaborated by Chişinău, was pending before the Great Chamber.

Several important Moldovan judgments were adopted by a Chamber of seven judges. On 11 July 2006 ECtHR delivered the *Boicenco* judgment, where it found that certain provisions from the CrPC concerning arrest and practice of detaining people pending trial without an arrest warrant, are contrary to Art. 5 of ECHR. In the *Iordachi and Others* judgment (10 February 2009), ECtHR found that Moldovan legislation concerning interception of telephone conversations is not sufficiently clear to comply with Art. 8 of ECHR. In the *Olaru and Others judgment* (28 July 2009), ECtHR applied the pilot procedure and found that non-enforcement of court judgments related to providing social housing is a systemic problem, and called on the Government of the Republic of Moldova to introduce a special compensatory remedy for this type of situations, and to settle more than 100 cases of this type. On 13 July 2010 ECtHR delivered the *Manole and Others* judgment, where the Court for the first time ruled on the obligation of states under Art. 10 of ECHR to ensure editorial independence of public broadcasters. At the same time, in the *Ivanţoc and Others v. Moldova and Russia* judgment (15 November 2011), after the refusal of Russia to accept relinquishment of jurisdiction to the Grand Chamber, a Chamber of the ECtHR found that ECtHR is indeed competent in awarding compensations for non-enforcement of the *Ilaşcu* judgment, and that the Republic of Moldova complied with its obligations under the ECHR.

The high number of important cases can be explained by a good knowledge of ECHR by a number of Moldovan lawyers. On the other hand, the diversity of cases suggests that the legal

²⁶ ECtHR can examine cases in panels of three judges (committee), seven judges (Chamber) or 17 judges (Great Chamber). The most important cases for ECtHR jurisprudence are examined by the Great Chamber.

²⁷ Out of 822 judgments concerning Ukraine, none were delivered by the Great Chamber. The Great Chamber has adopted only 11 (0.9%) out of 1,212 judgments involving Russia.

system of the Republic of Moldova still has many systemic or repetitive problems, including resistance or lack of interest of relevant actors to apply ECHR properly at the domestic level.

The most serious violations by Moldova were found in judgments *Gurgurov* (16 June 2009), where ECtHR established that the applicant was ill-treated and that prosecutors tried to hinder the applicants attempts to bring the perpetrators to justice, *Muşuc* (6 November 2007) and *Stepuleac* (6 November 2007), where applicants were arrested based on warrants issued by judges without a reasonable suspicion that they had committed a crime, *Oferta Plus SRL* (19 December 2006), where the director of the applicant was arrested in order to discourage the company in pursuing its case before the ECtHR, or *Baroul Partener-A* (16 July 2009), where ECtHR concluded that the Government acted in bad faith in order to expropriate the applicant.

4.5 Supervision of execution of judgments

According to Art. 46 para. 1 of the ECHR, the states undertake to abide by the final judgment of the Court in any case to which they are parties. This means both redressing the violation found against the applicant, as well as taking measures to avoid similar situations in the future. The Committee of Ministers of the Council of Europe (CM) is responsible for the supervision of execution of ECtHR judgments. This is a lengthy process. It will continue until the CM is convinced that redress was offered and that the systemic problem that generated the violation of the ECHR has been discontinued. CM may monitor enforcement of judgments according to the enhanced or the usual procedure. The enhanced procedure is applicable in cases that require urgent reactions or important changes.

According to the Activity Report of the CM on supervision of the execution of ECtHR judgments and decisions for 2011, on 31 December 2011 CM was supervising execution of 10,689 judgments. 1,336 of them were leading judgments and the others referred to problems already addressed in leading judgments.²⁸ 202 of them were Moldovan judgments and 59 of them leading judgments.²⁹

CM grouped all judgments pending execution in categories according to the main problem from the judgment. The main categories of Moldovan judgments mentioned by the CM in its Activity Report for 2011 are the following:

Table no 4
The main categories of Moldovan judgments identified by the CM

Main judgment	Number of judgments concerned	Case description
<i>Luntre</i> (15 June 2004) and <i>Olaru and Others</i> (28 Iulie 2009) – pilot procedure	51	Failure or substantial delay by the administration or state companies to abide by final domestic judgments; absence of an effective remedy.
<i>Ciorap</i> (19 June 2007)	12	Poor conditions of the pre-trial detention in the remand centres under the authority of the Ministry of Justice; absence of an effective remedy.

²⁸ http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2011_en.pdf, p.34.

²⁹ Ibidem, p. 38.

<i>Corsacov</i> (4 april 2006)	13	Ill-treatment and torture in police custody; ineffective investigations; absence of an effective remedy.
<i>Șarban</i> (4 october 2005)	9	Violations mainly related to unlawful detention on remand (lawfulness, duration, justification).

According to the table no. 4, supervision of execution of judgments delivered in Moldovan cases lasts from four (*Ciorap*) to seven years (*Luntre*). According to the Activity Report of the CM on supervision of the execution of ECtHR judgments and decisions for 2011, at the end of 2011, 7% of all cases examined according to the enhanced procedure represented Moldovan cases. Moldova is found, accordingly, on 6th place among contracting states with the highest number of judgments of this type. These statistics confirm that too many important judgments against Moldova were not fully executed.³⁰

4.6 Conclusions

- a) A high number of cases against Moldova have been submitted to the ECtHR. According to the number of applications pending on 1 January 2012, Moldova is among the top 8 countries, well ahead of countries like France, Germany, Great Britain and Bulgaria. The high number of applications submitted against the Republic of Moldova could be explained by good knowledge of the activities of the ECtHR in the Moldovan society, as well as by serious dysfunctions in the justice system;
- b) The number of Moldovan applications submitted to the ECtHR increased constantly until 2009. In 2010, it decreased comparing to the previous year, while in 2011 it increased again. Apparently, the number of Moldovan applications will decrease in 2012. However, no sudden improvement of the level of protection of human rights was ascertained. Variations in the number of submitted applications can be explained by the change of the Moldovan Government in 2009, which led to enhanced hope of potential applicants that their situation could be redressed on the domestic level; by introduction of compensatory remedies for violations of the requirements for reasonable time; by reticence of some lawyers to address ECtHR following the fact that in 2010 and 2011 a high number of applications were declared inadmissible; and by the reduction of the total number of applications submitted to the ECtHR in the first half of 2012;
- c) The number of applications pending against Moldova will be reduced in the next years following implementation of Protocol 14 and the arrival of three Moldovan lawyers appointed to the ECtHR in July 2012, paid by the Government in Chișinău;
- d) Even though new applications against Moldova are still often submitted to the ECtHR, the number of applications with high chances of success is small, and it tends to decrease. This phenomenon could be explained by largely-spread perception in Moldova that ECtHR acts as a forth instance court, by insufficient knowledge of the ECHR by Moldovan lawyers and by decrease during last years of the number of applications submitted by lawyers with experience in representing cases at the ECtHR;
- e) Until 2006 the Moldovan Government did not apply friendly settlements frequently, but this practice changed after the appointment of the new GA in December of that year;

³⁰ Ibidem, p. 49.

- f) Out of applications examined until 2012, the percentage of cases where judgments were adopted was high. This could be explained by prioritization of certain categories of cases by the ECtHR Registry, by existence of systemic problems in the Moldovan justice system and by specialization of certain Moldovan lawyers in representing cases at the ECtHR;
- g) By 31 December 2011 ECtHR had delivered a high number of judgments against Moldova. The number of judgments decreased promptly in 2008 and since then it stayed on the same level. This does not mean that the respect of human rights in Moldova improved dramatically. Many judgments delivered in 2007 referred to one single case. After 2007, ECtHR used the practice of delivering one single judgment in several similar cases and concentrated on the most important violations, therefore examinations of many repetitive applications are still pending. At the same time, after 2007, many cases where judgments could be adopted ended with friendly settlement or acceptance of unilateral declarations of the Government; by the ECtHR
- h) Out of 206 Moldovan final judgments concerning merits delivered by 31 December 2011, only in two cases (0.97%) did the ECtHR find that Moldova did not violate the ECHR. This percentage is much lower than the 6.86 % ECtHR average, and could be explained by the clear nature of violations, lack of reaction by Moldovan authorities, poor justification of court judgments, good knowledge of ECtHR by some Moldovan lawyers, and by poor quality of representation of the Moldovan Government at the ECtHR;
- i) Comparing to other states with many lost cases at the ECtHR where the majority of judgments refer to one or several systemic problems, Moldovan judgments refer to a wide array of issues. The majority of cases in which Moldova has been convicted are related to flaws in the judicial and/or the prosecutorial system. Lack of adequate reactions in so many cases strengthens the opinion that prosecutors and judges did not apply the ECHR properly;
- j) Based on 227 judgments delivered by 31 December 2011, the Government of the Republic of Moldova paid more than EUR 12.8 mil. In 2009, Moldova was the No. 1 country with respect to the amount of just satisfaction due based on ECtHR judgments. It looks like Moldova is currently among the top ten countries in this field, even though it is the poorest country in Europe;
- k) More than EUR 10 mil. was paid based only on three ECtHR judgments. These cases related to economical relations with the state or state companies and the violations found by the ECtHR were particularly serious. In these cases, SCJ had delivered judgments in favour of the state, disregarding ECHR;
- l) Many Moldovan judgments are considered very important from a legal point of view. The high number of important judgments could be explained by good knowledge of ECHR by certain Moldovan lawyers, while their diversity suggests that the Moldovan legal system has been affected by many structural and systemic problems;
- m) Execution of ECtHR judgments by Moldova takes a long time and many important judgments are still not fully executed. At the end of 2011, Moldova was on 6th place among countries with the highest number of non-enforced important ECtHR judgments.

Execution of judgments of the European Court of Human Rights: individual measures

5.1 Introduction

By Art. 46 of the ECHR, the states undertook to abide by 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 the domestic proceedings or another form of redress (individual measures). Besides individual measures, governments must undertake measures aimed at preventing similar ECHR violations in the future (general measures). This chapter analyses the rules and practices from the Republic of Moldova concerning individual measures. General measures will be analysed in Chapter 6 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 of 17 judges. Judgments of the committee of three judges and of the Great Chamber are final at 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, from the date the appeal is rejected (see Art. 44 of the ECHR). 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.

5.2 Payment of just satisfaction

ECtHR informs the applicant in writing that the judgment is final and, if just satisfaction was awarded, it 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 always indicates 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 from the notification about the adoption of the ECtHR decision.

The state is not allowed to deduct anything from any amount awarded by the ECtHR for non-pecuniary damage. The same applies to any debt of the applicant to a third party or

to the state with respect to any amount awarded for legal costs due to the representative.¹ Amounts awarded by the ECtHR are net. Taxes and costs related to the receipt of the just satisfaction, such as transfer costs, shall be borne by the Government.² Failure to pay just satisfaction in time automatically generates the obligation to pay interest on the outstanding amount. Usually, the methodology of calculation of the interest is indicated in the operative part of the ECtHR judgment, or in the text of the ECtHR decision. Simple interest is equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

In a vast majority of cases, shortly after receiving the letter from the ECtHR, the applicants contact the Moldovan GA and submit requisites of their bank accounts where just satisfaction shall be paid. The GA shall submit this information to the Ministry of Finances (MF), which makes the payment.

In 2011, there were more than ten cases where applicants did not contact the Moldovan GA promptly to receive the just satisfaction (see the table no. 5). Most late submissions referred to payment of just satisfaction based on struck out decisions. In several cases, the GA tried to contact the applicants or their representatives.³ After contacting them, the GA received the necessary requisites of bank accounts. However, the fact that this information was received late led to delayed payment of just satisfaction.

Until autumn 2010, even after receiving bank requisites of the applicants, the MF was usually paying the just satisfaction to the office of Department for execution from the district where its headquarters are located (district Rîșcani, Chișinău). Apparently, payments were not transferred to the accounts of the applicant in order to avoid payment of bank fees charged by the applicant's bank.⁴ Applicants were informed by the MF about the payment by post and were encouraged to contact the execution office in order to receive just satisfaction. The execution office requested applicants to submit a written request in order to receive money. Usually, just satisfaction was paid cash to individuals. Just satisfaction was usually received from seven to fourteen days after the bailiff was contacted. Many times, just satisfaction was received on the account of the execution office during the last 15 days of the time limit for payment and, because of the length of the proceedings within the execution office, just satisfaction was effectively received by applicants several days after expiry of the deadline for payment. Interest mentioned in the ECtHR judgment was not paid for this delay.⁵ Taking into consideration that the office is situated in Chișinău, applicants from the

¹ See pp. 103-113 of the Memorandum on monitoring of the payment of sums awarded by way of just satisfaction, available at <https://wcd.coe.int/ViewDoc.jsp?id=1393941&Site=CM&BackColorOrInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

² Idem, p. 122

³ In the *Oculist and Imaș* case (judgment of 26 June 2011) the GA contacted the representative of the applicants. The same happened in the case of *Pasat* (decision of 9 March 2011).

⁴ Banks in the Republic of Moldova charge a fee from individual for operating their bank accounts. The amount of this fee varies depending on the bank from 0.75% to 1.25% of the amounts received or withdrawn from the account. The fee is charged automatically upon transfer of money into account or before withdrawing the amount from account.

⁵ Apparently, the Government considered the date when the amount was transferred to the account of the execution office as date of payment of just satisfaction. Applicants did not complain, as the delay did not exceed just a few days.

regions had to come to Chişinău at least twice, first in order to submit a request for receiving money, and second in order to receive the money. Transport costs were not compensated. Such trips are rather difficult for elderly applicants who were living outside of Chişinău and for those with limited means. Natural persons can issue a power of attorney to a representative to receive the just satisfaction. It needs to be certified by a notary. Costs for obtaining such a power of attorney were not compensated.⁶

In 2010, the execution department was reorganized and bailiffs became private. Now they charge fees for their services, including for services related to execution of ECtHR judgments. In order not to pay this fee, since the end of 2010, just satisfaction is paid directly to the applicant's bank account. Upon request of the individuals and presentation of a notarized power of attorney, just satisfaction can also be paid to another person.

In general, Moldovan authorities pay the just satisfaction resulting from the ECtHR judgments and decisions in time. Based on ECtHR judgments and decisions, in 2011, MF made payments to 111 persons.⁷ According to the analyzed data, in 93 cases (84%), the payments were made within three months from the date when the ECtHR judgment became final or from the date of the struck out decision. Payments in respect of 18 persons (16%) were made after the three months deadline. Information concerning delayed payments is presented in table no. 5.

*Table no. 5
Information about the 2011 default payments*

Case	Date of the judgment/decision	Beneficiary of the payment	Deadline for payment	Date of payment	Length of delay	Comments
Eparhia Moldovei de Est a Bisericii Ortodoxe din Ucraina and Others (46157/07)	Decision 07/12/2010	Eparhia Moldovei de Est a Bisericii Ortodoxe din Ucraina and Others	07/03/2011	17/03/2011	10 days	GA submitted the bank requisites to the MF on 28/01/2011. Two payments, of 04/03/2011 and 15/03/2011, were returned by the bank because the bank requisites submitted by the applicant were not correct. On 14/03/2011, the applicant submitted correct bank requisites.
Bizgu and Others (45653/05)	Decision 25/01/2010	Valentin Hanganu	25/04/2011	19/05/2011	24 days	The applicant submitted the bank requisites to the GA on 13/05/2011. They were submitted to the MF on 16/05/2011.
Bizgu and Others (45653/05)	Decision 25/01/2010	Liliana Coropat	25/04/2011	30/05/2011	35 days	The applicant submitted the bank requisites to the MF on 24/05/2011.

⁶ Moldovan authorities did not recognize a power of attorney issued to the applicants' representation at the ECtHR as valid, because the Enforcement Code requires that delegation of the right to receive money based on a court judgment shall have the format of a notarized proxy.

⁷ During our research, we analyzed information about all payments made by the MF in 2011 based on judicial decisions.

Bizgu and Others (45653/05)	Decision 25/01/2010	Serghei Cijov	25/04/2011	06/06/2011	42 days	The applicant submitted the bank requisites to the MF on 26/05/2011.
Bizgu and Others (45653/05)	Decision 25/01/2010	Anatolie Terentiev	25/04/2011	09/06/2011	45 days	The applicant submitted the bank requisites to the MF on 01/06/2011.
Bizgu and Others (45653/05)	Decision 25/01/2010	Alexei Bulbuc	25/04/2011	07/07/2011	73 days	The applicant submitted the bank requisites to the GA on 30/06/2011. Bank requisites were submitted to the MF on 04/07/2011.
Chetruş and Others (15953/07)	Decision 25/01/2010	Alexandru Scerba	25/04/2011	15/06/2011	51 days	The applicant submitted the bank requisites to the MF on 10/06/2011.
Chetruş and Others (15953/07)	Decision 25/01/2010	Claudia Cotorobai	25/04/2011	23/06/2011	59 days	The applicant submitted the bank requisites to the MF on 15/06/2011.
Chetruş and Others (15953/07)	Decision 25/01/2010	Vera Dinga	25/04/2011	04/07/2011	70 days	The applicant submitted the bank requisites to the MF on 22/06/2011.
Chetruş and Others (15953/07)	Decision 25/01/2010	Andrei Ghirea	25/04/2011	26/07/2011	89 days	The applicant submitted the bank requisites to the MF on 20/07/2011.
Munteanu (24092/07)	Decision 02/11/2010	Elena Munteanu	02/02/2011	20/07/2011	168 days	The applicant submitted the bank requisites to the MF on 15/07/2011.
Pasat (24092/07)	Decision 29/03/2011	Valeriu Pasat	29/06/2011	26/08/2011	58 days	The applicant submitted the bank requisites to the MF on 24/08/2011.
Talmazan (13605/08)	Decision 31/05/2011	Oleg Talmazan	31/08/2011	15/09/2011	15 days	GA submitted the bank requisites to the MF on 15/08/2011. A payment made on 12/09/2011 was reimbursed by the bank.
Grosu (36170/05)	Decision 02/11/2010	Victor Grosu	02/02/2011	21/10/2011	261 days	The applicant submitted the bank requisites to the MF in October 2011.
Oculist and Imaş (44964/05)	Judgment 28/06/2011 Final 28/06/2011	Ecaterina, and Iosif Oculist and Iliia Imaş	28/09/2011	25/11/2011	58 days	GA submitted the bank requisites to the MF on 12/11/2011.
Gheţan (7170/07)	Decision 06/09/2011	Ion Gheţan	06/12/2011	13/12/2011	7 days	GA submitted the bank requisites to the MF on 18/11/2011.
Savcenco (16999/07)	Decision 06/09/2011	Petru Savcenco	06/12/2011	20/12/2011	14 days	GA submitted the bank requisites to the MF on 09/12/2011.
Drăgan (8608/05)	Decision 20/09/2011	Vladimir Drăgan	20/12/2011	26/12/2011	6 days	GA submitted the bank requisites to the MF on 05/12/2011.

Out of 18 payments mentioned above, only one payment (*Oculist and Imaş*) concerns an ECtHR judgment. The other payments were made pursuant to struck out decisions. According to the GA, in the *Oculist and Imaş*, the applicants did not submit their bank requisites within the three-month deadline. They were eventually submitted later, after GA contacted the applicants' representative. MF made the payment thirteen days after the receiving the bank requisites from GA of. In this case, the late payment was mainly due to the applicants.

In five out of 17 payments made after more than three months from the date of the ECtHR decision, the delay was of less than 15 days. GA explained that, according to unilateral declarations or friendly settlement agreements reproduced in ECtHR decisions, just satisfaction had to be paid within three months from the notification about the ECtHR decision and not from the date of delivery. ECtHR decisions concerning Moldova are placed on the ECtHR web page with a delay of several weeks and the post correspondence sent by the ECtHR to the Republic of Moldova reaches destinations within 10-15 days. In this perspective, the Government cannot be criticized for the five above mentioned payments.

In ten cases, delays lasted spanned between 24 and 89 days, while in the case of the *Munteanu and Grosu* decisions the delays were 168 and 261 days, respectively. In all 12 cases, just satisfaction was paid by the MF within two weeks from the receipt of the bank requisites. It follows that these delays were caused by the delayed submission by the applicants of their bank requisites.

In order to avoid speculations on who is responsible for the delay in payment of just satisfaction, upon expiration of the deadline for payment, the amounts due pursuant to ECtHR judgments and decisions can be transferred to a special account, informing the applicants about the transfer. In 2012, no such special account existed in the Republic of Moldova. Until summer 2012, just satisfaction was not paid to bank accounts opened for the applicants by authorities. In autumn of 2012, for the first time, just satisfaction awarded through a decision of the ECtHR was transferred to an account opened by the MF for the applicant.⁸

ECtHR awards just satisfaction in Euro. It is paid by the MF to the residents from 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.

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.⁹

Until 2012, 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 may be chargeable.

⁸ The applicant in the case of *Morozan* (decision of 5 June 2012) refused to submit requisites of his bank account within the three-month deadline. In September 2012, upon the request of GA, just satisfaction was paid to a special account opened by the MF for Mr. Morozan.

⁹ See pp. 103-113 of the Memorandum on monitoring of the payment of sums awarded by way of just satisfaction, available at <https://wcd.coe.int/ViewDoc.jsp?id=1393941&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

Moldovan legislation does not regulate expressly the methodology of taxation of money received based on ECtHR judgments and decisions. However, Art. 20 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 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.

Even though we cannot speak of many situations, difficulties were still noticed with respect to taxation of costs for representation a legal entity at the ECtHR by a person without advocate's license, when the fee compensated by the ECtHR had to be paid by the applicant to his/her representative after delivery of the ECtHR judgment. For representation services provided to legal entities by persons who are not advocates, legal entities have to pay social and medical contributions in amounts exceeding 25%. As mentioned above, until 2012 these taxes were not compensated by the MF. Apparently, applicants have never requested this compensation.

As mentioned above, since late 2010, MF pays just satisfaction to a bank account of the applicant or of another person indicated by the applicant. Nevertheless, fees charged by the bank upon receipt or withdrawal of money from the bank account were not paid.¹⁰ As a consequence, beneficiary of just satisfaction was effectively receiving a smaller amount than that which was awarded by the ECtHR. The GA confirmed that bank fees are not paid by the MF. However, he declared that they can be compensated at the request of the applicant. There are no cases known so far where bank fees have been compensated. On the contrary, in the *Gurgurov* case (judgment of 16 June 2009), the applicant received just satisfaction (EUR 45,000) directly to his bank account. Upon receipt on the account, the bank automatically charged a fee of EUR 450. The applicant requested MF to compensate this fee. By September 2012, the amount was not yet compensated for.

5.3 Reopening of domestic proceedings

ECHR does not require expressly reopening of domestic proceedings following a 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 CM R(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.*”

¹⁰ The fee varies from bank to bank from 0.75% to 1.25% from amounts received or withdrawn from accounts. The bank fee is charged automatically when money is transferred to the bank account, or before withdrawal.

It clearly follows from ECtHR case-law that reopening shall be available in case of criminal conviction in an unfair trial (see judgments *Ocalan v. Turkey*, 12 May 2005, § 210; *Popovici*, 27 November 2007, § 87; *Levința*, 16 December 2008, § 113; *Vetrenko*, 18 May 2010, § 64). It appears that ECtHR has not yet made it clear whether ECHR implies the obligation to reopen civil proceedings. The Recommendation CM R(2000)2 does not rule out that such an obligation may exist. Even though the legislation of many countries allows reopening of civil proceedings as a result of a ECHR violation found by the ECtHR, there is no consensus on this issue at the CM level.

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

5.3.1 Criminal proceedings

CrPC allows the reopening of judicial criminal proceedings based on ECtHR judgments or decisions, as well as after the Government is informed by the ECtHR about an application. By 27 October 2012, the two situations were covered by Art. 453 CrPC (cassation for annulment). Since 27 October 2012 (Law no. 66, of 5 April 2012), the reopening of domestic proceedings as a result of an ECtHR judgment or an ECtHR struck out decision is governed by a particular article of the CrPC (464¹). The relevant part of this article 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 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.*
- (6) *Participation of the prosecutor in the examination of the case is mandatory.*
- (7) *The parties shall be summoned for examination of the revision request. Detained parties shall be provided the possibility to be present at trial.*

...

(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.*

(12) *Examination of the case shall take place according to revision procedure.”*

CrPC also authorises reopening of criminal judicial 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 CrPC, that provides:

„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.”

This provision was introduced in order to provide redress for applicants at the domestic level and to facilitate the process of friendly settlement of the communicated applications. 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 communication. In case the request is allowed, the SCJ can uphold 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.

Cases discontinued during criminal investigation that led to or may lead to a 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 cannot 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 date of discontinuance of the criminal investigation. This rule shall not apply if new facts occur or if a fundamental defect committed during the 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 defect (see the Table no. 6). Apparently not all investigative judges are aware of this practice of the SCJ.¹¹

5.3.1.1 Reopening of the proceedings following judgments of the Court

Until 31 December 2010, ECtHR delivered more than 50 judgments in Moldovan cases that concerned criminal proceedings. 22 of those judgments raised serious doubts as to the fairness of the solutions adopted by national authorities. In all these cases, the

¹¹ See in the table below the solution of the investigation judge from 10 October 2012 in the *Levința* case.

authorities reviewed whether the reopening of the proceedings was justified. Out of 22 cases, six cases referred to criminal proceedings against applicants and 17¹² to ill-treatment of the applicants and/or inadequate investigation of the ill-treatments or deaths.

a) Criminal proceedings against the applicants

Following ECtHR judgments delivered until 31 December 2010, reopening of at least six criminal cases that referred to accusations brought against the applicants was requested. Information about the six proceedings is presented in the table no. 6.¹³

*Table no. 6
Information about criminal proceedings against the applicant
that have been reopened based on ECtHR judgments*

ECtHR judgment	Relevant violations found by the ECtHR	Information about the proceedings
Bujniță (36492/02) 16/01/2007 <u>final</u> 16/04/2007	Art. 6 § 1 ECHR – quashing of a final acquittal through cassation for annulment	On 26 November 2007, Plenary of the SCJ allowed the cassation for annulment of the applicant, quashed the conviction and upheld the acquittal.
Popovici (289/04 and 41194/04) 27/11/2007 <u>final</u> 02/06/2008	Art. 6 § 1 ECHR – conviction of the applicant in appeal on points of law without direct examination of evidence	On 7 December 2007, the applicant's advocate requested reopening of criminal proceedings and for quashing of the conviction. 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 arrest of the applicant. The representative of the applicant submitted a new cassation for 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 for annulment, quashed the judgment of 30 June 2008 and sent the case for examination of the Criminal Section of the SCJ. 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.
Grădinar (7170/02) 08/04/2008 <u>final</u> 08/07/2008	Art. 6 § 1 ECHR – conviction of the applicant without sufficient reasons	Ms. Grădinar and another convicted person in the same case filed a cassation for annulment. On 16 March 2009, the Plenary of the SCJ allowed 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.

¹² The *Levința* case concerns both criminal investigation against the applicant and ill-treatment of the applicant, as well as inadequate investigation of the ill-treatment.

¹³ This information was generated based on examination of the practice of the SCJ and of the subsequent proceedings.

Năvoaloacă (25236/02) 16/12/2008 <u>final</u> 16/03/2009	Art. 6 § 1 ECHR – conviction of the applicant in appeal on points of law without direct examination of evidence	<p>On 31 May 2009, the Plenary of the SCJ allowed the cassation for 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 re-examination of the case by the Chişinău Court of Appeal. On 25 June 2012, Chişinău Court of Appeal rejected the appeal launched by the prosecutor as unfounded and upheld the acquittal sentence. This sentence was challenged by the prosecutors' office. In September 2012, the appeal on points of law was still pending at the SCJ.</p>
Levința (17332/03) 16/12/2008 <u>final</u> 16/03/2009	Art. 6 § 1 ECHR – conviction of the applicants based on evidence received through torture	<p>On 8 February 2010, Plenary of the SCJ allowed the cassation for annulment submitted by the applicant's advocate, quashed the conviction and sent the case for re-examination of the Chişinău Court of Appeal. In September 2012, the case was still pending at the Chişinău Court of Appeal.</p>
Vetrenko (36552/02) 18/05/2010 <u>final</u> 04/10/2010	Art. 6 ECHR – criminal conviction without clarifying essential discrepancies in the evidence of the accusation and without refuting the applicant's alibi	<p>On 24 January 2011, Plenary of the SCJ allowed the cassation for annulment of the applicant's advocate, quashed earlier sentences concerning the applicant and ordered re-examination of the case by the Chişinău Court of Appeal. By a judgment of the Chişinău Court of Appeal of 22 September 2011, the proceedings were discontinued on rehabilitation grounds. The prosecutors' office did not contest the judgment.</p>

Following the ECtHR judgment, the SCJ reopened all six domestic proceedings. All solutions of the SCJ are compatible with the ECtHR judgments. However, the reasoning of the SCJ judgments did not always follow the position of the ECtHR expressed in its judgments. Thus, in the case of *Popovici*, Plenary of the SCJ initially quashed both the conviction and the acquittal of the applicant, even though ECtHR referred in its judgment only to the conviction.¹⁴ In the case of *Grădinar*, Plenary of the SCJ quashed the conviction of the applicant because the latter was convicted after his death. This reasoning is not compatible with the ECtHR judgment, which found that conviction was not based on sufficient evidence.¹⁵ In the same case, Plenary of the SCJ rejected the request of one person convicted based on the same evidence and in the same file with the applicant, even though CrPC allowed Plenary to examine this request (see Art. 424 para. 2 of CrPC). The reasoning of the SCJ in the judgments *Popovici* and *Grădinar* suggests that the SCJ tried to comply with the ECtHR judgments. It tried however, to limit benefits that reopening of the proceedings could bring for the applicants or for third parties. This approach is alarming, bearing in mind that both judgments were unanimously adopted by the Plenary of the SCJ.¹⁶

¹⁴ 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.

¹⁵ The position of the Plenary of the SCJ was, in fact, rejected by the majority of ECtHR judges that voted for finding a 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.

¹⁶ The Plenary of SCJ includes all judges of the court.

b) Ill-treatment and investigation of ill-treatment and deaths

Based on ECtHR judgments delivered until 31 December 2010, reopening of 17 criminal cases that related to ill-treatment of the applicants or inadequate investigation of ill-treatment or deaths was justified. Information about these 17 proceedings is presented in table no. 7:¹⁷

Table no. 7
Information about the reopening of criminal proceedings related to ill-treatment or inadequate investigation of ill-treatment or deaths, based on ECtHR judgments

ECtHR judgment	Relevant violations found by the ECtHR	Information about the proceedings
<p>Corsacov (18944/02) 04/04/2006 <u>final</u> 04/07/2006</p>	<p>Art. 3 ECHR – ill-treatment; Art. 3 ECHR – inadequate investigation of ill-treatment</p>	<p>It appears that the domestic procedure was pending on the day of the ECtHR judgment. After the ECtHR judgment, criminal investigation was finalized and the case file was sent to the court. On 15 July 2008, Hîncești District Court convicted the two police officers (A.Tulbu and V.Dubceac) for committing a crime under Art. 185 para. 3 of the Criminal Code (from 1961) (excess of power or excess of official authority causing severe consequences). Each of them was convicted to five years of imprisonment, with deprivation of the right to hold official positions within the MIA for two years. Under Art. 43 of Criminal Code (from 1961), execution of the imprisonment was suspended for a probation period of two years.</p> <p>On 30 April 2009, Chișinău Court of Appeal upheld the judgment of the district court. However, on 3 November 2009, the SCJ quashed the judgment of the court of appeal and sent the case for re-examination. On 20 January 2010, Chișinău Court of Appeal convicted the police officers under Art. 328 para. 2 a) and c) of the Criminal Code (from 2003) (excess of official authority causing severe consequences) and reduced the imprisonment to three years. On 22 June 2010, the SCJ discontinued the proceedings against the police officers following expiry of the time limit for applying criminal sanctions.</p>
<p>Pruneanu (6888/03) 16/01/2007 <u>final</u> 23/05/2007</p>	<p>Art. 3 ECHR – ill-treatment (one violation); Art. 3 ECHR – inadequate investigation of ill-treatment (two violations)</p>	<p>Episode I: On 20 July 2007, criminal investigation no. 2007168024 was opened under Art. 185 para. 2 of the Criminal Code (from 1961) (excess of power or excess of official authority). On 1 November 2007, criminal investigation was discontinued. On 25 August 2010, this order was annulled by a higher prosecutor. On 25 October 2010, criminal investigation was again discontinued. This order was annulled by a higher prosecutor on 28 April 2011. On 26 March 2012, criminal investigation was again discontinued. Apparently, the last order was not challenged and is in force.</p> <p>Episode II: On 1 December 2002, the Buiucani Prosecutors' Office refused to open a criminal investigation for the reason that no elements of crime as described in Art. 185 of the Criminal Code (from 1961) (excess of power or excess of official authority) were found in the actions of the police officers. Apparently, this order was not challenged and is in force.</p>

¹⁷ Information from this table is mainly based on information received from the General Prosecutor's Office.

<p>Colibaba (29089/06) 23/10/2007 <u>final</u> 23/01/2008</p>	<p>Art. 3 ECHR – ill-treatment; Art. 3 ECHR – inadequate investigation of ill-treatment</p>	<p>On 21 November 2008, on its own motion, the General Prosecutors' Office ordered additional verifications. According to the prosecutors' office, the verification was carried out by a group composed of prosecutors and officials from the MIA and the intelligence service, with participation of representatives of the MJ, representatives of civil society (Institute for Penal Reform, Ex-Lege Agency and IDIS Viitorul) and independent experts delegated by the Representative of the Secretary General of the CoE in the Republic of Moldova. The group finalized its activity on 25 February 2009. The control established that actions of national authorities were objective and impartial. For this reason, it was decided, by a majority of votes, that no reopening of domestic proceedings was necessary.</p>
<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 allowed the cassation for 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 on refusal to open the investigation. On 24 August 2009, the General Prosecutor's Office opened criminal investigation no. 2009378051 under Art. 328 para. 2 a) of the Criminal Code (excess of official authority with 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. This order is in force.</p>
<p>Levința (17332/03) 16/12/2008 <u>final</u> 16/03/2009</p>	<p>Art. 3 ECHR – ill-treatment of applicants and failure to subsequently transfer of the applicants to a safe place; Art. 3 ECHR – inadequate investigation of ill-treatment</p>	<p>On 10 May 2011, the Criminal Section of the SCJ allowed the cassation for annulment submitted by the General Prosecutor's Office on 29 May 2010, quashed the decision of the investigative judge on the complaint against the order refusing to open the criminal investigation into ill-treatment, and ordered the re-examination of the complaint by an investigative judge. In 2011, an investigative judge quashed the order on refusal to open the criminal investigation. On 17 June 2010, Chişinău Prosecutors' Office opened the criminal investigation no. 2010028145 under Art. 101/1 of the Criminal Code (from 1961) (torture). The police officers in question were given the status of as suspects. However, on 10 March 2011, the Chişinău Prosecutors' Office discontinued the criminal investigation for the reason that the applicants were not ill-treated in the Republic of Moldova. The applicants found out about this order in 2012, when it was presented by the accusation within criminal proceedings against them. On 23 August 2012, Chişinău Prosecutors' Office rejected as ill-founded the complaint submitted by the applicants against this order. On 10 October 2012, Rîşcani District Court from Chişinău rejected the applicants' complaint because in this case no fundamental defect affected the order and, accordingly, Art. 287 para. 4 of CrPC does not allow the reopening of criminal investigation after more than one year.</p>

<p>Breabin (12544/08) 07/04/2009 <u>final</u> 07/07/2009</p>	<p>Art. 3 ECHR – ill-treatment of the applicant; Art. 3 ECHR – inadequate investigation of ill-treatment</p>	<p>On 4 October 2011, the Criminal Section of the SCJ allowed the cassation for 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 order on the order on refusal to open the 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). In June 2012, criminal investigation in this case was still pending at the Chişinău Prosecutors' Office.</p>
<p>Gurgurov (7045/08) 16/06/2009 <u>final</u> 16/09/2009</p>	<p>Art. 3 ECHR – ill-treatment of the applicant; Art. 3 ECHR – inadequate investigation of ill-treatment</p>	<p>On 17 July 2009, the Chişinău Prosecutors' Office opened the criminal investigation no. 2009028198 under Art. 309¹ para. 2 c) of Criminal code (torture committed by two or more persons). In June 2012, criminal investigation was still pending at the Chişinău Prosecutors' Office.</p> <p>Within criminal investigation, a new expert's opinion was ordered. However, experts could not answer all questions without hospitalization of the applicant. After 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>Buzîlov (28653/05) 23/06/2009 <u>final</u> 23/09/2009</p>	<p>Art. 3 ECHR – ill-treatment; Art. 3 ECHR – inadequate investigation of ill-treatment</p>	<p>On 12 July 2007, the General Prosecutor's Office opened criminal investigation No. 2007208063 concerning the applicant's ill-treatment. It was still pending on the day the ECtHR judgment was delivered. On 8 April 2011, Hînceşti Prosecutors' Office ordered suspension of criminal investigation for the reason that the persons who committed the crime could not be identified. This order is still in force.</p>
<p>Petru Roşca (2638/05) 06/10/2009 <u>final</u> 06/01/2010</p>	<p>Art. 3 ECHR – inadequate investigation of ill-treatment</p>	<p>On 30 November 2010, the deputy prosecutor general annulled the order on refusal to open criminal investigation. The General Prosecutor's Office opened the criminal investigation no. 2009158084 under Art. 328 para. 2 a) of Criminal Code (excess of official authority with application of force).</p> <p>On 14 May 2012, the Cahul Prosecutors' Office ordered the suspension of the criminal investigation, because the person who committed the crime could not be identified. Apparently, this order was not challenged and is still in force.</p>
<p>Pădureţ (33154/03) 05/01/2010 <u>final</u> 05/04/2010</p>	<p>Art. 3 ECHR – inadequate investigation of ill-treatment; Art. 3 ECHR – inadequate sanctioning of ill-treatment</p>	<p>After the ECtHR judgment, the Centru Prosecutors' Office, on its own motion, made a verification of the statement of the applicant that he identified the third policeman that ill-treated him and that was not criminally charged. On 20 January 2012, it was decided not to open a criminal investigation for the reason that that person was not a policeman and could not be accused under Art. 309¹ of the Criminal Code (torture). When contacted by the team who conducted this study, the applicant declared that in March 2012 he was called by a person who allegedly employed by the prosecutors' office. However, he did not receive the order from 20 January 2012.</p>

<p>Răilean (23401/04) 05/01/2010 <u>final</u> 28/06/2010</p>	<p>Art. 2 ECHR – inadequate investigation of death</p>	<p>In this case, the prosecutors' office did not consider it necessary to reopen domestic proceedings. Apparently, the applicant did not request reopening.</p>
<p>Iorga (12219/05) 23/03/2010 <u>final</u> 23/06/2010</p>	<p>Art. 2 ECHR – inadequate investigation of death</p>	<p>In this case, the prosecutors' office did not consider it necessary to reopen domestic proceedings. Apparently, the applicant did not request reopening.</p>
<p>Anuşca (24034/07) 18/05/2010 <u>final</u> 18/08/2010</p>	<p>Art. 2 ECHR – inadequate investigation of death</p>	<p>In this case, the prosecutors' office did not consider it necessary to reopen domestic proceedings. Apparently, the applicant did not request reopening.</p>
<p>Parnov (35208/06) 13/07/2010 <u>final</u> 13/10/2010</p>	<p>Art. 3 ECHR – ill- treatment of the applicant; Art. 3 ECHR – inadequate investigation of ill- treatment</p>	<p>On 21 December 2010, the Criminal Section of the SCJ allowed cassation for annulment submitted by the General Prosecutor's Office, quashed the decision of the investigative judge, annulled the order refusing opening of criminal investigation on ill-treatment and sent the case-file to the prosecutors' office.</p> <p>On 9 February 2011, the Prosecutors' Office of the Rîşcani District in Chişinău 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.</p>
<p>Popa (29772/05) 21/09/2010 <u>final</u> 21/12/2010</p>	<p>Art. 3 – inadequate investigation of ill- treatment</p>	<p>After the ECtHR judgment, the General Prosecutor's Office re-examined the case concerning the alleged ill-treatment of the applicant ex officio. Following re-examination, it was decided that reopening of domestic proceedings was not reasonable.</p>
<p>Mătăsar and Saviţchi (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, 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, criminal investigation was suspended, because the perpetrators could not be identified. On 30 March 2010, 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 the identification of the perpetrators. In March 2012, this order was challenged to the General Prosecutor's Office. Until June 2012, the applicant did not receive any answer to his complaint.</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 on the refusal to open criminal investigation and opened a criminal investigation under Art. 328 para. 2 a) and c) of Criminal code (excess of official authority with application of force and torture). Three persons were recognized as suspects.</p> <p>One suspect challenged the order on the non-initiation of criminal investigation. On 15 June 2010, the prosecutor general rejected the complaint. The suspect challenged orders of 15 March 2010 and 15 June 2010 to the investigative judge. On 12 August 2010, an investigative judge allowed the complaint and annulled the orders. The General Prosecutor's Office challenged the decision of the investigative judge by cassation for annulment. On 28 December 2010, the SCJ allowed the cassation for annulment and ordered re-examination of the complaint by another investigative judge. On 30 March 2011, an investigative judge rejected the complaint of the suspect.</p> <p>The criminal case was sent for examination to the Buiucani District Court.</p>
--	---------------------------------------	--

In four¹⁸ out of 17 cases, domestic proceedings were still pending on the day of delivery of ECtHR judgments. After delivery of ECtHR judgments, all the 13 cases that were not pending on the day of delivery of ECtHR judgments were re-examined by the prosecutors.¹⁹ Re-examination was carried out upon the request of GA or ex officio. This practice of re-examination of the proceedings is encouraging.

Within this study, information about the date of re-examination of nine²⁰ out of 13 proceedings that were not pending on the day of delivery of ECtHR judgments has been available. Only in one case (*Gurgurov*), did the re-examination take place within one month from the date of the ECtHR judgment. In the remaining eight cases, the decision concerning re-examination was made within a period of five to 24 months. In four cases, decisions on re-examination were made by prosecutors, and in the remaining four cases, by judges, upon the request of the prosecution.²¹ Considerable delays were observed in all four cases re-examined by the prosecution. Thus, in the *Pruneanu* case, the decision on re-examination was made six months after the ECtHR judgment, in the *Colibaba* case – after almost 13 months, in the *Petru Roşca* case – after almost 14 months, and in the *Pădureţ* case – after 24 months. In three out of four cases where judges ruled on reopening of the proceedings,

¹⁸ *Corsacov, Buzilov, Mătăsar and Saviţchi* and *I.D.*

¹⁹ In the case of *Pruneanu*, the applicant alleged that he was ill-treated twice. ECtHR found procedural violations of Art. 3 of ECHR in respect of both allegations. After delivery of the ECtHR judgment, the proceedings were re-examined only with respect to the first of the two ill-treatments complaints. It looks that this is the only allegation that was not re-examined by the prosecutors.

²⁰ Information concerning the judgments *Răilean, Iorga, Anuşca* and *Popa* could not be obtained.

²¹ Final court judgments were delivered in four cases where decisions of the prosecutors' office on the non-initiation or discontinuation of criminal investigation were upheld. According to Art. 275 p. 8 CrPC, the criminal investigation cannot start and, if it started, it cannot be carried out when there is a valid decision on the same facts. In order to reopen a criminal investigation, the court judgments need to be quashed.

prosecutors addressed the courts with delays. Thus, in the case of *Victor Savițchi*, the General Prosecutor's Office requested reopening of proceedings after almost five months after the ECtHR judgment, in the case of *Breabin* – after almost eight months, and in the case of *Levinta* – after 16 months. In the above cases the three months delay could be explained by the fact that the ECtHR judgments were not final upon delivery. However, any delay of more than four months is difficult to explain. The SCJ was also not very diligent in examining the requests on reopening of proceedings. Thus, in the case of *Victor Savițchi*, the SCJ delivered its judgment four months after it received the request, in the case of *Levinta* – after 11 months, and in the case of *Breabin* – after 23 months.

In nine out of 13 cases that were not pending on the day of the ECtHR judgment, decisions justifying reopening of proceedings were made by the prosecution. In four cases, prosecutors reopened criminal proceedings²² and in five cases they decided that reopening was not justified.²³ All four²⁴ requests submitted to the judges were allowed, the decisions of the prosecutors on refusal to open or on discontinuation of the criminal investigation were annulled, and the cases were sent to the prosecutors' office for investigation.²⁵

In two out of five cases where prosecutors refused reopening of the proceedings, refusal appears to be justified. The cases *Iorga* and *Anusca* concerned inadequate investigation of alleged suicides that took place nine and six years ago, respectively, and in its judgments the ECtHR found that reasonable measures were taken for investigation of these deaths. However, it is difficult to explain the refusals to reopen the *Colibaba*, *Răilean* and *Popa* cases. In the case of *Colibaba*, the applicant clearly identified the person that ill-treated him, the description of the ill-treatment by the applicant suggested that this was a particularly serious case, there was medical evidence confirming the injuries, initial investigation was affected by serious shortcomings, while decision of the group created by the prosecutors' office was not unanimous. In the case of *Răilean*, the person who could be held responsible for a death was identified. He was never charged, and the initial proceedings were conducted with shortcomings that clearly suggested that the investigation was superficial. In the *Popa* case, there was medical evidence confirming injuries and the previous investigation was incomplete.

After ECtHR judgments, eight proceedings were reopened, four by the prosecution and four through court orders. Additional four proceedings were pending on the day of the ECtHR judgment. All the 12 cases concern ill-treatment. Even though more than seven years passed after delivery of 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 of *Corsacov*, judges discontinued criminal proceedings concerning the ill-treatment because the time limitation for applying criminal sanction expired; while in the case of *I.D.* criminal

²² *Pruneanu, Gurgurov, Petru Roșca and Pădureț.*

²³ *Colibaba, Răilean, Iorga, Anusca and Popa.*

²⁴ See cases *Victor Savițchi, Levința, Breabin and Parnov.*

²⁵ In cases *Levința* and *Breabin*, the General Prosecutor's Office requested SCJ to reopen proceedings. However, before the SCJ judgment on reopening of proceedings, the prosecutors' office opened criminal investigation into ill-treatment, even though the decisions of the prosecutor on the refusal to open criminal investigation were still in force. Art. 275 p. 8 of CrPC stipulates that criminal prosecution cannot start if there is a valid decision on refusal to open a criminal investigation.

proceedings on ill-treatment is still pending before the district court. Out of ten cases that were not sent to court, in three cases the criminal investigation was discontinued,²⁶ in four cases criminal investigation was suspended²⁷ and three criminal investigations²⁸ were still pending. It is extremely complicated to prove torture after several years and this can explain the fact that large numbers of these cases did not reach the courts. Nevertheless, decisions of the prosecutors in some cases raise serious concerns. The order on the refusal to open criminal investigation in the case of *Pădureț*, for the reason that the person who tortured the applicant was not a policeman, is surprising bearing in mind that the applicant alleged that he was tortured in the police commissariat, while other persons „that act with consent” of the police could be sanctioned under Art. 309¹ of Criminal Code. The suspension of criminal investigation in the case of *Mătăsaru and Savițchi* on the grounds that the perpetrator was not identified is also surprising as Mr. Mătăsaru from the very beginning pointed to the person who assaulted him. The initials of that person were mentioned in the ECtHR judgment and he was previously recognized as a suspect.

5.3.1.2 Reopening of proceedings following communication of the application to the Government

Apparently the only judicial proceedings reopened under Art. 453 para. 1 of CrPC was in the case of *Giuliani* (dec. of 23 October 2007). In this case, the applicant alleged that his right to a fair trial was violated because his appeal was examined in his absence. The request for reopening of the proceedings was allowed and the case was sent for re-examination of the court of appeal. Subsequently, the case before the ECtHR was solved through a friendly settlement.

5.3.2 Contravention proceedings

CC authorises revision of contravention judicial proceedings that can be or are contrary to the ECHR. Art. 475 para. 2 of CC provide that revision may be requested if:

„a) an international court, by decision, found a violation of human rights and freedoms that can be redressed by a retrial;

...

d) a procedure on the respective case was initiated before an international authority;

...”

The revision bases on Art. 475 para. 2 a) of CC can be requested by the offender or the prosecution. In case of Art. 475 para. 2 d) of CC, the revision shall be requested by the prosecutor general or his/her deputies. The request shall be lodged within 6 months from the moment the ground for revision appeared, and shall be examined by the court that delivered the final judgment. If the revision request is allowed, the court shall quash the challenged judgment and adopt a new one. The court shall order, when necessary, restoration of rights, return of any fine paid, and of goods, as well as compensation of legal costs which the person in whose favour the request was allowed incurred (Art. 477 para. 2 CC).

²⁶ *Pruneanu, Levința* and *Pădureț*.

²⁷ *Victor Savițchi, Buzilov, Petru Roșca* and *Mătăsaru and Savițchi*.

²⁸ *Breabin, Gurgurov* and *Parnov*. In *Gurgurov* and *Parnov* cases, more than three and two years, respectively, passed after the reopening of the proceedings.

5.3.2.1. Reopening of proceedings following judgments of the Court

Based on ECtHR judgments delivered until 31 December 2010, reopening of judicial proceedings was requested in three contravention cases. Information about these three cases is presented in table no. 8.²⁹

Table no. 8

Information about contravention proceedings reopened as a result of ECtHR judgments

ECtHR Judgment	Relevant violations found by the ECtHR	Information about the proceedings
Masaev (6303/05) 12/05/2009 <u>final</u> 12/08/2009	Art. 6 § 1 ECHR – failure of the cassation court to summon the parties properly; Art. 11 ECHR – imposing contravention liability for practicing a religious cult that is not officially recognized	On 18 September 2009, the General Prosecutor's Office lodged a revision procedure requesting quashing of judgments convicting the applicant, as well as dismissal of the accusations brought against him. On 22 October 2009, Chişinău Court of Appeal allowed the revision request and sent the case for re-examination by the Centru District Court of Chişinău. On 13 December 2009, the Centru District Court discontinued the proceedings.
Petru Roşca (2638/05) 06/10/2009 <u>final</u> 06/01/2010	Art. 6 § 1 and § 3 (c) and (d) ECHR – impossibility to prepare for the case because of its examination on the same day when the file was received by the court	On 30 October 2009, the General Prosecutor's Office lodged a revision procedure requesting quashing of judgments convicting the applicant, as well as re-examination of the case. On 30 November 2009, Cahul Court of Appeal quashed the judgments and sent the case for re-examination of the Cahul District Court.
Gavrilovici (25464/05) 15/12/2009 <u>final</u> 15/03/2010	Art. 10 ECHR – unjustified conviction for insult	On 23 April 2010, the General Prosecutor's Office asked for a revision of the case. The applicant also submitted a revision request. On 21 December 2010, Bender Court of Appeal allowed the revision requests, quashed the court judgments and discontinued the proceedings against the applicant.

In all three cases mentioned above, requests for reopening of proceedings were submitted in up to four months from the ECtHR judgment. In the cases of *Masaev* and *Petru Roşca*, judges adopted decisions within one month and four days after the request, which is rather fast. Nevertheless, in the case of *Gavrilovici*, judges made the decision after seven months from the request. In all three cases, judges allowed the requests for reopening of proceedings.

5.3.2.2 Reopening of proceedings following communication of application to the Government

Between 2009 and 2011, at the request of the GA after communication of the applications to the Government by the ECtHR, the prosecutors' office asked for the reopening of six contravention proceedings. Information about these proceedings is presented in table no. 9.³⁰

²⁹ Information from this table is mainly based on information received from the General Prosecutor's Office.

³⁰ Information from this table is mainly based on information received from the General Prosecutor's Office.

Table no. 9
Information about contravention proceedings
reopened following communication of application to the Government

Case	Applicant's allegations	Information about the proceedings
Episcopia de Edineț și Briceni (22742/06) Dec. 07/09/2010	Art. 6 § 1 ECHR and Art. 1 Protocol 1 – quashing of a final judgment through extraordinary appeal	<p>On 22 June 2009, the General Prosecutor's Office lodged a revision request asking for the quashing of the judgment adopted as a result of allowing an extraordinary appeal and to award compensation by direct application of Art. 41 of the ECHR.</p> <p>On 2 July 2009, Chișinău Court of Appeal quashed the challenged judgment and upheld the judgment adopted in the applicant's favour. It has, in principle, allowed the compensation claim and called that on applicant to initiate a civil action to establish the exact amount of the compensation.</p> <p>On 1 February 2010, the applicant agreed on a friendly settlement of the case under conditions proposed by the GA.</p>
Hmelevschi (43546/05) Dec. 24/11/2009	Art. 6 § 1 ECHR – failure of the cassation court to summon the parties properly; Art. 11 ECHR – sanctioning for active participation in unauthorized assemblies	<p>On 26 June 2009, the General Prosecutor's Office lodged a revision request asking for quashing of the judgment convicting the applicant, and the discontinuation of contravention proceedings. On 14 July 2009, Chișinău Court of Appeal allowed the revision request in full.</p> <p>On 19 September 2009, the parties signed a friendly settlement agreement.</p>
Moscalev (844/06) Dec. 16/03/2010	Art. 6 § 1 ECHR – failure of the cassation court to summon the parties properly; Art. 11 ECHR – sanctioning for active participation in unauthorized assemblies	<p>On 26 June 2009, the prosecutors' office lodged a revision request asking for the quashing of the judgment convicting the applicant and the discontinuation of the contravention proceedings. On 14 July 2009, Chișinău Court of Appeal allowed the revision request in full.</p> <p>La 18 December 2009, the applicant accepted the unilateral declaration of the Government.</p>
Carcea (24251/07) Dec. 14/12/2010	Art. 6 § 1 ECHR – failure of the cassation court to summon the parties properly	<p>On 23 February 2010, the prosecutors' office lodged a revision request asking for the quashing of the judgment convicting the applicant and re-examination of the case in compliance with Art. 6 of the ECHR. On 28 April 2010, Bălți Court of Appeal allowed the revision request and sent the case for re-examination.</p> <p>On 27 September 2010, the Government made a unilateral declaration which was accepted by the ECtHR.</p>
Chistol (19042/06) Dec. 14/12/2010	Art. 6 § 1 ECHR – failure of the cassation court to summon the parties properly	<p>On 24 August 2009, the prosecutors' office lodged a revision request asking for the quashing of the judgment convicting the applicant and the discontinuation of contravention proceedings. On 19 October 2009, Chișinău Court of Appeal allowed the revision request and sent the case for re-examination.</p> <p>On 14 December 2012, ECtHR struck the application out of the list based on unilateral declaration of the Government.</p>

<p>Donciu (488/07) Dec. 21/11/2011</p>	<p>Art. 6 § 1 ECHR - failure of the cassation court to summon the parties properly</p>	<p>On 23 February 2010, the prosecutors' office lodged a revision request asking for the quashing of the judgment convicting the applicant and re-examination of the case in compliance with Art. 6 of the ECHR. On 27 July 2010, Chişinău Court of Appeal allowed the revision request and sent the case for re-examination.</p> <p>On 26 May 2011, the Government made a unilateral declaration which was accepted by the applicant.</p>
---	--	--

These six applications were examined very fast by the courts. In five cases, revision requests were examined in less than three months, and in one case – within five months.

All revision requests were allowed. Apparently, judges allowed revision requests in these cases based on one single ground, namely that ECtHR communicated the application to the Government without examining if the circumstances of each case justified reopening of the proceedings. This conclusion is also supported by Art. 475 para. 2 d) CC, that allows reopening of proceedings regardless of the nature of allegations invoked before an international authority. Reopening of judicial proceedings without taking into consideration the circumstances of the case could be contrary to the ECHR, because it could lead to unjustified quashing of a final judgment. Reopening shall take place only in cases authorised by Recommendation CM R (2000)2. In cases similar to those six reopened proceedings, ECtHR did not insist on the reopening of the proceedings.³¹ At the same time, reopening of proceedings based on communication of the application to the Government may run contrary to legal certainty, if the case does not deal with obvious violations of the ECHR.

5.3.3 Civil proceedings

The right of reopening of civil proceedings following ECtHR proceedings is provided by Art. 449 CiPC. It authorises the reopening of civil proceedings both following ECtHR judgments finding a violation of the ECHR, as well as following an unilateral declaration of the Government which served as basis for striking the application out of the list of cases. Reopening can also be requested following the initiation of a friendly settlement procedure. The relevant part of Art. 449 CiPC is the following³²:

„Revision shall be declared when:

...

g) the European Court of Human Rights or the Government of the Republic of Moldova

³¹ In the case of *Bogatu* (dec. of 24 April 2010), that contained allegations under Art. 6 and Art. 10 of the ECHR resulting from contravention sanctioning for active participation at unauthorized assemblies and the failure of the cassation court to properly summon the parties, GA recognized that the allegations of the applicant are well-founded and offered an amount for friendly settlement of the case. The applicant did not agree, for the reason that there was no formal annulment of this conviction, suggesting that the court proceedings shall be reopened. GA objected, stating that a contravention record does not last more than one year and it had expired a long time ago. ECtHR did not consider that reopening was necessary in this case. Apparently, after the *Bogatu* ECtHR decision, the prosecutor's office did not request the reopening of contravention proceedings.

³² Art. 449 CiPC was slightly amended through Law no. 155, of 5 July 2012, in force since 1 December 2012. This is the text of the article after the amendment. This law was also amended with regards to who can request revision and the time limit for doing so.

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.”*

Apparently, in both cases, requests can be submitted by the applicant in the ECtHR proceedings. Until 30 November 2012, upon the request of the GA, the prosecutor general could ask for a revision only for the purpose of reaching a friendly settlement. From 1 December 2012, revision can be requested by the GA and not by the General Prosecutor. GA may submit revision requests both in order to reach a friendly settlement, as well as following a judgment or a decision by the ECtHR. All revision requests submitted under Art. 449 g) and h) CiPC are examined by the SCJ.

If the revision aims at settling the case, it may be lodged within the period of friendly settlement proceedings. CiPC does not specify if, for this kind of revision, and the applicant's agreement is needed. After 2008, the SCJ allowed most³³ of the revision requests received from the General Prosecutor's Office, despite the objections of applicants. In other words, according to the SCJ case-law, revision could be requested any time after communication of the application and up to delivery of ECtHR judgment. Under Art. 449 h) CiPC, revision requests shall be submitted within six months after delivery of the judgment or decision. Until 1 December 2012, this term was three months and it generated divergent interpretations because the revision request had to be submitted before the judgment of the ECtHR Chamber was expected to become final.³⁴

5.3.3.1 Reopening of proceedings following judgments of the Court

Based on ECtHR judgments delivered in Moldovan cases until 31 December 2010, applicants requested revision of at least 20 civil proceedings. Information about these proceedings is presented in Table no. 10.³⁵

³³ In the case of *Venera-Nord-Vest Borta A.G.* (judg. 13 February 2007), the revision request was rejected based on the fact that the parties did not submit a confirmation of friendly settlement; after the ECtHR declared the application admissible in the case of *Moldovahidromaş* (judg. of 27 February 2007), in the context of friendly settlement negotiations, GA requested SCJ to review a *Brumărescu* type domestic judgment. SCJ rejected the revision request based on, *inter alia*, that ECtHR did not adopt a judgment on the merits of the case. The case of *Moldovahidromaş* referred to a dispute between private persons with considerable financial interests.

³⁴ Judgments of the ECtHR Chambers are not final upon delivery and can be challenged to the Great Chamber within three months. The Christian-Democratic People's Party (judg. *Christian-Democratic People's Party*, of 14 February 2006) requested the revision after more than three months from delivery of the ECtHR judgment. On 29 November 2006, SCJ allowed the revision request, noting that the time limit shall be calculated from the notification of the applicant by the ECtHR that the judgment became final. Based on this jurisprudence, the newspaper „Kommersant Moldovy” (judg. *Kommersant Moldovy*, of 9 January 2007) submitted a revision request after receiving notification that the ECtHR judgment became final. SCJ rejected this revision request as time-barred, noting that the time limit runs from the day of the ECtHR judgment. Apparently, this is the only interpretation of this kind. After 2007, SCJ has calculated this term from the notification of the applicant by the ECtHR that the judgment became final.

³⁵ This table was prepared based on the analysis of SCJ judgments and information provided by applicants.

Table no. 10
Information about civil proceedings reopened as a result of ECtHR judgments

ECtHR judgment	Relevant violations found by the ECtHR	Information about the proceedings
Metropolitan Church of Bessarabia and Others <i>(45701/99)</i> 13/12/2001 <u>Final</u> 27/03/2002	Art. 9 of ECHR – refusal to register a cult.	<p>On 17 June 2002, the applicants requested for the reopening of proceedings. On 2 April 2003, after several postponements, the Civil Section of the SCJ allowed the revision request, quashed in part its earlier judgment and compelled the Government to approve the statute of the Metropolitan Church of Bessarabia. However, the SCJ mentioned that the judgment shall not be executed in the part that has already been executed by the Government.</p>
Christian-Democratic People's Party <i>(28793/02)</i> 14/02/2006 <u>final</u> 14/05/2006	Art. 11 of ECHR – unjustified suspension of a political party for 30 days	<p>On 29 November 2006, the Civil Section of the SCJ allowed the revision request of the applicant and quashed the decision of the minister of justice on suspension.</p>
Macovei and Others <i>(19253/03)</i> 25/04/2006 <u>final</u> 25/07/2006	Art. 6 § 1 of ECHR and Art. 1 Prot. 1 – deprivation of effect of several judgments through subsequent judicial proceedings	<p>On 18 October 2006, the Civil Section of the SCJ allowed the applicants' revision request, reopened the proceedings and sent the case for re-examination of the appeal court. Afterwards, the action of the opponent was rejected.</p>
Gurov <i>(36455/02)</i> 11/07/2006 <u>final</u> 11/10/2006	Art. 6 § 1 of ECHR – examination of the appeal on points of law by a judge whose mandate expired	<p>On 1 November 2006, the Civil Section of the SCJ allowed the applicants' revision request and sent the case for re-examination by the Chişinău Court of Appeal.</p>
Oferta Plus SRL <i>(14385/04)</i> 19/12/2006 <u>final</u> 23/05/2007	Art. 6 § 1 of ECHR and Art. 1 Prot. 1 – quashing final judgment through unwarranted admission of the revision request	<p>On 4 January 2007, the applicant submitted a revision request asking for the quashing of the judgment allowing revision and for the restoration of the right to request money from MF.</p> <p>On 29 October 2007, after several postponements for unknown reasons, the Plenary of the SCJ quashed the judgment allowing the revision request, but refusing to restore the right to compensation. The SCJ mentioned that compensation was already paid. Nevertheless, the SCJ awarded the applicant MDL 16,000 (EUR 969) for non-pecuniary damage for violation of the ECHR, despite the fact that the latter did not ask for such compensation and this issue was not discussed in the court hearings. Five judges dissented.</p> <p>In its judgment on just satisfaction (12 February 2008 § 69), the ECtHR noted that it was stricken by the refusal to restore the right of the applicant for reimbursement of the debt, which, according to it, represented a repeated failure to respect final judgment in favour of the applicant.</p>

<p>Kommersant Moldova (41827/02) 09/01/2007 final 09/04/2007</p>	<p>Art. 10 of ECHR – ceasing the activity of a newspaper for spreading critical information about the leadership of the Republic of Moldova</p>	<p>In 2007, the Economic Section of the SCJ rejected the applicant’s revision request as time-barred. For more details, see footnote no. 34.</p>
<p>Moldova-hidromaş (30475/03) 27/02/2007 final 27/05/2007</p>	<p>Art. 6 § 1 of ECHR and Art. 1 Prot. 1 – quashing a final judgment through cassation for annulment</p>	<p>On 19 July 2007, the Economic Section of the SCJ allowed the applicant’s revision request and ordered re-examination of the cassation for annulment request. On 2 August 2007, the cassation for annulment request was rejected. On 8 August 2007, records of registry of companies were introduced based on the judgment of 2 August 2007.</p>
<p>Flux (no. 3) (32558/03) 12/06/2007 final 12/09/2007</p>	<p>Art. 10 of ECHR – inadequate examination of a defamation action</p>	<p>On 27 October 2007, the Civil Section of the SCJ allowed the applicant’s revision request and, on 19 December 2007, rejected the defamation action lodged against the applicant as ill-founded.</p>
<p>Flux (no. 2) (31001/03) 03/07/2007 final 03/10/2007</p>	<p>Art. 10 of ECHR – inadequate examination of a defamation action</p>	<p>On 19 September 2007, the Civil Section of the SCJ allowed the applicant’s revision request and, on 5 December 2007, rejected the defamation action lodged against the applicant as ill-founded.</p>
<p>Flux and Samson (28700/03) 23/10/2007 final 23/01/2008</p>	<p>Art. 10 of ECHR – inadequate examination of a defamation action</p>	<p>On 26 March 2008, the Civil Section of the SCJ allowed the applicant’s revision request and, on 18 June 2008, rejected as ill-founded the defamation action lodged against the applicant.</p>
<p>Flux (28702/03) 20/11/2007 final 20/02/2008</p>	<p>Art.10 of ECHR – inadequate examination of a defamation action</p>	<p>On 14 May 2008, the Civil Section of the SCJ allowed the applicant’s revision request.</p>
<p>Bălan (19247/03) 29/01/2008 final 29/04/2008</p>	<p>Art. 1 Prot. 1 of ECHR – failure to award compensation for violation of copy-rights.</p>	<p>On 12 November 2008, the Civil Section of the SCJ allowed the revision request submitted by the applicant, quashed its judgment that rejected the action and upheld the judgment of the appeal court, by which the applicant had been awarded MDL 183,600 (EUR 11,475) as pecuniary and non-pecuniary damage for the violations of copyrights. The SCJ also explained that the amount awarded in the ECtHR judgment for damages (EUR 5,000) should be deducted from that amount.</p>

<p>Guja (14277/04) 12/02/2008 <u>final</u> 12/02/2008</p>	<p>Art. 10 of ECHR – dismissal of the applicant from the position of head of the press service of the General Prosecutor’s Office for dissemination of information proving the involvement of a politician in the activity of the General Prosecutor’s Office</p>	<p>On 30 April 2008, the Civil Section of the SCJ allowed the revision request submitted by the applicant and, on 28 May 2008, the SCJ ordered reinstating of the applicant. The SCJ also ordered payment of the applicant’s salary for the period between 1 July 2007 (the date of observations on just satisfaction submitted to the ECtHR) and May 2008.</p> <p>On 5 June 2008, the prosecutor general ordered the reinstatement of the applicant in the position from which he was dismissed, despite the fact that this position did not exist any longer because of reorganization of the General Prosecutor’s Office. After being reinstated, the applicant was not assigned any tasks. On 16 June 2008, the applicant was dismissed on the basis of Art. 14 para. 8 of the Law on Public Service (change of leadership within General Prosecutor’s Office that leads to the discontinuation of labour contracts with employees of the press service).</p>
<p>Dacia SRL (3052/04) 18/03/2008 <u>final</u> 18/06/2008</p>	<p>Art. 1 Prot. 1 of ECHR – deprivation of the property following the annulment of a contract of sale of state property as ill-founded; Art. 6 § 1 of ECHR – the right of state authorities to claim restitution of state property without any time limitation</p>	<p>On 24 July 2008, the Economic Section of the SCJ allowed the revision request submitted by the applicant, quashed all judgments and ordered re-examination of the case by the Economic Court of Appeal. The latter delivered a judgment on the merits of the case after the ECtHR judgment on just satisfaction (24 February 2009) and rejected the prosecutor’s action asking for dissolution of the contract.</p>
<p>Tudor-Comert (27888/04) 04/11/2008 <u>final</u> 04/02/2009</p>	<p>Art. 6 § 1 of ECHR – failure to examine a request for exemption from court fees</p>	<p>In 2009, the Economic Section of the SCJ allowed the revision request submitted by the applicant and sent the case for re-examination. In September 2012, the case was still pending before the first instance court.</p>
<p>Eugenia and Doina Duca (75/05) 03/03/2009 <u>final</u> 14/09/2009</p>	<p>Art. 6 § 1 of ECHR and Art. 1 Prot. 1 – quashing of a final judgment through unwarranted admission of the revision request</p>	<p>On 3 December 2009, the Economic Section of the SCJ allowed the revision request submitted by applicants, quashed its earlier judgments, re-examined the case and rejected the appeal on points of law submitted by the opponents of the applicants. It upheld the judgment of the Economic Court of Appeal that rejected the action submitted by the opponents as ill-founded. The Economic Section of the SCJ also ordered <i>restitution in integrum</i>.</p>
<p>Business și Investiții pentru Toți (39391/04) 13/10/2009 <u>final</u> 13/01/2010</p>	<p>Art. 6 § 1 of ECHR – failure to examine the suit of the applicant concerning the purchase of an immovable and prejudging this issue in another action, where judges refused to admit the applicant</p>	<p>On 8 April 2010, the Economic Section of the SCJ rejected the revision request submitted by the applicant based on the fact that damage caused to the applicant was compensated through the ECtHR judgment, and through another judgment adopted by domestic courts obliging the seller to reimburse the applicant the prize paid for the immovable.</p>

Ipteh SA and Others <i>(35367/08)</i> 24/11/2009 <u>final</u> 07/04/2010	Art. 1 Prot. 1 – dissolution of a contract on sale of state property on grounds that were not imputable to the applicant; Art. 6 § 1 of ECHR – refusal of the courts to apply the general time-limitation	On 22 April 2010, the Economic Section of the SCJ allowed the revision request submitted by the applicants, quashed the earlier judgments and rejected the action of the prosecutors' office. The SCJ also awarded the five applicants more than EUR 240,000 for pecuniary damage, EUR 55,000 for non-pecuniary damage and more than 21,000 for costs and expenses.
Petrenco <i>(20928/05)</i> 30/03/2010 <u>final</u> 04/10/2010	Art. 8 of ECHR – unjustified rejection of a defamation action	On 1 July 2010, applicant submitted a revision request. On 19 January 2011, the Civil Section of the SCJ allowed the revision request of the applicant. On 5 May 2011, the SCJ allowed the applicant's action in part and obliged the defendants to publish a denial of a passage concerning collaboration with the KGB.
Ciubotaru <i>(27038/04)</i> 27/04/2010 <u>final</u> 27/07/2010	Art. 8 of ECHR – refusal by authorities to correct records from official registries concerning the ethnic origin of the applicant	On 2 August 2010, the applicant submitted a revision request. On 3 November 2010, the Civil Section of the SCJ allowed the revision request and, on 9 February 2011, allowed the appeal on points of law of the applicant, quashed the earlier judgments, allowed the application and obliged the civil registry to rectify the ethnic origin of the applicant in the official documents.

Most of the revision requests submitted based on ECtHR judgments were examined in up to three months after their submission. However, in the cases of *Metropolitan Church of Bessarabia* and *Oferta Plus SRL*, decisions on revision requests were adopted after eight and ten months respectively. In these two cases, several court hearings took place. The SCJ postponed the examination of these cases several times. In the case of *Metropolitan Church of Bessarabia*, postponements could be explained by the fact that this was the first case where reopening was requested based on a ECtHR judgment. However, in the case of *Oferta Plus SRL*, the Plenary of the SCJ postponed the examination several times ex officio, without addressing the issue of the alleged necessity to do so. Taking into consideration the subject of the dispute³⁶ and the subsequent solution adopted by the Plenary of the SCJ, this situation could suggest that judges of the SCJ did not have a clear opinion about the decision to be made.

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 the first case for the reason that the time limit for submitting revision was missed, and in the second case for the reason that reopening was not justified because the applicant received compensations at the domestic level. While the solution in the case of *Kommersant Moldovya* does not seem to correspond to SCJ case-law, the reasoning in the case *Business și Investiții pentru Toți* seems convincing.

In the 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 relating to major financial allegations against the state, the SCJ was reserved in respect of the claims of the applicants.

³⁶ The case referred to a claim of more than EUR 1 mil. against the MF.

Thus, in the case of *Oferta Plus SRL*, the Plenary of the SCJ did not restore the right of the applicant to claim money from the MF, despite the fact that this solution was clearly emerging from the ECtHR judgment, while in the case of *Dacia SRL*, the SCJ sent the case for re-examination, despite the fact that it was clear from the ECtHR judgment that the action against the applicant could not be allowed.³⁷ On the other hand, in cases with high chances of settlement, the SCJ took the most convenient position for the applicants.³⁸

5.3.3.2 Reopening of proceedings following initiation of friendly settlement procedure

Between 2009 and 2011 prosecutors' office submitted 21 revision requests based on Art. 449 g) CiPC. GA asked the prosecutors' office to request the reopening of the proceedings in those cases. Information about these procedures is presented in table no.11.³⁹

*Table no. 11
Information about civil proceedings reopened following initiation of friendly settlement procedure*

Case	Allegations of the applicant	Information about the proceedings
Perhulov (27768/05) Dec. 03/07/2012	Art. 6 § 1 ECHR – quashing of a final judgment through unwarranted admission of the revision request	On 18 May 2009, the SCJ allowed the revision request of 10 March 2009, quashed the judgment that allowed revision and the subsequent judgments and upheld the judgment delivered in favour of the applicant. In the revision proceedings the applicant claimed compensation for violations of ECHR. The SCJ allowed in part the applicant's claims (the case referred to a dispute between private persons) and awarded MDL 47,250 (EUR 2,953) for pecuniary damage, MDL 35,000 (EUR 2,187) for non-pecuniary damage and MDL 3,000 (EUR 187) for costs and expenses. The SCJ suggested that the applicant should request parts of pecuniary damages that have not been compensated, from his counterpart in the domestic proceedings. On 3 July 2012, ECtHR declared the application inadmissible based on that the applicant lost his victim's status following the judgment of 18 May 2009.
Ciorap (no.10) (10910/06)	Art. 5 § 1 ECHR – failure to award compensation for illegal deprivation of liberty	On 15 July 2009, the SCJ rejected the revision request of 13 May 2009, because the alleged deprivation of liberty of the applicant did not take place. On 16 October 2012, the ECtHR declared the application inadmissible.

³⁷ This conclusion is also supported by the solutions of the SCJ in cases *Moldovabiromaş, Bălan, Eugenia and Doina Duca* or *Ipteş SA.*, where, after allowing the revision request, the SCJ ruled on the merits of the case and did not send the case for re-examination. The SCJ judgments in cases *Oferta Plus SRL* and *Dacia* were adopted until 2009. After 2009, no clear deviations of the spirit of ECtHR judgments were found in the SCJ judgments.

³⁸ See solutions in the *Moldovabiromaş* and *Ipteş SA* cases.

³⁹ Information from this table is mainly based on information received from the General Prosecutor's Office.

<p>Zelinski and Others (5314/06)</p>	<p>Art. 6 § 1 ECHR – quashing of a final judgment through the unwarranted admission of the revision request</p>	<p>On 20 October 2009, the SCJ allowed the revision request of 4 June 2009, quashed the judgment admitting the revision and the subsequent judgments and upheld the judgment delivered in favour of the two applicants.</p> <p>Within the revision proceedings the applicants claimed compensations for violation of the ECHR. The SCJ partially allowed these claims and awarded MDL 25,500 to each of them (the case referred to a dispute between private persons) for non-pecuniary damage against the state. The SCJ suggested the applicants to request in other proceedings, from their opponent in domestic proceedings, a part of pecuniary damage that has not been compensated.</p>
<p>Avramenko (7467/06) Dec. 26/01/2010</p>	<p>Art. 6 § 1 ECHR and Art. 1 Prot. 1 – quashing of a final judgment through the unwarranted admission of the revision request</p>	<p>On 3 February 2010, the SCJ allowed the revision request of 1 July 2009, quashed the judgment admitting the revision and upheld the judgment delivered in favour of the applicant.</p> <p>At the same time, the SCJ mentioned that the examined case was closely linked with another case examined by the ECtHR (no. 29808/02), where ECtHR awarded compensation by a judgment delivered on 26 January 2010. The SCJ explained that the compensation awarded through the ECtHR judgment of 26 January 2010 was to be taken into consideration at the execution of the judgment upheld in these revision proceedings (that referred to payment of money).</p>
<p>Smolei (246/05) Dec. 19/10/2010</p>	<p>Art. 6 § 1 ECHR – refusal to exempt the applicant from obligation to pay the court fee in cassation</p>	<p>On 26 February 2010, the SCJ allowed the revision request of 11 February 2009, quashed the decision of the cassation court and ordered re-examination of the cassation.</p> <p>On 19 October 2010, the ECtHR struck the case out of the list of cases based on an unilateral declaration of the Government.</p>
<p>Jestcov (50319/06) Dec. 09/11/2010</p>	<p>Art. 1 Prot. 1 of ECHR – deprivation of property following the annulment of a sale contract of state property; Art. 6 § 1 of ECHR – the right of state authorities to claim restitution of state property without any time limitation</p>	<p>On 15 April 2010, the SCJ allowed the revision request of 17 March 2010, quashed the judgments delivered against the applicant and rejected the action of the prosecutor as time-barred.</p> <p>On 9 November 2010, the ECtHR struck the case out of the list of cases after the GA offered just satisfaction and the applicant accepted it.</p>

<p>Blic (8738/07)</p>	<p>Art. 6 § 1 ECHR – failure of the cassation court to summon the parties properly</p>	<p>On 28 April 2010, the SCJ allowed the revision request of 24 March 2010, quashed decision of the cassation court and ordered re-examination of the cassation.</p> <p>On 29 September 2010, the SCJ adopted an additional judgment awarding the applicant MDL 16,000 (EUR 1,000) for pecuniary and non pecuniary damage and MDL 16,000 (EUR 1,000) for legal costs incurred within ECtHR proceedings.</p> <p>In September 2012, this application was still pending before the ECtHR.</p>
<p>Pirnău (12255/08) Hot. 31/01/2012</p>	<p>Art. 6 § 1 ECHR and Art. 1 Prot. 1 – quashing of a final judgment through the unwarranted admission of the revision request</p>	<p>On 8 July 2010, the SCJ allowed the revision request of 24 May 2010, quashed judgment on revision and upheld the judgment delivered in favour of the applicant. However, the SCJ did not award compensation for violations of the ECHR.</p> <p>In the judgment of 31 January 2012 the ECtHR found that the applicant was not awarded compensations for the violation of ECHR at the domestic level, and subsequently awarded compensations.</p>
<p>Guțul</p>	<p>Art. 6 § 1 ECHR and Art. 1 Prot. 1 – quashing of a judgment by an appeal request submitted out of time</p>	<p>On 8 December 2010, the SCJ allowed the revision request and quashed the judgment on appeal and the subsequent judgments and sent the case for re-examination by the appeal court.</p> <p>In September 2012, this application was still pending before the ECtHR.</p>
<p>Renan SRL (12255/08) Hot. 31/01/2012</p>	<p>Art. 6 § 1 ECHR and Art. 1 Prot. 1 – quashing of a final judgment through unwarranted admission of the revision request</p>	<p>On 22 December 2010, the SCJ allowed the revision request of 22 October 2010, quashed the judgment on revision and the subsequent judgments and upheld the judgment delivered in favour of the applicant. Nevertheless, the SCJ did not award compensations for violations of the ECHR.</p> <p>In a judgment of 31 January 2010 (<i>Pirnău and Others</i>), the ECtHR found that at the domestic level the applicant was not awarded compensations for the violation of the ECHR at the domestic level, and awarded compensations.</p>
<p>Dionysos Mereni and Others (13420/06)</p>	<p>Art. 6 § 1 ECHR and Art. 1 Prot. 1 – quashing of a final judgment through the unwarranted admission of the revision request</p>	<p>On 23 December 2010, the Economic Section of the SCJ allowed the revision request of 9 December 2009, quashed the judgment on revision and delivered a judgment in favour of the applicant (the case referred to a dispute between private persons).</p> <p>In the revision proceedings, Dionysos Mereni claimed compensations for violations of the ECHR. The SCJ allowed this claim in full and awarded MDL 1,140,098 (EUR 71,256) for pecuniary damage and EUR 5,000 for non-pecuniary damage.</p> <p>In September 2012, this application was still pending before the ECtHR.</p>

<p>Boris Iurii (6376/05)</p>	<p>Art. 6 § 1 ECHR and Art. 1 Prot. 1 – quashing of a judgment by a cassation request submitted out of time</p>	<p>On 23 June 2011, the SCJ allowed the revision request of 19 October 2010, quashed the judgment on cassation and upheld the judgment of the appeal court.</p> <p>In the revision proceedings, the applicant claimed compensations for violations of the ECHR. The SCJ allowed this claim in part and awarded him MDL 15,000 (EUR 937) for non-pecuniary damage and MDL 16,000 (EUR 1,000) for legal costs and expenses related to the ECtHR proceedings.</p> <p>In September 2012, this application was still pending before the ECtHR.</p>
<p>Ștefănuță (53567/08) Dec. 14/06/2011</p>	<p>Art. 6 § 1 ECHR and Art. 1 Prot. 1 – quashing of a final judgment through the unwarranted admission of the revision request</p>	<p>On 9 March 2011, the SCJ allowed the revision request of 25 October 2010, quashed judgment on revision and upheld the judgment delivered in favour of the applicant.</p> <p>The SCJ awarded the following compensations to the applicant for violation of the ECHR: EUR 2,000 for non-pecuniary damage, EUR 1,500 for legal representation and EUR 50 and MDL 650 (EUR 40) for expenses.</p> <p>By the decision of 14 June 2011, the ECtHR struck the case out of the list of cases after it was informed by the applicant on 11 April 2011 that he no longer wished to pursue his application.</p>
<p>Buzurin</p>	<p>Art. 6 § 1 ECHR and Art. 1 Prot. 1 – quashing of a final judgment through the unwarranted admission of the revision request</p>	<p>On 13 April 2011, the SCJ allowed the revision request of 6 December 2010, quashed judgment on revision and upheld the judgment delivered in favour of the applicant.</p> <p>In September 2012, this application was still pending before the ECtHR.</p>
<p>Jomiru and Others (28430/06) Hot. 17/04/2012</p>	<p>Art. 6 § 1 ECHR and Art. 1 Prot. 1 – quashing of a final judgment through the unwarranted admission of the revision request</p>	<p>On 18 April 2011, the Plenary of the SCJ rejected the revision request because it had not proved the initiation by the ECtHR of friendly settlement negotiations, a friendly settlement between the parties, or a unilateral declaration of the Government.</p> <p>By a judgment of 17 April 2012, the ECtHR found a violation of Art. 6 § 1 ECHR and Art. 1 Prot. 1.</p>
<p>Rusu Lintax SRL (17992/09)</p>	<p>Art. 6 § 1 ECHR and Art. 1 Prot. 1 – quashing of a final judgment through the unwarranted admission of the revision request</p>	<p>On 16 May 2011, the Civil Section of the SCJ rejected the revision request because initiation by the ECtHR of friendly settlement negotiations, friendly settlement between the parties, or unilateral declaration of the Government was not proved.</p> <p>In September 2012, this application was still pending before the ECtHR.</p>

Steţco (8189/09)	Art. 6 § 1 ECHR – quashing of a final judgment through the unwarranted admission of the revision request	On 13 October 2011, the SCJ allowed the revision request of 12 July 2011, quashed the judgment on revision and upheld the judgment delivered in favour of the applicant. In September 2012, this application was still pending before the ECtHR.
Viorel Ipate (51411/09)	Art. 6 § 1 ECHR and Art. 1 Prot. 1 – quashing of a final judgment through the unwarranted admission of the revision request	On 29 February 2012, the SCJ allowed the revision request of 19 December 2011, quashed the judgment on revision and sent the case for re-examination to the Chişinău Court of Appeal. In September 2012, this application was still pending before the ECtHR.
Jovmir (22917/09)	Art. 6 § 1 ECHR and Art. 1 Prot. 1 – quashing of a final judgment through the unwarranted admission of the revision request	On 29 February 2012, the SCJ allowed the revision request of 8 September 2011, quashed the judgment on revision and the subsequent judgments and upheld the judgment delivered in favour of the applicant. In September 2012, this application was still pending before the ECtHR.
Tv-Zavtoni (35153/10)	Art. 6 § 1 ECHR and Art. 1 Prot. 1 – quashing of a final judgment through the unwarranted admission of the revision request	On 15 March 2012, the SCJ allowed the revision request of 30 December 2011, quashed the judgment on revision and upheld the judgment delivered in favour of the applicant. In September 2012, this application was still pending before the ECtHR.
Tiuvildina (64677/10)	Art. 6 § 1 ECHR – quashing of a final judgment through the unwarranted admission of the revision request	On 23 May 2012, the SCJ allowed the revision request of 27 December 2011, quashed the judgment on revision and upheld the judgment delivered in favour of the applicant. In September 2012, this application was still pending before the ECtHR.

Revision requests submitted by the prosecutors' office were examined quite quickly by the SCJ. 11 out of 21 applications were examined in less than three months after they were submitted, and in six cases the decisions concerning the revision requests were made over a period of three to six months. Only in four cases the SCJ ruled on the requests in more than six months. In the case of *Russu Lintax SRL*, the revision request was examined within six months and a half, in the case of *Avramenko* – within seven months, in the case of *Boris Iurii* – within nine months, and in the case of *Dionysos Mereni and Others* – within 12 months.

Out of 21 revision requests received within 2009-2011, only three were rejected. In 18 cases where revision was allowed, the solutions of the SCJ were in line with the core of the applicants' claims submitted to the ECtHR.⁴⁰ Apparently, the SCJ reopened the proceedings in order to redress violations of the ECHR at the domestic level and to contribute to friendly settlements of those cases. Unlike in contravention cases, where the courts ordered

⁴⁰ *Ciorap (no. 10), Jomiru and Others and Russu Lintax SRL*.

reopening of the proceedings based solely on the received notification that an application was submitted to an international authority, in civil cases examined in 2010 and 2011, the SCJ constantly verified whether obvious violations of the ECHR followed as a result of the handling of each case.

The solutions of the SCJ in three cases where revision requests were rejected do not contribute to the unification of the judicial practice. The solution in the case *Ciorap (no. 10)*, where the SCJ rejected the revision request for the reason that the application submitted to the ECtHR was not based on real facts, can be considered logical. Nevertheless, in cases of *Jomiru and Others* and *Russu Lintax SRL*, the SCJ rejected the revision requests because initiation by the ECtHR of friendly settlement negotiations, a friendly settlement between the parties, or a unilateral declaration of the Government was not proved, despite of the fact that before and after these judgments the SCJ has never asked for such confirmations in order to admit revision requests submitted based on Art. 449 g) CiPC. The cases *Jomiru and Others* and *Russu Lintax SRL* concerned disputes between private persons with considerable pecuniary interests.

To a large extent, the reopening of civil proceedings based on Art. 449 g) CiPC was requested by the prosecutors' office and ordered by the SCJ only in case of obvious violations of the ECHR.⁴¹ In five cases,⁴² the prosecutors' office rejected the requests of the GA to submit revision requests, apparently, because they did not refer to clear violations of the ECHR.

5.3.4 Other procedures

In the *Amihalachioaie* judgment (20 April 2004), the ECtHR found a violation of Art. 10 of the ECHR because a fine imposed on the chairperson of the Bar Association for criticizing a decision of the Constitutional Court was not justified. The fine was applied through a decision of the Constitutional Court. According to Art. 72 of the Code on constitutional jurisdiction, revision of the decisions of the Constitutional Court can take place only at the initiative of the Constitutional Court. Despite the fact that this did not result from the ECtHR judgment, based on the ECtHR judgment the Constitutional Court re-examined the procedure ex officio. Through the Decision no. 1, of 3 August 2004, the Constitutional Court ordered the reimbursement of the fine that was paid by the applicant. However, it did not quash its earlier decision imposing the sanction. This decision of the Constitutional Court confirms the inclination at that time of the Moldovan judges to easily reopen domestic proceedings based on ECtHR judgments.

5.4 Conclusions

Payment of just satisfaction

- a) Generally, the Moldovan authorities pay just satisfaction awarded through ECtHR judgments and decisions in due time. Out of 111 payments made in 2011 based on

⁴¹ In the case of *Eugenia and Doina Duca* (judg. ECtHR of 3 March 2009), the revision request submitted by the applicant's opponent was allowed based on a letter confirming that the application was submitted to the ECtHR, despite the fact that it was clear that the application to the ECtHR was submitted after six months. This approach shocked the ECtHR (§ 39 of the ECtHR judgment).

⁴² In the cases *Eugenia and Doina Duca*, *Timpul*, *Dragostea Copiilor-Petrovski-Nagornii*, *Vieru* and *Voltman*.

- ECtHR judgments and decisions, in 93 cases (84%) the payments were made within three months. 18 payments (16%) were made later than three months. These delays were due to late submission of bank requisites by the applicant;
- b) Until 2012, there was no special account in the Republic of Moldova where just satisfaction not requested by the applicants in due time could be deposited. In September 2012, for the first time, just satisfaction not requested by the applicant was transferred to a special bank account opened by the MF in the applicant's name. In most cases concerning late submissions in 2011, just satisfaction was paid to the applicants by the MF in two to four weeks after receiving bank requisites;
 - c) The Government is paying the just satisfaction to the residents of the Republic of Moldova in Moldovan lei. Conversion is made according to the exchange rate of the National Bank of Moldova on the date of payment of the amount by the MF. This rate is in line with the commercial exchange rates;
 - d) Moldovan legislation does not limit in any manner the right of creditors of the applicant to take money awarded by the ECtHR to the applicant for non-pecuniary damage or costs and expenses through the enforcement proceedings. This situation is not totally in compliance with the ECHR;
 - e) Moldovan legislation does not regulate expressly the methodology of taxation of the amounts received following judgments and decisions of the ECtHR. According to general rules, the amounts awarded for real damage and for compensating non-pecuniary damage are not subject to taxation. However, lost revenue that exceeds the amount of the real damage is subject to taxation. Legal entities shall also pay contributions exceeding 25% from legal fees compensated by the ECtHR and due to the applicant's representative at the ECtHR when he or she is not a licensed advocate. Until 2012, these taxes were not paid by the MF to the applicants. Apparently, the applicants did not request compensation of these taxes either;
 - f) Just satisfaction is paid to a bank account indicated by the applicant. Authorities are aware of the fact that the applicant's bank charges a fee on the amount received in the account. Nevertheless, until 2012, the authorities have never paid this bank fee. It leads to a situation where the recipient of the payment effectively receives a smaller amount than the one indicated by the ECtHR. Requests by applicants to have bank charges compensated have been unsuccessful.

Reopening of domestic proceedings

- a) Moldovan legislation authorises the reopening of domestic proceedings based on ECtHR proceedings in criminal, contravention and civil cases. The grounds for reopening of domestic proceedings based on ECtHR judgments seem to be in accordance with Recommendation of the CM R(2000)2. Domestic legislation goes even further, allowing reopening of the domestic proceedings based on ECtHR stricken out decisions and even on communication of applications to the Government by the ECtHR;
- b) In Moldovan cases delivered until 31 December 2010, re-examination of 22 criminal proceedings based on ECtHR judgments was requested. These proceedings concerned both accusations against applicants and cases where applicants were victims. In all these

cases, a re-examination took place. All the six criminal proceedings against the applicants were reopened. Among the other 17 proceedings where applicants were victims, four were still pending at the domestic level on the day of the ECtHR judgment, eight proceedings were reopened, and in five cases the prosecutors refused the reopening of proceedings. In eight cases concerning ill-treatment, reopening took place after considerable delays;

- c) Despite the fact that more than seven years have passed after the first relevant ECtHR judgments, until 1 September 2012, no one was convicted in any of the 12 cases concerning ill-treatment or death that were pending on the day of the ECtHR judgment, or that were opened based on ECtHR judgments. Seven cases were subsequently discontinued or suspended by the prosecution, three cases are still pending at the prosecutors' office, and only two cases were sent to the trial court. In one case, judicial proceedings were discontinued because the time limitation for a criminal sanction expired, while in the second case no judgment has been delivered so far. These figures suggest that, although the domestic proceedings were reanimated, many prosecutors did not treat these proceedings with due seriousness;
- d) Based on ECtHR proceedings, at least nine requests for reopening of contravention proceedings were submitted by 31 December 2011. Three of them were based on ECtHR judgments and six followed communication of the applications to the Government. The revision requests were examined quickly and were allowed. In six cases reopened following the communication of the application, the judges allowed the revision requests merely on the basis of communication of the application by the ECtHR to the Government, without looking into whether the circumstances of each case justified the reopening;
- e) Based on the ECtHR judgments adopted by 31 December 2010, the SCJ allowed all requests for reopening of criminal proceedings, and 18 out of 20 requests concerning reopening of civil proceedings. All solutions of the SCJ, except one, were compatible with the ECtHR judgments. However, sometimes the reasons of the SCJ were different from the position of the ECtHR expressed in the judgment. It is clear that the SCJ tried to follow ECtHR judgments. However, until 2009, it was also clear that the SCJ wanted to limit the potential benefits that could be awarded applicants and third parties through reopening;
- f) Between 2009 and 2011, the prosecutors' office submitted 21 requests for reopening of civil proceedings in order to facilitate friendly settlements of cases communicated by the ECtHR to the Government. 11 out of 21 applications were examined in less than three months, in six cases the decision on revision was taken in terms from three to six months, and in four cases the decisions were adopted in more than six months. The SCJ allowed 18 out of 21 requests for reopening of proceedings. Unlike in contravention cases, where courts ordered reopening of proceedings on the mere reason that they were notified about the submission of the application to an international instance, in civil proceedings reopened in 2010 and 2011 the SCJ constantly verified whether obvious violation of the ECHR resulted from the case under examination.

5.5 Recommendations

Payment of just satisfaction

- a) If no request for receipt of just satisfaction was submitted in due time, the payment of just satisfaction shall be made to a special account that would permit a quick payment to the applicant, or to a bank account opened by the authorities for this purpose for the applicant. The applicant shall be informed about this;
- b) Moldovan legislation shall be complemented with provisions excluding the possibility for the state to cover the applicant's debts to the state from the sums awarded by the ECtHR for non-pecuniary damage. The legislation should also be complemented with provisions prohibiting the attachment of the amounts awarded by the ECtHR for legal costs due to the applicant's representative;
- c) The tax legislation shall be complemented with a provision excluding amounts awarded by the ECtHR to the applicant from taxation. Alternatively, an efficient mechanism for compensation of taxes charged on the amounts awarded in the ECtHR judgments should be created;
- d) The MF should stop the practice of not paying bank fees charged from the beneficiary of just satisfaction. Payment of fees should be made together with the just satisfaction.

Reopening of domestic proceedings

- a) Prosecutors and judges shall decide without delay on reopening of criminal proceedings based on ECtHR judgments and decisions. Decisions concerning the refusal to reopen investigations related to ill-treatment, discontinuation or suspension of these criminal investigations shall be well justified. Reopening shall not be refused, or investigation shall not be discontinued, in cases where there is at least a theoretical possibility to identify perpetrators and bring them to justice;
- b) The reopening of judicial proceedings following the communication of the application to the Government, without taking into consideration circumstances of the case, can be contrary to the ECHR, because it can result in an unjustified quashing of a final judgment. In such cases, reopening shall take place only when provided by Recommendation CM R(2000)2. Art. 453 para. 1 of CrPC, Art. 475 para. 2 d) CC and Art. 449 g) CiPC shall be adjusted accordingly. At the same time, reopening of proceedings based on communication of the application to the Government shall take place only in cases of clear violation of the ECHR.

Execution of judgments of the ECtHR: general measures

6.1 Introduction

It is generally accepted that Art. 46 of the ECHR obliges the states to take measures aimed at avoiding similar violations of the ECHR. These measures imply, first, amendment of the legislation and practices that are contrary to the ECHR, as well as a change of some factual situations that may generate violation of the ECHR, such as, for instance, poor conditions of detention. Dissemination of information about judgments of the ECtHR and training regarding the ECHR may also contribute to avoiding situations that are contrary to the ECHR. In this chapter we shall analyze the measures taken by the Government of the Republic of Moldova in this regard.

6.2 Raising awareness about the ECHR

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

6.2.1 University education

There are more than ten faculties of law in the Republic of Moldova. The Faculty of Law from the State University of Moldova (SUM) is the biggest of them, with more than 4,000 students studying in 2012. Apparently, the Faculty of Law from the Free International University from Moldova (FIUM) is the second by size. More than 2,000 students studied the law at the FIUM in 2012.

During bachelor studies at SUM, students from the Law Faculty do not study a specialized course dedicated to the ECHR. However, in 2012, students from the third year were

studying the course „International Protection of Human Rights”, 60 academic hours, and 32 hours were dedicated to the ECHR. At the FIUM no such course exists at all, however within the second year course „International Protection of Human Rights”, ECHR is discussed during four out of the total of 40 hours of the course. At both faculties, ECtHR is tangentially discussed also within the courses of public international law, civil procedure and criminal procedure.

In 2012, there were ten master programs at the Law Faculty of the SUM. Four of them included courses that referred exclusively or mostly to the ECHR. These courses are in the table no. 12.

*Table no. 12
Courses that refer exclusively or mainly to the ECHR
from the master programs at the Law Faculty of the SUM*

Master program	The title of the course	Duration of the course (hours)	Dedicated to the ECHR (%)
International Law	Principles of applying ECHR in the domestic legal framework	40	100%
Criminal Law	Observance of human rights in criminal law	40	80%
Civil Judicial Proceedings	ECtHR procedure and case-law	60	100%
Law and Criminal Procedure	Human rights in criminal procedure	45	65%

In 2012, there were four master programs at the FIUM. The course of „European protection of human rights” is a joint course for all four programs. It lasts 45 hours and is exclusively dedicated to the ECHR.

Information mentioned above suggests the fact that ECHR is studied insufficiently within bachelor studies at the two law faculties. However, within master studies, ECHR is studied during eight out of 14 master programs. The time allocated for courses related to the ECHR within master programs is comparable with the time allocated for other courses. The course „ECtHR Procedure and Case-Law” is the longest course from the master program. Despite the fact that within master programs ECHR is studied within sufficient courses, this fact does not compensate the insufficiency of information about the ECHR within bachelor programs, because in 2012 students from master programs represented less than 10% of the total number of students from those two faculties. On the other hand, in 2012 one could become judge, prosecutor or advocate without graduating a master program.¹

6.2.2 Professional training of judges and prosecutors

6.2.2.1 Initial training

According to the general rule, in order to become judge or prosecutor, the candidate shall graduate the National Institute of Justice (NIJ), the program that lasts for 18 months. During these studies, the candidates must take the course of „European Convention on

¹ See Art. 6 para. 1 b) of the Law on the Status of Judges (no. 544, of 20 July 1995); Art. 37 para. 2 of the Law on Prosecution Office; and Art. 10 para. 1 of the Law on the legal profession (no. 1260, of 19 July 2002).

Human Rights and case-law of the European Court of Human Rights". The course lasts 54 hours, out of which 34 hours are allocated for seminars and 18 hours for lectures. The curriculum of the course covers the majority of the rights regulated by the ECHR, organization of the ECtHR and procedure at the ECtHR. The ECtHR case-law is tangentially discussed also within other courses taught at the NIJ. NIJ was frequently accused of the fact that its programs are too theoretical.

As an exception, persons with experience in certain legal professions could also become judges or prosecutors after they pass a special exam. Candidates for the position of judge need to pass this exam before the Qualification Board of the SCM. In 2012, one of several subjects that candidates needed to respond to referred to the ECtHR case-law. Candidates for the position of prosecutor need to pass the exam before the Qualification Board of the SCP. This exam is composed of three tests. About 10% of the questions from the first test refer to the ECHR.

6.2.2.2 Continuous training

Both judges and prosecutors must annually undergo at least 40 hours of continuous training. Usually, this training takes place at the NIJ. In 2010, 80 seminars were organized at the NIJ, out of which 22 (27.5%) of them referred exclusively or mainly to the ECHR. During these seminars, 337 judges and 152 prosecutors were trained.²

According to the Activity Report of the NIJ for 2011, this year NIJ carried out 208 continuous training activities, 189 of them were seminars. From 208 activities, 33 (15.9%) represented seminars related to the ECHR. In 2011, ECHR was the most frequently discussed legal subject at the seminars.³ More information about the 33 seminars is presented in the table no. 13.

*Table no. 13
Seminars in the ECHR field organized at the NIJ in 2011*

Title of the seminar and duration	Number of the seminars	Article of the ECHR	Trained judges/prosecutors	Main organizer
ECHR and CPT standards concerning combating ill-treatment and impunity; using alternatives to the preventive detention (two days)	20	3 and 5	211/241	CoE-EU
Practical application of the ECHR judgments at the domestic level (two days)	7	5 and 6	124/0	NORLAM
Prevention and combating of torture and other ill-treatment	3	3	0/73	UNDP
Case-law concerning Article 6 and 8 of the ECHR and Article 1 of Protocol 1 to the ECHR	3	6, 8 and P.1-1	24/30	NIJ
total	33		359/344	

² See Activity Report of the NIJ for 2010, available on: http://inj.md/files/u1/Raport_privind_activitatea_INJ_in_anul_2010.pdf

³ Among activities carried out in 2011, 15.9% referred to the ECHR, 13% to the application of the national legislation, and 5% to the interaction between legal professions.

Following the table above, 359 judges and 344 prosecutors participated at the seminars organized in 2011 at the NIJ in the field of ECHR, which represents 80% of the total number of judges and 46% of the total number of prosecutors.⁴ Besides these seminars, ECHR was also discussed at other seminars where related subjects were covered. Besides these seminars, SCJ annually organizes ten meetings with judges in order to discuss problems that are emerging from the application of the law. According to judges, issues related to application of the ECHR were discussed at each of these seminars. Thus, in 2011, a high majority of judges and a high majority of prosecutors were trained in the field of ECHR.

When asked about the quality of the continuous training at the NIJ, many interviewed judges and prosecutors declared that subjects presented at the seminars were, mainly, the same as in previous years, many presentations were too theoretical, and contribution of some trainers left much to be desired. Repetition of subjects concerning ECHR is mainly due to the fact that high majority of seminars are organized with support and upon request of external donors, who organize them according to their priorities and the needs of judges. Indeed, out of 33 seminars organized in 2011, only three were organized upon the initiative of and with sources of the NIJ. Apparently the reduced number of seminars organized in the field of ECHR upon the initiative of the NIJ is due to limited financial resources available to the NIJ, as well as the availability of donors to cover expenses for such seminars.

Besides continuous training, judges and prosecutors must also pass once in several years an exam before the Qualification Board of the SCM and, respectively, at the SCP. During such exams only theoretical knowledge is verified. One of those three subjects that need to be answered by the judge refers to the ECtHR case-law in Moldovan cases. In case of prosecutors, there is no list of subjects that follows to be prepared, and prosecutors are requested to verbally answer any question of the members of the Qualification Board. When interviewed, members of both Qualification Boards declared that the level of knowledge of the judges and prosecutors regarding the ECHR is quite reduced.

In 2012, NIJ requested judges and prosecutors to fill in a questionnaire where they were asked to indicate the subjects that they would like to study at NIJ seminars organized in 2013. Within this questionnaire, ECHR was on the second place among their preferences. This suggests the fact that, even though judges and prosecutors from the Republic of Moldova benefited from the training in the ECHR field, they still need to receive additional training in this field.

6.2.3 Training of the advocates

In order to become an advocate, the candidate needs to pass a preliminary exam. Those who pass the exam shall carry out an internship of 18 months and subsequently pass the exam for admission to the profession. The preliminary exam represents a multiple-choice test that includes several hundreds of questions. Several of these questions refer to the ECHR. However, during the exam for admission to the profession of advocate, which is mainly a theoretical one, knowledge of the candidates in the field of ECHR is not verified.

Advocates-interns must annually carry out 80 hours of training during their internship and advocates – 40 hours. Neither BA nor universities organize periodic courses for

⁴ At the beginning of 2012, there were 444 judges and 748 prosecutors in the Republic of Moldova.

advocates and advocates-interns. Usually, the latter take part in the training seminars organized by the foreign donors. In 2011, the main donors who organized seminars for advocates were ABA ROLI and NORLAM. Information about these seminars is presented in the table no. 14.

Table no. 14
Seminars in the ECHR field organized for advocates in 2011

Title of the seminar and duration	Number of the seminars	Article of the ECHR	The number of participants	Organizer
The right to freedom and security and the right to a fair trial (two days)	7	5 and 6	49	NORLAM
Articles 3 and 5 of ECHR (three days)	2	3 and 5	40	ABA ROLI
Changing the procedure for examination of cases by the ECtHR following Protocol No. 14 (one day)	1	35 and 46	50	ABA ROLI
total	10		139	

Besides these seminars, in 2011, ECHR was discussed during many of the monthly meetings of several hours organized by ABA ROLI and Amnesty International for advocates. Even so, in 2011 training in the field of ECHR offered for advocates was more reduced than training for judges and prosecutors. During the ten seminars mentioned above only 139 advocates participated, which represents less than 9% of the total number of advocates.

6.2.4 Translation of the case-law of the European Court of Human Rights

Few of them know well enough English or French languages and this reason was often invoked at the beginning of 2000 by judges and prosecutors in order to justify non-application of the ECHR. Judges, prosecutors and advocates from the Republic of Moldova must know Romanian language. A high majority of them know Russian language quite well. Thus, judges, prosecutors and advocates may easily read the translations of the case-law carried out both in the Republic of Moldova, as well as in Romania and Russia. A considerable amount of case-law was translated in Romanian and Russian languages in Romania and Russia, which is available free of charge on internet.⁵

Translation in Romanian language of the judgments and decisions of the ECtHR concerning the Republic of Moldova is carried out both by the office of GA as well as by

⁵ Translation in Romanian language of several hundreds of judgments and decisions of the ECtHR concerning Romania is available on the web pages of the Superior Council of Magistrates from Romania (<http://www.csm-just.ro/csm/index.php?cmd=9503>) and of the High Court of Cassation and Justice from Romania (http://www.scj.ro/decizii_strasbourg.asp). Translation in the Russian language of more than 100 judgments and decisions of the ECtHR concerning Russia is available on the web pages of the Russian Ministry of Justice (<http://www.minjust.ru/ECJ/precedent?theme=minjust>). Several hundreds of ECtHR judgments translated in the Russian language are also available on the web pages of several Russian non-governmental organizations, such as Sutyajnik (http://sutyajnik.ru/rus/echr/school/judg_v_russia.html) or Russian Justice Initiative (<http://www.srji.org/resources/search/results/p11/?t=1&p=1&d=26.05.2009>).

non-governmental organizations from the Republic of Moldova. Translations carried out by the office of the GA are published on the web page of the Ministry of Justice (http://justice.md/md/jud_gen/) and can be accessed free of charge. In September 2012, most of the judgments of the ECtHR concerning the Republic of Moldova delivered until July 2010 were available on the web page of the Ministry of Justice. In parallel with the office of the GA, Public Association „Lawyers for Human Rights” is translating all judgments and all decisions of the ECtHR concerning the Republic of Moldova. Translations of the judgments and decisions of the ECtHR carried out by the latter are published on its web page (<http://www.lhr.md/hot/>) two-six months after judgments or decisions become available. In October 2012, all judgments and decisions of the ECtHR concerning the Republic of Moldova until 31 December 2011 and several judgments adopted in 2012 were available free of charge on this web page. Translation of the whole case-law of the ECtHR concerning the Republic of Moldova for the period September 1997 – June 2009 was published by the Public Association „Lawyers for Human Rights” in nine volumes and distributed free of charge to the specialists from the Republic of Moldova.⁶

Neither the office of the GA nor the non-governmental associations from the Republic of Moldova carry out periodic translations of the ECtHR case-law against other states. However, starting from July 2012, ECtHR, with the support of the Trust Fund for Human Rights of the CoE, started translation in Romanian of its main judgments and decisions adopted in the period 2007-2012. Until end of 2012, more than 50 judgments and decisions of the ECtHR are planned to be translated.

All interviewed persons declared that, due to available translations, they do not encounter linguistic difficulties in studying the 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.

6.2.5 Periodical information of specialists about the case-law of the European Court of Human Rights

According to Art. 6 e) of the Law on Governmental Agent, GA shall inform judges, prosecutors and public officials about the ECtHR case-law. This information is disseminated by publishing information about the ECtHR case-law on Moldova in the Official Gazette (OG), separately informing judges and prosecutors about the main case-law and pending cases, issuing of press releases and elaboration of analytical materials about the ECtHR case-law.

According to Art. 16 of the Law on Government Agent, translation of the judgments or decisions of the ECtHR, where Republic of Moldova is a defendant, follows to be published in OG. Art. 1 para. 8 of the Law on publication and entry into force of official acts (no. 173, from 6 July 1994) mentions that only the summary of decisions or judgments shall be published and not their entire text. Summary of the decisions or judgments is prepared by the office of the GA. Lately, GA was sending for publication the entire text of short judgments and decisions, and in case of long judgments or decisions only their summary was published.

⁶ Translation and publication by the Public Association „Lawyers for Human Rights” of the case-law of the ECtHR was carried out, mainly, with financial support of Civil Rights Defenders (former Helsinki Committee for Human Rights).

Decisions and judgments are published several months after their delivery, however sometimes their publication takes place with considerable delays.⁷ However, these delays are not so relevant for specialists as long as press releases are issued.

Until 2008, GA was sending written information about the main Moldovan cases that are pending or examined by the ECtHR to each court of law, once in several months. After 2008, the practice of sending periodical information was discontinued. GA explained that the need of such a practice disappeared after translations of the case-law started to be published on the web page. However, it seems that GA is still sending written information about the judgments and decisions of the ECtHR concerning the Republic of Moldova to the SCM and SCP. In order to ensure reopening of domestic proceedings, General Prosecutor's Office is also informed about the main cases communicated to the Government.⁸

In 2011, the office of the GA translated the Guide concerning admissibility criteria elaborated by the ECtHR in the Romanian language. This translation is available free of charge on the web page of the Ministry of Justice (<http://justice.gov.md>). In 2012, GA elaborated a Guide concerning the ECtHR case-law on non-enforcement of judgments and excessive duration of the proceedings.⁹ Besides the ECtHR standards, this guide also contains an analysis of the compensations awarded by the ECtHR in Moldovan cases concerning non-enforcement of judgments and excessive duration of the proceedings. In July 2012, GA, together with the chairperson of the SCJ, issued joint opinion concerning just satisfaction to be awarded for violation of the rights regulated by the ECHR. Joint opinion was published on the web page of the SCJ.¹⁰

GA periodically issued press releases concerning main judgments and decisions of the ECtHR delivered in Moldovan cases. These press releases are published on the web page of the Ministry of Justice. In especially important cases, such as *Catan and Others v. Moldova and Russia* (judgment of 19 October 2012), even press conferences were organized. The practice of press releases intensified starting from 2009. In 2011 six press releases were issued, and in the period January–November 2012 – seven press releases.

Public Association „Lawyers for Human Rights” is more active than GA in disseminating information about the Moldovan cases at the ECtHR. Starting from 2006, it publishes press releases about each judgment and main decision of the ECtHR issued in Moldovan cases on its web page (www.lhr.md). Press releases represent a one-two pages summary of judgments or decisions. Periodically, association issues press releases also concerning the main cases communicated to the Government and other important events related to the ECtHR. In the period 2006–2011, it issued more than 250 press releases.

⁷ For example summary of the judgment *Straisteanu and Others*, from 7 April 2009, was published in OG of 14 September 2012; decision *Bigea*, from 24 January 2012 was published in OG of 12 October 2012; decision *Povestca*, from 4 September 2012 was published in OG of 19 October 2012; judgment *Straisteanu and Others* (just satisfaction), from 24 April 2012 was published in OG of 2 November 2012.

⁸ Starting from 1 December 2012, GA alone may request reopening of domestic civil proceedings following the ECtHR procedures. However, he cannot request reopening of criminal or contravention proceedings.

⁹ Available at http://justice.gov.md/public/files/file/GHID_PRACTIC_DAG_MJ_mai_2012.pdf

¹⁰ Available at http://csj.md/news.php?menu_id=481&lang=5

In January each year, Legal Resources Centre from Moldova publishes an analysis of judgments and decisions of the ECtHR in Moldovan cases, which were settled during previous year. This analysis contains statistical information about Moldovan cases lodged and examined by the ECtHR, a presentation of the main judgments, as well as a list of ECtHR violations found in the respective period of time.¹¹

6.2.6 Conclusions

- a) ECHR is studied insufficiently during bachelor studies at the faculties of law of the SUM and FIUM. Within master studies, ECHR is studied within eight out of 14 master programs from the two faculties of law. The time allocated for the courses related to the ECHR within master programs is comparable with the time allocated for other courses. Despite the fact that at the master level, ECHR is studied within sufficient number of master programs, this fact does not compensate the insufficiency of information about the ECHR provided within bachelor programs. Students from master programs represent less than 10% of the total number of students from the two faculties of law. On the other hand, in 2012 a person could become advocate, prosecutor or judge without graduating a master program;
- b) During initial training conducted in 2012, candidates for the position of judge and prosecutor were trained in the ECHR field. However, NIJ was often accused of the fact that its programs are too theoretical. Subjects on ECHR are also included during exams organized by Qualification Board of judges and prosecutors;
- c) 80% of the total number of judges and 46% of the total number of prosecutors participated during ECHR seminars organized in 2011 at the NIJ. Many of the interviewed judges and prosecutors declared that subjects of the seminars were, mainly, the same as in previous years, many presentations were too theoretical, and contribution of some trainers left much to be desired. Repetition of subjects related to ECHR is mainly explained by the fact that high majority of seminars are organized with support and upon request of external donors, who organize them according to their priorities and the needs of judges. Even though judges and prosecutors from the Republic of Moldova participated at the trainings in the field of ECHR, they declared that they still need additional training in this field;
- d) Judges and prosecutors must pass theoretical exam before the Qualification Board of the SCM and, respectively, the SCP once in several years. One of the three subjects at the exam for judges refers to the ECtHR in Moldovan cases;
- e) The exam for admission to the internship for advocates includes several questions about the ECHR. However, the exam for admission to the profession of advocate does not include such subjects. Neither BA nor universities organize periodic courses for advocates or advocates-interns. Usually, the latter participate at the training seminars organized by foreign donors. In 2011, ten seminars were organized in the field of ECHR, where less than 9% of the total number of advocates participated;
- f) All ECtHR case-law concerning the Republic of Moldova until 2011 was translated in Romanian language by the GA or non-governmental associations. These translations

¹¹ They are available at <http://crjm.org/categories/view/147>

are available free of charge on internet two-six months after judgments or decisions become available. Specialists from the Republic of Moldova also consult translations in Russian and Romanian languages carried out in Romania and Russia. In July 2012, ECtHR started translation in Romanian language of its main judgments and decisions adopted in the period 2007-2012. Until end of 2012, more than 50 judgments and decisions of the ECtHR are planned to be translated. 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;

- g) Non-governmental organizations and GA periodically inform specialists about the ECtHR case-law concerning the Republic of Moldova and cases communicated to the Government. Information sent in this way is often much more detailed than required by legal specialists.

6.2.7 Recommendations

- a) A higher attention should be paid to the ECHR within bachelor studies at the law faculties. At the same time, during the process of admitting candidates to the profession of advocate, more emphasis should be made on studying the ECHR;
- b) NIJ should plan organizing continuous training seminars in the field of ECHR based on the needs of judges, and these training seminars should be less theoretical;
- c) UA should periodically organize training seminars in the field of ECHR for advocates and advocates interns;
- d) GA should intensify its efforts aimed at ensuring communication of information concerning cases communicated by the ECtHR to the prosecutors and judges. Also, GA should focus on translation of the ECtHR case-law in Moldovan cases which are not translated by non-governmental organizations;
- e) In order to ensure systematization of the large volume of information received by specialists, elaboration of periodic bulletins about the activity of the ECtHR in Romanian language would be welcome, with the emphasis on case-law relevant for the Republic of Moldova.

6.3 Measures taken in respect of violations of the ECHR found in Moldovan cases

In those 196 judgments of the ECtHR delivered until 31 December 2010, more than 50 types of violations of the ECHR were found. All violations found by the ECtHR, grouped according to the type of violation, are presented in this sub-chapter. During research, we tried to identify reasons that led to violation of ECHR, measures taken in order to avoid such situations in future and the impact of such measures.

6.3.1 Article 2 and 3 of the European Convention on Human Rights

In 196 ECtHR judgments, 59 violations of Art. 2 and 3 of the ECHR were found. The three violations of Art. 2 referred to inadequate investigation of deaths. ECtHR found 56 violations of Art. 3, including 11 violations for ill-treatment, 16 violations for inadequate investigation of ill-treatment, two violations because of too lenient sanction applied for

ill-treatment, 14 violations for detention in poor conditions and ten violations for the failure to provide medical assistance to the detainees.

6.3.1.1 Ill-treatment

The 11 cases where ill-treatment of the applicants was established are the following: *Corsacov* (04/04/2006) §§ 51-63; *Boicenco* (11/07/2006) §§ 102-111; *Pruneanu* (16/01/2007) §§ 39-64; *Colibaba* (23/10/2007) §§ 42-51; *Victor Savițchi* (17/06/2008) §§ 60-69; *Levița* (16/12/2008) §§ 59-75; *Breabin* (07/04/2009) §§ 47-52; *Gurgurov* (16/06/2009) §§ 54-62; *Buzilov* (23/06/2009) §§ 23-33; *Parnov* (13/07/2010) §§ 25-31, and *I.D.* (30/11/2010) §§ 40-41. In 2011, ECtHR found other three violations of this type. The first Moldovan judgment where such a violation was found was *Corsacov*, of 4 April 2006.

In *Corsacov*, *Boicenco*, *Pruneanu*, *Colibaba*, *Levița*, *Breabin*, *Gurgurov*, *Buzilov*, *Parnov*, and *I.D.* judgments, it was established that applicants were ill-treated while in police custody. In the judgment of *Victor Savițchi*, ECtHR found that applicant was beaten up by policemen during his apprehension, despite of the fact that he was not violent and could be calmed down through other methods. In *Stepuleac* and *Levița* judgments, ECtHR also found the failure of authorities to transfer applicants to a safe place, after application of torture or threat of use of torture against them.

The high number of ill-treatments found by the ECtHR and high number of cases concerning ill-treatment examined on an annual basis confirm the fact that these cases are not unique and abusive use of force represented a quite widespread phenomenon in the Republic of Moldova. The table no. 15 presents statistical data regarding ill-treatment cases registered in the Republic of Moldova in the period January 2009 – June 2012¹².

Table no. 15
Data about ill-treatment cases registered in the period January 2009 – June 2012

Year	Registered cases	Criminal investigations opened	% of registered cases	Criminal proceeding ceased	% of criminal investigations opened	Cases sent to court	% of criminal investigations opened
2009	992	180	18%	75	42%	36	20%
2010	828	131	16%	72	55%	65	50%
2011	958	108	11%	92	85%	36	33%
01-06.2012	485	69	14%	44	64%	24	35%

According to Activity report of the Section on combating torture from the General Prosecutor's Office for the first semester of 2012, out of 485 cases registered in this period, 427 (88%) referred to behaviour of criminal police (214), other employees of the Ministry of Internal Affairs (MIA) (192) or criminal investigation officers (21). The other cases referred to behaviour of the employees from the penitentiary service (39), of the prosecutors (6), employees of the Ministry of Defence (5) and other persons (8). According to the same report, the alleged ill-treatment was applied in order to receive information in 168 cases (35%), in order to prove the superiority in 96 cases (20%), in order to punish the victim - in

¹² Information from this table was taken from the Activity report of the Section of the General Prosecutor's Office on combating torture.

93 cases (19%), excessive force was applied during apprehension in 86 cases (18%), and for reasons of intimidation or discrimination in 42 cases (9%). Based on these data, it results that ill-treatment is most frequently applied in the Republic of Moldova by the employees of the MIA, and its purpose is usually to receive information, to intimidate or punish. It is true that ten out of 11 judgments of the ECtHR mentioned above referred to behaviour of policemen, and in most of these cases applicants alleged that they were ill-treated in order to make them recognize their guilt.

According to the interviewees, police resorts 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 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.

Until 2010, evaluation of performances of the MIA subdivisions was mainly based on statistical indicators. The degree of crime discovery was one of the most important indicators. On 6 December 2010, the Government of the Republic of Moldova approved the Strategy on Reforming MIA (decision no. 1109). P. 39 of this Strategy provides that evaluation of performances will be carried out based on opinion polls, on analysis of the activity of subdivisions and statistical data. In May 2010, MIA elaborated new internal regulations concerning performance evaluation of its subdivisions (Order of the MAI, no. 164, of 26 May 2010). However, in autumn of 2012, they were still not applied.

All interviewed persons declared that professional capacity of the MIA subdivisions responsible for investigation of crimes is poor. In the spring of 2011, following raise in the pension age,¹³ several hundreds of the most experienced employees of the MIA left their jobs.

Several interviewed persons who earlier acted 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 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 cases when superiors of policemen who ill-treated were truly sanctioned for admitting irregularities in the subdivisions they lead. On the contrary, according to an investigation carried out by a newspaper from Chişinău, several days after the events of April 2009, heads of subdivisions responsible for coordinating the actions of the police in the centre of Chişinău were disciplinary sanctioned by the Minister of Interior; two days later these

¹³ 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 employees of the MIA who, until this law, were entitled to a pension preferred to retire.

sanctions were revoked, and in July and August 2009 they were decorated by the Minister of Interior.¹⁴ This practice cannot be tolerated.

The obligation to report about application of force or weapon could eliminate speculations concerning the manner of applying them and the ground that justified their application. The Law on Police (no. 416, from 18 December 1990) obliges policemen to inform their superiors about application of force or weapon only in cases of injury or death of the person. The Law does not specify if notification needs to be in written form. As a consequence, in case policemen do not consider that the person was injured, according to the law, he/she is not obliged to report. In case of informing the superior, the latter is obliged to inform the prosecutor (Art. 14 para. 5). This situation is not compatible with standards concerning prevention of torture.¹⁵ Prosecutors confirmed that they are informed quite rarely about application of force by the police, and advocates declared that usually reports of policemen about the incident are prepared after the ill-treatment complaint is lodged. On 26 October 2011, the Minister of Interior issued Order no. 11/3966, where he prohibited holding discussions with the apprehended person until the latter is communicated his/her rights, orally, and obliged policemen to draft written reports concerning each case of apprehending a person, with indication of the hour of apprehension, of the fact whether force was applied during apprehension and a description of any noticed injuries. This report should be attached to the criminal or administrative offence file. In 2012, the interviewed advocates did not see such reports in criminal files, which confirm the fact that Order no. 11/3966 was still not enforced. In spring of 2012, Government approved and sent to the Parliament the draft Law on the activity of police and statute of policeman. Regretfully, this draft law does not refer at all to the obligation to report cases of application of force.

Documentation of ill-treatment signs was always a subject of discussion in the Republic of Moldova. In judgments *Pruneanu* and *Petru Roșca*, ECtHR found that upon arrival to the police isolator (IDP), applicants were examined for bodily injuries, and in the case of *Levința* examination was conducted in 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. Government recognized that this represents a problem and by p. 18 of the National Human Rights Action Plan for 2011-2014 (decision of the Parliament no. 90, from 12 May 2011) (NHRAP), it undertook to transfer IDPs from subordination of the MIA into subordination of the Ministry of Justice until 2014. However, the Report for 2011 concerning implementation of NHRAP mentions that, because IDPs are situated within police stations, they cannot be transferred to the Ministry of Justice until building of arrest houses. Until September 2012, building of arrest houses

¹⁴ See <http://www.timpul.md/articol/papuc-a-dat-premii-pentru-%E2%80%9Ecoridorul-mortii%E2%80%9D-8869.html>

¹⁵ Eric SVANIDZE, Country Report, Moldova, Combating ill treatments and impunity and efficient investigation of ill-treatment, Chișinău 2009, p. 42

still was not initiated, and apparently financial resources for this purpose were not allocated. It is difficult to imagine that the change of administrative subordination of IDPs cannot be carried out already in the current situation. It appears that the real problem represents the reluctance of the Ministry of Justice to take over the IDPs, because of poor conditions of detention in them. On the other hand, in order to strengthen the position of the ill-treated person, Article 64 of the CrPC was supplemented through the Law no. 66, from 5 April 2012 (in force since 27 October 2012) with a new provision that provides the apprehended persons with the right 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 Pădureț*, for instance, applicants were ill-treated in the time limit 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.¹⁶ 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 IDP, and documentation of apprehension (drafting and signing the apprehension report) needs to be carried out later.

In the judgment of *Colibaba*, ECtHR criticized the manner in which a forensic doctor examined the ill-treated person (policemen charged with ill-treatment were present during medical examination) and the quality of the conclusions of this doctor. In the judgment of *Ghimp and Others* (30 October 2012), ECtHR severely criticized the behaviour of forensic doctors. Usually, experts are providing their conclusion based on primary medical documents,¹⁷ without examining the person who claims of being ill-treated. This fact is very strange, especially considering that the person could offer valuable information in order to reach a valid conclusion. Indeed, in the majority of conclusions issued until 2011, experts mentioned that injuries have been caused both in the circumstances described by the ill-treated person and by the policemen, this fact severely undermining the position of the accused party. In the period of January 2011 – December 2012, UNDP implemented a project of 1 million EUR aimed at strengthening capacities of forensic specialists from the Republic of Moldova. Within this project capacities of the forensic system from the country were evaluated, forensic doctors were trained and equipment was bought for them. It is too early to assess the impact of this project now.

In order to combat torture, in 2012, UNDP donated 44 sets of video surveillance equipment to the MIA. Until September 2012, this equipment should have been installed

¹⁶ Art. 167 para. 2 of CrPC requires that report on apprehension shall be drafted in the presence of advocate, within up to three hours from the *de facto* apprehension.

¹⁷ According to Art. 143 para. 1 of CrPC, the degree and nature of bodily injuries could be established only through an expert opinion. According to Art. 279 of CrPC, in the redaction until 27 October 2012, an expert opinion could be requested only after opening criminal investigation. For this reason, the prosecutor orders examination of the person that alleged ill-treatment by a doctor only after receiving the complaint. Following examination, the prosecutor issues a „conclusion”. After the opening of criminal investigation, „expert report” is prepared based on this conclusion.

in all IDPs throughout the country. This represents an important step in combating ill-treatment.

Ineffective investigation of ill-treatment and mild sanctions applied for ill-treatment cases in the recent years generated the perception that ill-treatment remains unpunished in the Republic of Moldova. These perceptions will be examined in the sub-chapters below.

The number of registered ill-treatment cases confirms the fact that torture still persists in the Republic of Moldova. In the period of 2009-2011, the number of registered ill-treatment cases remained at the same level (see the Table no. 15). In 2011, the prosecutor's office registered 958 cases, which is only with 34 complaints (3%) less than in 2009, when several hundreds of persons were abused by police following April events. In the first half of 2012, 485 cases were registered, which is even more than in the first half of 2011 (479). Interviewed advocates stated that cases of abuse of their clients by police in 2012 were rarer than several years ago. Nevertheless, such cases happened primarily in the regions situated far from Chişinău. Constant number of cases registered in 2009-2011 could be explained by the fact that, starting from 2010, the registration of ill-treatment cases improved, until 2009 many ill-treated persons were not addressing the prosecutor's office and were lodging manifestly ill-founded complaints.

Legislation of the Republic of Moldova does not include the interdiction to continue the 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 the 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 in the penitentiary or returning the person to the IDP upon the request of the criminal investigation body.

6.3.1.2 Deficient investigation of death and ill-treatment

Out of 19 cases where the Republic of Moldova failed to comply with procedural obligations, 16 cases referred to deficient investigation of ill-treatments. These cases are the following: *Corsacov* (04/04/2006) §§ 68-76; *Boicenco* (11/07/2006) §§ 120-127; *Pruneanu* (16/01/2007) §§ 39-64; *Colibaba* (23/10/2007) §§ 52-55; *Stepuleac* (06/11/2007) §§ 60-65; *Victor Saviţchi* (17/06/2008) § 68; *Levinţa* (16/12/2008) §§ 76-84; *Breabin* (07/04/2009) §§ 53-56; *Gurgurov* (16/06/2009) §§ 63-70; *Buzilov* (23/06/2009) §§ 23-33; *Petru Roşca* (06/10/2009) §§ 43-50; *Valeriu and Nicolae Roşca* (20/10/2009) §§ 65-70; *Pădureţ* (05/01/2010) §§ 62-69; *Parnov* (13/07/2010) §§ 32-35; *Popa* (21/09/2010) §§ 40-45; and *Mătăsaru and Saviţchi* (02/11/2010) §§ 79-95. Deaths were investigated deficiently in the following cases: *Răilean* (05/01/2010) §§ 25-35; *Iorga* (23/03/2010) §§ 24-37; and *Anuşca* (18/05/2010) §§ 31-45. The first judgment which established the failure to comply with procedural obligation is *Corsacov* judgment, from 4 April 2006.

All cases of ill-treatment in the Republic of Moldova are investigated by the prosecutors and not by police. Nevertheless, even in this situation, ECtHR found that the procedural obligation was not carried out both concerning the competence of the body that investigated the case, and concerning its independence or impartiality, thoroughness and promptness of investigation and involvement of the victim.

a) Competence of the investigating body

In cases of *Răilean* and *Mătăsar* and *Savițchi*, ECtHR criticized investigation of ill-treatment cases within some proceedings (Article 274 CrPC) that did not allow collection of all necessary evidence.¹⁸ In the case of *Levința*, the ill-treatment complaint was not examined because it was not lodged by the applicants, but by their advocates. Also in *Levința* case, ill-treatment complaint was not examined by the prosecutor, because it was lodged after the criminal file was sent for examination of the court.

Figures from the Table no. 15 confirm the fact that during 2009 – 2011, 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 and repeating the procedural actions. 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 these represent 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.

Despite judgments of *Răilean* and *Mătăsar* and *Savițchi*, the practice of examining serious ill-treatment cases according to Article 274 CrPC continued also after January 2010, when judgment *Răilean* was adopted. By the Law no. 66, from 5 April 2012, Article 279 of CrPC was amended in order to extend the procedural actions that could be carried out before criminal investigation is opened. Thus, starting from 27 October 2012, after the case was registered, all procedural actions could be carried out, except those requiring authorization of the investigation judge.¹⁹ Even though amendment of Article 279 CrPC could attenuate the existing problem, it does not bring a final solution to the problem.

Aspects criticized in the judgment *Levința* seem to be isolated. CrPC never requested that a complaint needs to exist in order to open investigation into ill-treatment. This fact is also confirmed by statistical data. According to the Activity report for 2011 of the Section on combating torture, in 2011, prosecutors acted *ex officio* in 241 (25%) out of 958 cases concerning registered cases of ill-treatment. The obligation to act *ex officio* also results from p.10.2 of the decision of the Plenary no. 8, of 30 October 2009, that requires judges and

¹⁸ According to Art. 279 CrPC in the version until 27 October 2012, until issuing order on opening criminal investigation, evidence could be accumulated only through investigation at the place of incident and bodily search.

¹⁹ Interception of communications or searches need to be authorized by the investigation judge in the Republic of Moldova.

prosecutors, in case of ill-treatment allegations or visible signs of ill-treatment, to ask the respective person if he/she was ill-treated, in order to clarify the origin and circumstances in which injuries were caused and to order medical examination of the person. There are also frequent cases when the person alleges at trial stage that s/he was ill-treated during criminal investigation. In these cases, usually judges ask prosecutors to investigate the case and to inform them about the result of investigation. On the other hand, through the joint Order of the MIA and the Ministry of Health no. 372/388, from 3 November 2009, medical personnel was obliged to inform the prosecutor's office about any case where medical assistance was requested as a result of the actions of the law enforcement bodies.

b) Independence and impartiality

In the *Boicenco* judgment, ECtHR criticized the fact that ill-treatment was investigated by the prosecutor responsible for criminal investigation against the applicant; in the *Gurgurov* judgment, independence of the prosecutor's office was doubted, because prosecutor's office voiced its opinion at the beginning of investigation and tried to exercise pressure on the advocate, and in the *Mătăsaru and Savîţchi* judgment, the requirement of impartiality was not respected, because, despite the fact that the higher prosecutor established that there is a possibility that examination of the case by prosecutor's office could be biased and the case was sent to another prosecutor's office, eight months later, the case was sent back to the prosecutor's office whose impartiality was under question.

Following *Boicenco* judgment, on 19 November 2007, GP 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 investigation of 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 Balţi or Prosecutor's Office from Cahul. On 30 October 2009, Plenary of SCJ adopted judgment no. 8. P. 16.2 of this judgment mentions that the ill-treatment complaint cannot be investigated by the prosecutor responsible for the case opened against the person who alleges of being ill-treated.

Decision of the Parliament no. 77, from 4 May 2010, approved the new structure of the General Prosecutor's Office that envisaged the creation of the Section on 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 respect of 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 reduced 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 ill-treatment. In August 2012, four prosecutors were working in the Section on combating torture. They were conducting criminal investigation in four 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, Moldovan society does not fully trust the system of the prosecutor's office. 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 force bodies.²⁰

Gurgurov and *Mătăsar* and *Savițchi* judgments refer to very specific situations that do not seem to disclose systemic problems. However, it should be mentioned that following the ECtHR judgment in the case of *Mătăsar* and *Savițchi*, the investigation of the case by the prosecutor's office whose impartiality was under question continued. The applicant's requests to send the case for examination by another prosecutor's office were dismissed by the prosecutor's office from mun. Chișinău.

c) Thoroughness of investigation

In cases of *Corsacov* and *Stepuleac*, ECtHR criticized the failure of the prosecutor's office to investigate threats of execution and, respectively, of psychological intimidation. Apparently in cases of *Levința* and *Boicenco*, ill-treatment complaints were dismissed without an investigation. In the case of *Pădureț*, the investigation was opened only concerning two of the three persons charged with ill-treatment, and in the case of *Pruneanu*, the prosecutor did not request immediate examination of the applicant by a doctor, despite the fact that bodily injuries were obvious. In cases of *Gurgurov* and *Parnov*, prosecutors did not ask doctors about the origin of injuries on applicant's body, and in cases of *Corsacov*, *Colibaba*, *Pruneanu* and *Gurgurov*, they ignored bodily injuries and conclusions of the doctors. In the case of *Victor Savițchi*, the prosecutor and judges did not examine the video recording that confirmed excessive use of force, and in the case of *Răilean*, the person suspected for deathly injuring a person in a car accident was never charged. These deficiencies cannot be explained except by serious negligence or bad faith of the prosecutors. Bad faith of the prosecutor was expressly mentioned by the ECtHR in *Gurgurov* judgment (§ 69). Despite these serious violations, apparently no measures were taken in order to sanction prosecutors responsible for these case files. This fact could be explained by long period between the decision of the prosecutors and the ECtHR judgment, as well as by the fact that many decisions of the prosecutors were left in force by the investigation judges. Nevertheless, the high number of such serious violations could speak about lack of discipline and professionalism of the prosecutor's office, or, what is more serious, about the reluctance of the prosecutors to investigate persons who applied torture.

²⁰ 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.

In the case of *Colibaba*, judges and prosecutor unjustifiably refused to allow examination of the applicant by a doctor of his choice, in order to document bodily injuries. In April 2006, Art.187 para. 2 of CrPC provided the obligation of the administration of the detention facility to ensure access of the arrested person to independent medical assistance. However, because this right was not regulated by Art. 64 (rights of suspects) and Art. 66 (rights of accused persons) of CrPC, Art. 187 was interpreted as imposing an obligation to ensure access only in case of authorization of this fact by the criminal investigation body. In practice, access of the arrested person to independent medical assistance was provided very rarely. Through the Law no. 66, Art. 64 and 66 of CrPC were supplemented with the right to have access to independent medical examination after apprehension. This right is not conditioned by permission of the criminal investigation body. New amendments to the CrPC currently exclude the situations found in *Colibaba* judgment.

In many judgments, ECtHR found that the prosecutors did not examine the case carefully or under all aspects. 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 *Mătășaru and Savițchi* the person who was the cause of the altercation was also not heard. In the cases of *Gurgurov*, *Buzilov* and *Mătășaru and Savițchi* the presentation for recognition and confrontation were not carried out, despite the fact that 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 the deficiencies mentioned by the investigation judge. Deficiencies mentioned above could disclose insufficient professionalism of the prosecutors.

On 27 November 2007, the Board of the Prosecutor's Office adopted decision no. 30/4, „on the observance by criminal investigation bodies of the rights and freedoms of persons under criminal investigation, in accordance with the ECtHR case-law, in order to prevent and avoid cases of torture, physical suffering or harm of human dignity”. In the same decision, the Board of the Prosecutor's Office assessed the situation in this field as „alarming” and the activity of the prosecutors „not fully satisfactory”. The Board warned nine prosecutor's offices about violations found and proposed dismissal of the prosecutor from Comrat city. Also, the Board indicated detailed questioning of persons about the alleged ill-treatment, immediate examination of the crime scene, examination of registries from commissariats and questioning of persons detained in same room, ordering forensic examination and gathering all materials from the police that could be related to the alleged acts of ill-treatment. On 29 October 2008, the Board of the Prosecutor's Office adopted the decision no. 25/4, where it found that the level of respecting interdiction to apply torture remained on the same level and asked the prosecutors to intensify the efforts in this sense. Regretfully, measures recommended through decision no. 30/4 were not observed during the investigation of ill-treatment cases from April 2009.

Apparently, in 2007, General Prosecutor's Office elaborated methodical Recommendations „on discovery, counteracting and combating cases of torture, inhuman or degrading treatment or punishments in the process of administration of justice". These recommendations represent an executive summary of the ECtHR standards in the field of investigation of ill-treatment cases. Recommendations seem to be old and are of limited relevance after the decision of the Board of the Prosecutor's Office no. 30/4. Apparently, in 2008, General Prosecutor's Office elaborated guidelines concerning the methodology and tactics of investigating torture cases, which is mainly a theoretical document that contains recommendations from the decision no. 30/4. On 30 October 2010, in order to provide guidelines to judges and prosecutors, Plenary of the SCJ adopted decision no. 8 that mainly refers to the manner of investigating ill-treatment cases and reiterates the ECtHR standards in the field of investigation of ill-treatment cases. SCJ still did not evaluate the impact of these judgments.

Art. 3 of ECHR was the subject of most of the seminars for judges and prosecutors in the ECHR field. In 2010, 11 seminars and in 2011 – 23 seminars of this type were organized at the NIJ. Both judges, as well as prosecutors, mentioned that they possess sufficient information about ECHR in order to apply it directly.

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 investigations remains insufficient. Interviewed advocates and judges declared that the quality of orders issued by prosecutors is 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 reason 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 of CrPC²¹ seems to be a simple formality, and after quashing the prosecutor's order by the judge, often prosecutors do not redress deficiencies indicated in the court judgment. Thus, according to Annual statistical report, in 2011, 2,243 complaints were lodged to the investigation judges against actions of the criminal investigation bodies, and 792 (35%) out of them were lodged by the injured party. 35% of the total number of examined complaints were admitted. Deficiency of the investigations concerning ill-treatment cases was confirmed in 2009 also by the CPT.²² Poor quality of investigations is implicitly confirmed also by the small percentage of cases where criminal investigation is ordered, high percentage of acquittals²³, long period of carrying out investigations²⁴ and insufficient quality of prosecutors' performance in other types of proceedings, such as, for instance, those related to arrests.

²¹ According to Art. 299¹ CrPC, any order of the prosecutor needs to be challenged to the higher prosecutor and only subsequently to the investigation judge.

²² See <http://www.cpt.coe.int/documents/mda/2009-37-inf-eng.pdf>, par. 50-67

²³ In 2011, judges examined 10,088 criminal cases. According to Activity report of the prosecutor's office for 2011, only 184 of these cases (1.8%) finalized with acquittal sentences.

²⁴ Ex. In cases of *Gurgurov* and *Parnov*, proceedings were reopened after the ECtHR judgment. After more than two years after their reopening, criminal investigations were still pending before the prosecutor's office. For more details in this respect, see sub-chapter 5.3.1.1 of the Report. Concerning duration of investigations, see, also, next sub-chapter.

The introduction in CrPC in 2008 of the provision stating that burden of proof concerning non-application of ill-treatment rests with authorities (Art. 10 para. 31) did not bring significant changes, because often prosecutors do not find injuries or consider that this task was carried out.

d) Promptness of investigations

ECtHR criticized delayed medical examination of the applicant in order to document injuries by the doctor, delayed opening of criminal investigation and excessive duration of investigation. Delayed medical examination was found in cases of *Pădureț* (three days), *Valeriu and Nicolae Roșca* (four days), *Gurgurov* (seven days) and *Parnov* (eight days). In cases mentioned above, delayed examination by the doctor was mainly due to the late reaction of the prosecutors or delayed non-execution by police of the indications given by the prosecutor.²⁵ Prosecutors were trained to order immediate examination by forensic doctor of the person who claimed of being ill-treated. Lately no serious deficiencies were found in this regard. At the same time, according to the amendments introduced in Art. 64 and Art. 66 of CrPC through the Law no. 66, starting with 27 October 2012, the right to examination by an independent doctor from the moment of apprehension was introduced to the CrPC. However, amendments to the CrPC cannot totally eliminate the problem, because finding an independent doctor who would be ready to come to a detention facility may last several days, some persons cannot afford paying an independent doctor, and their access to detention facilities could be refused.²⁶

In four cases, ECtHR criticized delayed opening of criminal investigation. In the case of *Răilean*, criminal investigation was opened after nine days, in the case of *Valeriu and Nicolae Roșca* after a month, in the case of *Pădureț* after 2 months and 12 days, and in the case of *Breabin* after one year. In all these cases, prosecutor's office was notified before criminal investigation was opened and undertook certain actions. However, according to national legislation, evidence received in this way was not considered valid for a criminal case, because it was obtained before issuing the order on opening criminal investigation. By the Law no. 66, CrPC was amended (Art. 279 para. 1) and it was allowed to collect evidence for a criminal case also before issuing the order on opening criminal investigation.

The total duration of investigation was criticised by the ECtHR in five cases. In the case of *Corsacov* investigation lasted more than three years, in the case of *Anușca* – three years and seven months, in the case of *Mătăsară and Savițchi* – four years, in the case of *Răilean* – more than five years, in the case of *Pădureț* – almost six years, and in the case of *Iorga*, autopsy and examination of evidence from the place of incident took place after six months, despite the fact that the case required urgent measures. In three of these cases tergiversation was due to

²⁵ According to a well-established practice, escorting detainees to forensic doctors is carried out by the employees of the detention facility. In those four cases concerning ill-treatment the police escorted the detainees.

²⁶ Until 2012, access of outside persons into the IDP was forbidden. In April 2009, access to the IDP was refused even to the representatives of Ombudsperson, despite of the fact that the law provides their right to freely enter any detention facility.

discontinuation of investigation and subsequent reopening of investigations was based on the reason that discontinuation was not justified. Thus, in the case of *Corsacov*, investigation was reopened at least 12 times, and in the case of *Mătăsarū and Savîţchi* – several times. In the case of *Pădureţ*, the delay was explained by the discontinuation of criminal investigation, as well as by lengthy examination of the case in court.

Frequent discontinuation of criminal investigations of ill-treatment cases was examined in the context of thoroughness of investigation. This problem is still valid in the Republic of Moldova. Thus, in 2011, the prosecutor's office opened 108 criminal investigations and discontinued 92 (85%) of them. According to the Activity report for 2011 of the Section on combating torture, in 2011, 50 orders refusing opening of criminal investigation were cancelled, and in 98 cases the request was lodged to higher prosecutors to cancel these orders. These statistics are alarming.

Apparently, neither judges nor prosecutors treat cases of ill-treatment as priority cases. Duration of examination of such cases in court continues to be a problem. On 31 December 2011, most of cases sent to court in 2009-2011 were still pending. Thus, out of 137 cases sent to court, only 43 cases were examined in 2011. Such delays are not characteristic for the legal system of the Republic of Moldova (for more details, see sub-chapter 6.3.3). In cases related to April 2009 events it seems that many judges and prosecutors were waiting for settlement of the political crisis in the Republic of Moldova (election of the President of the country),²⁷ the fact that rises doubts concerning the independence of prosecutors and judges in general.

e) Involvement of the victim

In five judgments, ECtHR found that victim was not sufficiently involved in the investigation process. Thus, in cases of *Iorga* and *Anuşca* criminal investigation body did not recognize any procedural status of the parents of the deceased person. Without this status, they did not have any rights within the criminal proceedings. In cases of *Pădureţ*, *Iorga*, *Anuşca* and *Mătăsarū and Savîţchi*, the applicants were not informed about the development of the criminal investigation and in the case of *Anuşca*, information about discontinuation of the criminal investigation was passed with a delay of one month. In the case of *Mătăsarū and Savîţchi*, 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. On the other hand, complaint against the order on discontinuation of criminal investigation in the case of *Iorga* was examined by the investigation judge in the absence of the applicant.

Failure to recognize the procedural status in cases of *Iorga* and *Anuşca* seems to be a pure mistake of the criminal investigation body. Examination of the complaint in the absence of the applicant in the case of *Iorga* seems to occur following the summoning process. This aspect was examined in the sub-chapter related to the court summoning.

²⁷ Until change of Government from Chişinău in 2009, many persons accused of ill-treatment were high rank policemen from the MIA. More than 12 months, the Parliament was not able to select a President of the country and the danger of early elections persisted.

Delayed information about the discontinuation of the criminal investigation in the case of *Anușca* seems to reveal a systemic problem. The interviewed advocates declared that they either do not receive the orders on discontinuation of the criminal investigation, or receive them with delays of several weeks or even months. Prosecutors claim that this fact is due to the poor quality of postal services. Despite the fact that the quality of postal services represents a problem in the Republic of Moldova, this cannot explain receipt of the correspondence with such big delays or failure to deliver such a high number of postal letters. Apparently, the delay is due, to some degree, to the deficient flow of documents in the prosecutor's office and signing by the prosecutors of the orders with an earlier date.

The other violations found by the ECtHR were explained by the existing legislative 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 information about criminal investigation.²⁸ 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 development of the criminal investigation. CrPC does not provide the right of the victim to request information about the development of 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.

6.3.1.3 Lenient punishment for ill-treatment

In the judgments *Valeriu and Nicolae Roșca* (20/10/2009) §§ 71-75 and *Pădureț* (05/01/2010) §§ 70-77, ECtHR found that, because of the failure to apply sanctions or because of applying too 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 of *Valeriu and Nicolae Roșca* refers to the sanctioning for excess of power to three years imprisonment with suspension and interdiction to work in police for two years, when 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 its sentences, 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 *Pădureț* refers to exemption from responsibility of one torture perpetrator exempted due to the expiration of the time limitation for criminal liability. In those cases, suspension from office was also not applied. ECtHR also mentioned that ill-treatment acts by a state agent should not be subjected to the time limitation period.

Information concerning criminal cases related to ill-treatment and examined by the courts from the Republic of Moldova in the period of January 2011- June 2012 are presented in table no. 16.²⁹

²⁸ Interdiction does not extend to the access to documents drafted with participation of the person.

²⁹ This data was taken from the Activity reports of the Section of the General Prosecutor's Office on combating torture.

Table no. 16
Data about criminal cases concerning ill-treatment
examined by the courts of law in the period January 2011– June 2012

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
2011	36	13	14	43	16	23	1
01-06.2012	24	8	11	19	7	12	0

According to data from this table, criminal cases concerning ill-treatment that were sent to court were most frequently qualified as excess of official authority (Art. 328 of the Criminal Code) and not as torture (309¹ of the Criminal Code). Prosecutors explained that they qualify the act as excess of official authority when the act is not sufficiently serious in order to be qualified as torture. This occurs because Criminal Code does not include a special norm that would incriminate inhuman and degrading treatment. This fact could explain, to some extent, a vast number of cases qualified according to Art. 328 of the Criminal Code. Nevertheless, information from table no. 7 above confirms the fact that cases of torture were often qualified by the prosecutors as excess of official authority. Thus, even after the ECtHR judgment in the case of *Corsacov*, actions of policemen continued to be qualified as excess of official authority, despite the fact that ECtHR qualified ill-treatment as torture. The same also happened in the case of *I.D.*, despite the fact that the treatment to which the applicant was subjected to was closer to torture than degrading treatment.

Art. 309¹ and Art. 328 of the Criminal Code punish ill-treatment with imprisonment from two to ten years. According to Art. 90 of the Criminal Code, when establishing imprisonment for up to five years for committing an intentional crime, the judge may suspend execution of the punishment from one to five years. Regardless of the prosecutors's objections, judges do apply sanctions that suspend the execution of the punishment. Out of 35 persons convicted for ill-treatment in the period January 2011–June 2012, only one person was imprisoned.³⁰ In the other 34 cases, judges suspended the execution of the imprisonment sanction.³¹ These figures are worrying, especially taking into consideration the fact that the judgment *Valeriu and Nicolae Roșca* delivered in 2009 was largely disseminated, and most of the judges were trained in this field. Apparently, judges apply such mild sanctions because they presume that the ill-treated person could be guilty of a crime, because policemen are usually acting with the purpose of discovering a crime, because the quality of the investigation is poor, and because the accused persons did not commit crimes earlier.

As a result of the judgments *Valeriu and Nicolae Roșca* and *Pădureț*, in the spring of 2012, the Ministry of Justice, with the involvement of non-governmental organizations,

³⁰ Imprisonment was ordered by the first instance court. Subsequently, appeal court acquitted the person.

³¹ Moreover, after the judgment of the ECtHR in the case of *Corsacov*, criminal case concerning the ill-treatment was sent to court. Judges sanctioned the policemen with the mildest punishment allowed by law (imprisonment for three years) and suspended its execution. Subsequently, following expiration of the time limit for criminal liability of a person, the proceedings were discontinued.

elaborated a draft Law amending the Criminal Code (no. 1945). This draft Law regulates repealing of Art. 309¹ and Art. 328 of the Criminal Code (in the part referring to ill-treatment), excluding ill-treatment as aggravating circumstance from the Criminal Code and incriminating inhuman and degrading treatment in the same Article with torture (Art. 166¹). Also, punishments for ill-treatment were increased, in order to make it impossible to apply Art. 90 of the Criminal Code (suspended sanction) in cases of torture and the time limitation period for crimes of torture was excluded. The draft law also prohibits the amnesty of the persons convicted for torture. The draft law was adopted by the Parliament on 8 November 2012 and was sent for promulgation to the President. This amendment will improve the situation concerning sanctioning the acts of torture, however, it will not exclude suspension of the imprisonment sanction applied for inhuman and degrading treatment. Also, new criminal sanctions will not be applied to ill-treatments that took place before entry into force of the respective law.

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 motivate very rarely the application of one sanction or another. This practice was criticized in the judgment *Valeriu and Nicolae Roșca*. Three years after this judgment, no improvement in the reasoning of court judgments in this regard was noticed. It appears that this happens because of lack of uniform judicial practice concerning sanctions applied. In autumn of 2012, upon the initiative of ABA ROLI, judges of the SCJ and law professors started elaboration of a Guide on criminal sanctions. Nevertheless, this Guide will summarize the existing practice of the SCJ, which, until 2011, tolerated suspensive sanctions for ill-treatment. For this reason, intervention of the SCJ is necessary, in order to establish a judicial practice in the spirit of the judgment *Valeriu and Nicolae Roșca*.

Suspension from office within a criminal case is ordered by the employer, upon the request of the prosecutor, and the respective decision can be appealed to the investigation judge (Art. 200 of the CrPC). During the suspension time, the salary is not paid. 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.³² Judges invoked procedural grounds, as 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 give the right to receive the salary during the suspension period.

6.3.1.4 Poor conditions of detention

Until 31 December 2010, ECtHR found violation of Art. 3 of ECHR as a result of poor detention conditions in 14 judgments. These judgments are the following: *Ostrovar* (13/09/2005) §§ 67-90; *Becciev* (04/10/2005) §§ 34-48; *Istratii and Others* (27/03/2007)

³² See, Promo-LEX, Report on Human Rights from the Republic of Moldova, 2009-2010, p. 17

§§ 60-72; *Modârcă* (10/05/2007) §§ 60-69; *Ciorap* (19/06/2007) §§ 60-71; *Stepuleac* (06/11/2007) §§ 55-58; *Popovici* (27/11/2007) §§ 53-57; *Țurcan* (27/11/2007) §§ 30-39; *Malai* (13/11/2008) §§ 31-35; *Străisteanu and Others* (07/04/2009) §§ 71-79; *Valeriu and Nicolae Roșca* (20/10/2009) §§ 78-79; *Gavrilovici* (15/12/2009) §§ 38-44; *Brega* (20/04/2010) §§ 39-43; and *I.D.* (30/11/2010) §§ 42-46. In the judgment of *Ciorap (no. 2)* (27/07/2010) §§ 15-26, SCJ found that the applicant was detained in poor conditions, however it awarded insufficient compensations. The first judgment of this type is *Ostrovar* judgment that was delivered in 2005 for non-pecuniary damages.

All those cases refer to conditions of detention only in one penitentiary institution (penitentiary no. 13 from Chișinău) and in six IDPs: of the General Police Commissariat from Chișinău, of the General Department for Combating Organized Crime, of the Police Inspectorate Centru mun. Chișinău, and of the Commissariats from Orhei, Anenii Noi and Hîncești.

a) Penitentiary no. 13

Ten judgments refer to detention conditions from Penitentiary no. 13. These are *Ostrovar, Istratii and Others, Modârcă, Țurcan, Ciorap, Popovici, Țurcan, Străisteanu and Others, Valeriu and Nicolae Roșca* and *I.D.*. Detention conditions were criticized because the cells are overcrowded (*Ostrovar, Istratii and Others, Modârcă, Ciorap, Țurcan* and *I.D.*), food is insufficient (*Ostrovar, Becciev, Istratii and Others, Modârcă* and *Ciorap*), iron blinders were impeding the access of natural light (*Istratii and Others, Modârcă, Ciorap* and *I.D.*), cells were infested with vermins and cockroaches (*Ostrovar, Istratii and Others* and *Ciorap*), there was no bed linen (*Istratii and Others, Modârcă* and *I.D.*), water and electricity were disconnected periodically (*Modârcă, Ciorap* and *I.D.*), passive smoking was widespread, toilets were not separated from the other part of the room and it was impossible to take showers often enough (*Ostrovar*). Most of these cases refer to detentions that took place 5-10 years ago.

There are 17 penitentiaries in the Republic of Moldova. Information about their capacity, the number of the detainees and money allocated for capital investments in 2005, 2009 and 2011 are presented in the table no. 17*.

Table no. 17
Data about penitentiaries from the Republic of Moldova

Penitentiary	Total area of the cells (s.m.)	No. of cells	Separated toilet	Number limit of the detainees in 2011	Detainees in 2011	Medical personnel ⁺		Capital investments (thousands lei)								
						According to the personnel in the list	Positions held	2005		2009		2011				
								Budget	Dona-tions	Total	Budget	Dona-tions	Total	Budget	Dona-tions	Total
nr. 1-Taraclia	1,322	93	93	310	219	7	2,5	3.1	0	3.1	5	0	5	8	0	8
nr. 2-Lipcani	557	16	7	200	98	6,5	5	0.6	0	0.6	17	0	17	15	0	15
nr. 3-Leova	1,041	14	14	510	334	6,5	5	0	0	0	40.1	29.4	69.5	28.4	11.2	39.6
nr. 4-Cricova	3,220	123	16	700	564	11	9	23.4	0.2	23.6	22.3	0	22.3	175.5	23.6	199.1
nr. 5-Cahul	1,563	62	60	310	252	8	3	12.8	0	12.8	14.2	8	22.2	1	5.1	6.1
nr. 6-Soroca	2,987	73	61	700	623	10,5	8	54.1	0	54.1	49.7	0.4	50.1	62.7	13.9	76.6
nr. 7-Rusca	1,008	74	19	310	276	8	7	91.1	0	91.1	83.3	12	95.3	35.9	4.3	40.2
nr. 8-Bender	1,260	3	3	200	61	7,5	6,5	1	0	1	10	0	10	0	0	0
nr. 9-Pruncul	1,949	53	11	650	547	6,5	3	6.3	4.1	10.4	54.1	11.7	65.8	118.6	28.6	147.2
nr. 10-Goian	854	-	-	200	128	6	6	33.1	0	33.1	37.3	0	37.3	225.8	1.8	227.6
nr. 11-Bălți	1,278	69	63	550	515	9	6	25.1	6.3	31.4	18.1	8.8	26.9	19	9	28
nr. 12-Bender	1,021	46	46	200	66	7,75	7,25	0	0	0	20	0	20	38.5	4	42.5
nr. 13-Chișinău	2,835	166	132	1100	989	27,5	22,75	5.6	48.7	54.3	10.6	5.6	16.2	34.1	140.4	174.5
nr. 15-Cricova	1,961	69	64	510	466	8,5	8,5	120.8	3.6	124.4	9.7	0.2	9.9	50	16.8	66.8
nr. 16-Pruncul	1,545	77	56	510	301	103	103	0	0	0	10.5	156.5	167	53.2	48.8	102
nr. 17-Rezina	2,307	137	121	510	394	23	20,5	1.4	6.6	8	25	0	25	0	0	0
nr. 18-Brănești	3,242	62	13	510	396	7,5	7,5	80.5	0	80.5	108	0	108	72.4	0.1	72.5

* Information from this table was offered by the Department of Penitentiary Institutions

+ Medical personnel include internist-doctor, psychiatrist, drug specialists/doctors, surgeon, therapist, dentist, radiologist, doctors/specialists in tuberculosis, pharmacist, medical statist assistant, and others

According to data received from the Department of Penitentiary Institutions, the population from the penitentiaries from the Republic of Moldova in 2009 and 2011 was less than in 2005. Information is presented in the table no. 18.

Table no. 18
Number of persons detained in penitentiaries in 2005, 2009 and 2011

Year	Persons under preventive arres	Convicted persons	Total	Variation
2005	2,472	6,404	8,876	
2009	1,250	5,285	6,535	- 26.4%
2011	1,387	5,093	6,480	- 0.8%

Both convicted persons as well as arrested persons are detained in the Penitentiary no. 13. For this reason, the detention in this penitentiary may last for years. According to the data from table no. 17, the total space of the cells in Penitentiary no. 13 is of 2,835 m². Annually, the Department of Penitentiary Institutions establishes the maximum limit of the detainees for each penitentiary. According to this limit, in 2011, a number of 1,100 persons could be detained in this penitentiary and effectively 989 persons were detained. When establishing the limit for 2011 the norm for space per detainee recommended by the CPT, which is of 4 m², was not taken into consideration. According to the limit established for 2011, each detainee was allocated on average 2,6 m². The number of persons effectively detained was smaller than the established limit, but even so, the norm for space for each detainee was smaller than 2,9 m². This space also included areas occupied by basins and toilets. Thus, in 2011, Penitentiary no. 13 remained overcrowded. Overcrowding of cells also happens in other penitentiaries, the fact established by the CPT in the Report elaborated following the visit from 2011 (para. 56).

In 2010-2011, no considerable increase of allocations for food of the detainees was established, despite of the fact that the total number of detainees dropped by more than 25% comparing with 2005. However, detainees may periodically receive food from relatives, the fact that ameliorates their situation. However, they cannot receive food unlimitedly.

The general hygienic situation in the Penitentiary no. 13 did not improve considerably. This is due to poor conditions of the Penitentiary building, which is old and its renovation is very costly. Moreover, 34 out of 166 cells of the Penitentiary (20.5%) do not have toilets separated from the rest of the room. In 2009-2011, no major renovations took place in this penitentiary. According to data from Table no. 17, in 2009, MDL 16,200 (EUR 1,012) were spent for the renovation of this penitentiary, and in 2011 – MDL 174,500 (EUR 10,900). 80% of money spent in 2011 came from donations. In 2011, cells from the sector designated for detention of minors, as well as the bath and the canteen of the Penitentiary, were renovated. Several years ago, the Government announced the intention to sell the land plot where Penitentiary no. 13 is situated and build a new penitentiary for mun. Chişinău from money received from the sale. However, no one expressed interest in buying the land plot and funds for building a new penitentiary were not allocated.

Passive smoking remains to be a problem for the penitentiary system from the Republic of Moldova. Despite of the fact that p. 90 of the Statute for execution of penalties by convicted persons (Dec. of the Government no. 583, from 26 May 2006) forbids smoking in

the cells, detainees do smoke in the cells of the Penitentiary no. 13, because they are allowed to have cigarettes in the cells and they stay in the cells 23 hours per day. Apparently, there are no cells for smokers, and when arriving to the penitentiary institution detainees are not asked if they smoke.

b) Police detention centres

In seven judgments, ECtHR criticised conditions of detention in police detention centres (IDPs). Cases of *Becciev* and *Străisteanu and Others* related to detention in IDPs of the General Police Commissariat from Chişinău, cases of *Stepuleac* and *Popovici* related to detention in the IDP of the General Section for Combating Organized Crime of the MIA (SCOC), the case of *Malai* related to detention in the IDP of the Commissariat from Orhei, the case of *Gavrilovici* – in the IDP of the Commissariat from Ştefan-Vodă, and the case of *Brega* – detention in the IDP of the Police Inspectorate Centru from Chişinău. The case of *Ciorap (no. 2)* refers to detention in IDP of the Commissariat from Hînceşti.

Mainly persons apprehended for committing crimes are detained in IDPs. According to Art. 25 para. 3 of the Constitution, criminal apprehension cannot last more than 72 hours. Within this time, the person needs to be either released or brought before a judge, who shall decide on the criminal arrest. According to Art. 303 para. 1 of the Enforcement Code (Law no. 443, of 24 December 2004), persons in pre-trial detention are detained in the penitentiary institution. In Chişinău, the transfer from IDP to the penitentiary institution usually takes place on the day of issuing the arrest warrant. In case of arrest ordered by investigation judges from the regions, persons are brought to the penitentiary institution several days after their arrest, because escort of the detainees from IDPs to the penitentiary institution takes place once per week. Nevertheless, persons arrested on criminal charges could be brought back to the IDP upon request of the criminal investigation body. Apparently this phenomenon is widely spread in Chişinău, despite of the fact that the distance between Penitentiary no. 13 from Chişinău and IDP of the General Police Commissariat from Chişinău is of maximum 100 m. Thus, out of 34 persons detained in the IDP of the General Police Commissariat from Chişinău on 12 November 2012, 11 were detained there less than three days, and 23 were detained more than three days. Therefore, detention of an arrested person in the IDP may last more than 72 hours.

Persons taken into custody for committing administrative offences are also detained in the IDPs. Administrative detention of the citizens may not last more than 24 hours (Art. 435 para. 2 CC). During this time, a judge shall decide on the administrative case. The person who committed an offence may be sanctioned with arrest for a term from three to 30 days (Art. 38 para. 4 CC). Persons sanctioned with administrative arrest shall be detained in the penitentiary (Art. 318 para. 1 Enforcement Code). However, because the escort of the detainees takes place only once per week and because of short period of their administrative arrest, many persons sanctioned with administrative arrest execute their sanctions in IDPs.³³ In the judgment of *Gavrilovici*, ECtHR found a violation of Art. 3 ECHR even if the case related to administrative detention of five days.

³³ This fact is also established in the CPT Report following the visit from 2011, para. 14.

Until 2010, conditions of detention in all police IDPs were poor. In its judgments, ECtHR criticised lack of bed sheets and mattresses (*Becciev, Istratii and Others, Stepuleac, Brega and Gavrilovici*), detention in cold cells (*Stepuleac, Brega and Gavrilovici*) insufficient food (*Becciev, Popovici and Malai*), lack of toilet in the cell or non-separation of the toilet from the rest of the room (*Malai, Brega and Gavrilovici*), continuous artificial light in the cell (*Becciev and Malai*), iron blinders on the windows or lack of windows in the cell (*Becciev, Brega and Stepuleac*), lack of outside walks (*Becciev*), infestation of the cells with verms (*Malai*), access to the tap only once per day (*Stepuleac*), overcrowding of the cells and passive smoking (*Gavrilovici*). In the case of *Gavrilovici*, ECtHR also criticized the prohibition for the applicant to meet members of his family. Most of these cases refer to detentions that took place 5-10 years ago.

There are 39 IDPs in the Republic of Moldova. According to data offered by the MIA, in August 2012, there were 34 operational IDPs in the Republic of Moldova, and, because of their poor detention conditions, the activity of the IDPs from the commissariats of Criuleni, Dubăsari, Ialoveni and Strășeni and the one from GCOC (Chișinău) was stopped.

In 2010, the Government (decision no. 511, of 22 June 2010) awarded MDL 2.2 mil. (EUR 137,500) for reparation of 30 IDPs. The 30 IDPs were cosmetically repaired. Seven IDPs were not repaired yet (it appears that the IDP of the GCOC will be never reopened. The IDP of the General Police Commissariat from Chișinău was renovated with the financial support of the European Commission). Information about the capacity of the IDPs that were operational in August 2012, number of the detainees and amounts awarded for their renovation are presented in the table no. 19. According to the data from table no. 19, all cells from the IDPs from the country, except the one from Florești, had toilets.

*Table no. 19
Information about IDPs that were functioning in the Republic of Moldova in August 2012*

Isolator of Temporary Confinement	Capacity	No. of cells	Separated toilet	Detainees in 2010	Detainees in 2011	Doctors		Capital investments 2010 (thousands lei)	
						According to the list of personnel	Positions held	Budget	Donations
mun. Chișinău	54	22	22	2,239	1,874	2	2		EUR 250,000
mun. Bălți	6	3	3	372	330	4	4	100	0
mun. Bender	72	9	9	29	35	1	1	75	0
Anenii Noi	35	11	11	113	368	1	1	50	0
Basarabesca	20	8	8	101	92	1	1	40	0
Briceni	25	7	7	60	26	1	1	0	0
Cahul	12	6	6	270	317	1	1	70	0
Călărași	15	5	5	0	24	1	1	50	0
Cantemir	10	5	5	184	171	1	1	50	0
Căușeni	15	7	7	536	522	1	1	200	0
Cimișlia	40	8	8	124	178	1	1	75	0
Dondușeni				Closed	48			0	0
Drochia	50	12	12	311	82	1	1	70	0
Edineț	15	4	4	210	213	1	1	50	0

Făleşti	25	9	9	144	185	1	1	50	0
Floreşti	10	5	0	117	146	1	1	75	0
Glodeni	4	2	2	0	0	1	1	75	0
Hînceşti	4	1	1	212	303	1	1	30	0
Leova	30	9	9	0	232	1	1	150	0
Nisporeni	18	6	6	185	270	1	1	50	0
Ocnîţa	8	8	8	133	124	1	1	50	0
Orhei	9	3	3	362	325	1	1	150	0
Rezina	22	7	7	83	91	1	1	40	0
Rîşcani	6	9	9	128	141	1	1	50	0
Sîngerei	35	9	9	186	123	1	1	50	0
Şoldăneşti	12	4	4	29	38	1	1	50	0
Soroca	50	12	12	397	233	1	1	50	0
Ştefan-Vodă	7	3	3	0	221	1	1	50	0
Taraclia	16	4	4	72	61	1	1	30	0
Teleneşti	8	3	3	142	96	1	1	100	0
Ungheni	20	7	7	274	168	1	1	40	0
Comrat	34	10	10	414	373	1	1	200	0
Ceadăr-Lunga	3	1	1	0	58	1	1	80	0
Vulcăneşti	8	2	2	48	48	1	1	50	0

IDP of the General Police Commissariat from Chişinău was fully renovated in 2011 with the financial support of the European Commission. EUR 250,000 were spent for renovation. In order to ensure 4 m² space per detainee, the capacity of 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. Besides renovation of the building, furniture and bed linen were also purchased. Material conditions of detention are good.

IDPs from Orhei and Ştefan Vodă were renovated,³⁴ and in the case of IDP from Hînceşti detention only in one out of nine cells of the isolator was authorized. Despite of the fact that there were measures taken aimed at reparation of the IDPs, apparently allocations for the food of the detainees did not increase after 2009.

Art. 215 of the Enforcement Code provides that duration of daily walks of an adult detainee should not be shorter than an hour and of a minor detainee, of two hours. CPT found that in 2011 in the IDP of the General Police Commissariat from Chişinău detainees were not authorized to have daily walks for more than 15-20 minutes. In Hînceşti, some detainees informed that they did not have walks during the whole period of their detention. In other IDPs, because of lack of personnel, walks were limited to 30 minutes.³⁵

On 6 July 2012, Ministry of Internal Affairs approved the Instructions of the IDPs from MIA (order no. 223). According to these Instructions (p. 37), persons detained in IDP may have meetings with their relatives only with the permission of the head of the IDP. However, the legislation does not mention under what circumstances a meeting with relatives can be refused.

³⁴ After renovation, IDP from Stefan-Voda was reopened.

³⁵ See para. 33 of the CPT Report prepared following the visit from 2011.

6.3.1.5 Other violations of Art. 3

ECtHR found that detainees were not provided with necessary medical assistance in the following ten cases: *Şarban* (04/10/2005) §§ 68-91; *Boicenco* (11/07/2006), §§ 112-119; *Holomiov* (07/11/2006) §§ 109-122; *Istratii and Others* (27/03/2007) §§ 42-59; *Stepuleac* (06/11/2007) § 59; *Levința* (16/12/2008) §§ 85-91; *Paladi* (10/03/2009) §§ 68-72; *Brega* (20/04/2010) § 42; *Oprea* (21/12/2010) §§ 36-42. In the case of *Levința*, a request was submitted to have the applicant, detained in the IDP, examined by a doctor, however this request was unsuccessful. In the case of *Boicenco*, no measures were taken during several months in order to determine the diagnosis of the applicant who was in a critical condition, and in the case of *Stepuleac* the preliminary diagnosis was not verified. In the case of *Şarban*, providing medical assistance in the IDP of the Centre for Combating Economic Crimes and Corruption (CCCEC) and examination of the applicant by a doctor of his choice was refused and recommendation of the doctor-neurologist that the applicant needs to be examined by a neurosurgeon was not followed. In the case of *Istratii and Others*, an applicant was transferred to the hospital for surgery with a delay of three hours, he was hand-cuffed during the surgery and was brought back to the IDP four hours after the surgery. In cases of *Levința* and *Gurgurov*, administration of the IDP refused hospitalization of applicants, despite of the fact that their hospitalization was recommended by the doctors, and in the case of *Oprea*, the applicant was hospitalized after two weeks. In the case of *Brega*, no medical assistance was provided for a renal crisis during 12 hours, and in the case of *Holomiov*, no medical treatment was provided for renal illnesses for almost two years.

All violations mentioned above refer to lack of diligence on behalf of the administration of the detention facility or criminal investigation body that could be redressed only by enhancing the professional discipline. Apparently violations found in cases of *Gurgurov* and *Levința* aimed at hiding traces of bodily injuries. From 27 October 2012 (amendment of Art. 64 CrPC), the apprehended person has the right to an independent medical assistance. This amendment shall decrease the risk of the situation similar to those found in *Gurgurov* and *Levința* cases.

In the case of *Ciorap*, ECtHR found that forced feeding of the applicant in 2001 was carried out in order to discourage him to resort to strikes, it was not prescribed by a doctor, and the manner of feeding him caused him strong pain. After submitting the application *Ciorap* to the ECtHR, the Law on preventive arrest (no. 1226, of 27 June 1997), which served as the basis for forced feeding, was amended and forced feeding was prohibited (through the Law no. 390, of 9 October 2003). In 2005, the Law on preventive arrest was revoked through the new Enforcement Code. Enforcement Code does not refer to forced feeding. In 2006, the Statute for execution of penalties by convicted persons was adopted. The Statute also did not refer to forced feeding. Administration of the Penitentiary No. 13 from Chişinău confirmed the fact that in the period 2009-2011 it did not apply the forced feeding.

In the case of *Ciorap* (no. 2), ECtHR found a violation of Art. 3 of ECHR based on the fact that non-pecuniary compensation awarded at the domestic level for detention in poor conditions and failure to provide medical assistance was insufficient. Measures taken by authorities of the Republic of Moldova in this regard were mentioned in sub-chapter 3.2.2 of the Study.

6.3.1.6 Recommendations

Ill-treatment

- a) Ministry of Internal Affairs needs to implement a new system of performance indicators that need to be based on indicators that should not create incentives for abuse by police;
- b) The Law that regulates the activity of the police needs to regulate an unconditional obligation to provide written reports about use of force by police. Also, the law needs to introduce the obligation of policemen to report cases of abuse that they are aware about. When there are indications that policemen did not report or tried to hide ill-treatment cases, sanctions need to be applied;
- c) Apprehended persons need to be brought directly to the IDP. The practice of holding the apprehended person in the offices of criminal police or criminal investigation officer until apprehension report is drafted needs to be prohibited;
- d) Transmitting IDPs under subordination of the Ministry of Justice needs to be carried out as soon as possible and regardless of the process of building the arrest houses;
- e) Adopting legislative provisions that would prohibit further detention by authorities of ill-treated persons in the commissariat or in the detention facility where he/she was subjected to ill-treatment.

Deficient investigation of cases of death and ill-treatment

- a) The practice concerning opening of criminal investigations shall be reviewed. Merituous cases should not be examined without opening criminal investigation, when there is a need to carry out procedural actions that cannot be carried out without opening criminal investigation;
- b) It is necessary to set up an independent body that will investigate all complaints against law enforcement bodies;
- c) There is a need to elaborate methodological norms for investigation of ill-treatment cases for prosecutors that need to be comprehensive, short, exact and useful for them. These recommendations need to derive from the ECtHR standards and the best practices of investigating ill-treatment cases;
- d) New regulations concerning priority treatment of criminal cases by judges and prosecutors need to be adopted;
- e) CrPC needs to be amended in order to authorize periodical information of the victim about the development of the criminal investigation and his/her adequate involvement in the investigation of ill-treatment case, and prosecutors should be trained in this regard.

Too mild sanctions for ill-treatment cases

- a) Intervention of the SCJ is necessary in order to establish a case-law that would exclude application of sanctions that are too mild for cases of ill-treatment;
- b) Legislation needs to be amended in order to automatically suspend from office policemen who are accused of ill-treatment. Also, during the period of suspending policemen from office, their salary needs to be remunerated. Judges and prosecutors shall be trained on the application of provisions concerning suspension from office.

Detention in poor conditions

- a) Authorities need to observe the norm of 4 m² of space for a detainee. This norm should not include the space occupied by sinks and toilets;
- b) Allocations for the food of the detainees need to be increased;
- c) Persons detained in IDPs for more than 24 hours need to benefit of at least one hour of daily walks, and in case of minors – at least two hours;
- d) It needs to be ensured that recommendations of the doctors shall be executed in due time.

6.3.2 Art. 5 of the ECHR

In judgments delivered by the ECtHR in Moldovan cases until 31 December 2010, 44 violations of Article 5 of ECHR were found. In 14 judgments, ECtHR found that domestic judgments on arrest were not sufficiently motivated, in 11 cases deprivation of liberty was not based on legal grounds, in six cases deprivation of liberty on the basis of Art. 5 § 1 c) was not based on a reasonable suspicion, and in five judgments violation of Art. 5 § 4 was found because there were sufficient grounds to believe that meetings with the advocate were not confidential. In judgments of *Becciev* and *Țurcan and Țurcan*, ECtHR found violation of Art. 5 § 4 because hearing of witnesses who could challenge the arguments invoked for arrest was refused without any ground, and in judgments of *Țurcan and Țurcan* and *Muşuc*, violation of Art. 5 § 4 was found based on the ground that defence did not have access to materials submitted by the accusation in order to justify the arrest.

6.3.2.1 Deprivation of liberty contrary to the national legislation

ECtHR found violation of Art. 5 § 1 following deprivation of liberty contrary to the national legislation in the following 11 judgments: *Boicenco* (11/07/2006) §§ 146-154; *Holomiov* (07/11/2006) §§ 123-131; *Modârcă* (10/05/2007) §§ 70-74; *Guțu* (07/06/2007) §§ 55-62; *Gorea* (17/07/2007) §§ 71-75; *Stici* (23/10/2007) §§ 36-40; *David* (27/11/2007) §§ 32-41; *Țurcan* (27/11/2007) §§ 40-44; *Ursu* (27/11/2007) §§ 26-30; *Paladi* (10/03/2009) §§ 73-75 and *Străisteanu and Others* (07/04/2009) §§ 85-88.

In all cases mentioned above, except the case of *Guțu*, *David* and *Străisteanu and Others*, ECtHR found violation of Art. 5 § 1 because applicants were arrested at the stage of examination of the case in court without a valid arrest warrant, despite the fact that Art. 25 para. 4 of the Constitution allows detention under arrest only based on an arrest warrant issued by a judge. These detentions were based on interpretation of Art. 186 para. 2 CrPC, according to which it was not necessary to prolong the arrest warrant pending trial. Such violation was found for the first time in the judgment of *Boicenco*, from 11 July 2006. After 17 days from the adoption of this judgement, the Parliament adopted a law (No. 264, of 28 July 2006, in force from 3 November 2006) where it amended the CrPC, obliging prosecutors to justify the need to arrest the applicant at the stage of examination of the case in court. Upon the request of the prosecutors, judges who examine the case in court may order arrest pending trial for a period up to 90 days. Thus, starting from 3 November 2006, the general reason for the violation does not exist.

In the case of *Guțu*, the applicant was administratively detained because he did not allow policemen to forcibly take his son to the commissariat, when policemen were acting illegally. Apparently, this violation happened because of lack of professionalism on behalf

of policemen, lack of discipline within the police, large discretion allowed by law to police and insufficient supervision of the police by prosecutors. On 31 May 2009, CC entered into force where possibilities to apply administrative detention were limited (Art. 433), detention could not last more than 24 hours, and the prosecutor had to be informed about detention cases (Art. 435). As a consequence, the number of contravention detentions decreased considerably. Nevertheless, provisions of the new CC cannot totally eliminate similar situations to the case of *Guțu*. The interviewed advocates declared that they found several similar situations during 2010 – 2011.

In the judgment of *David*, ECtHR found that the applicant was forcibly detained in a psychiatric institution without a court judgment, despite the fact that national legislation required existence of such a judgment for authorizing detention (Art. 28 of the Law No. 1402 on Mental Health). A similar violation was found by the ECtHR in 2011 in the judgment *Gorobeț*. Apparently these detentions happened because of non-observance by medical personnel of the legislation concerning forceful hospitalization. In June 2012, the Ombudsman of Psychiatric Hospitals prepared a report where it was stated that the Psychiatric Hospital from Chisinau annually hospitalizes more than 500 persons without their consent. After hospitalization, these persons are convinced by the employees of the hospital to agree to their further detention in the hospital. According to medical personnel, annually, a court judgment is requested for forceful detention only in some 30 cases.³⁶ These practices and figures are concerning.

In the judgment of *Străisteanu and Others*, ECtHR found that, after the judge rejected the prosecutor's request for arrest and before the authorization of the arrest of the applicant in another criminal case, there was no legal ground for detention of the applicant. This violation is explained by the old practice of the prosecutors to instrument in parallel several criminal files against the same person, in order to ensure further detention of the person based on a reserve file in case the person is released by the judge in the first file. This practice was used also in cases of *Popovici* (judgment of 27 November 2007) and *Djaparidze* (dec. of 31 January 2012). All these three files were notorious cases and the intention of the accusation not to admit the release of the applicants was clear. In 2008, Plenary of the SCJ supplemented p. 18 of its decision on application of the criminal procedure legislation on preventive arrest and home arrest (No. 4, of 28 March 2005) with the interdiction to submit a request „on repeated preventive arrest within the same court or submitting a request on the preventive arrest in another equivalent court concerning the same person, after the request was rejected by the court for the same reasons or the same acts”. However, this explanation does solve the issue from the *Străisteanu and Others* judgment, because it does not rule out the submission of a repeated request for arrest within another criminal investigation and deprivation of liberty until the examination of the second request.

6.3.2.2 Apprehension or arrest without reasonable grounds to suspect that the person has committed a crime or a contravention

In the following six judgments, ECtHR found that apprehension or arrest based on Art. 5 § 1 c) was not based on credible grounds to suspect that the person violated criminal

³⁶ The analysis of the case-files was carried out within the Project “Improvement of the right to liberty and security in Moldova”, implemented by the Soros-Foundation Moldova. The report on this analysis will be published in the spring of 2013.

or contravention law: *Stepuleac* (06/11/2007) §§ 66-81; *Muşuc* (06/11/2007) §§ 29-34; *Cebotari* (13/11/2007), §§ 46-53; *Hyde Park and Others (No. 4)* (07/04/2009) §§ 57-64; *Leva* (15/12/2009) §§ 43-56; *Brega* (20/04/2010) §§ 33-38. Four cases referred to criminal proceedings (*Stepuleac*, *Muşuc*, *Cebotari* and *Leva*), and in two cases (*Hyde Park and Others (No. 4)* and *Brega*) to apprehension in contravention proceedings.

In cases of *Stepuleac*, *Muşuc*, *Cebotari* and *Leva*, applicants were deprived of their liberty mainly because of the abuse of the criminal investigation body. In *Stepuleac*, criminal investigation officer manipulated the materials of criminal investigation, while in *Muşuc*, the applicant was deprived of liberty for fraudulent reduction of the value of a building, despite the fact that there was no evidence in the case file to confirm that the value of the building was diminished. In *Cebotari*, the applicant was deprived of liberty after his refusal to make declarations in the detriment of a third party that lodged an application to the ECtHR (SRL Oferta Plus). It appears that in *Stepuleac* the deprivation of liberty was made in the interest of MIA, in *Muşuc* the applicant was in hostile relations with the leadership of the country at that time, and in *Cebotari* the deprivation of liberty was convenient to the Government. In the case of *Leva*, the applicant was detained because one witness recognized him, even though there no such statements in the case file. No person was punished for these abuses.

Art. 176 para. 1 of CrPC stipulates that application of preventive measures may take place only if there is reasonable suspicion. P. 15 of the decision of the Plenary of the SCJ No. 4, of 28 March 2005, obliges judges to verify, when examining the request for applying preventive arrest, „if there are reasonable grounds to presume that the person has committed a crime”. It also mentions that „reasonable suspicion needs to be based on facts or information, that would establish an objective link between the suspect and the presumed act, and that would be reflected in documents or technical-scientific and medico-legal conclusions, or other objective data that would directly involve the respective person in committing a prejudicial act”. In the cases of *Stepuleac*, *Muşuc* and *Cebotari*, during arrest proceedings, the applicants alleged that there was no reasonable suspicion. Nevertheless, the judges did not comment on this argument. Both the interviewed judges and the advocates declared that the three cases were notorious cases and it was difficult for them to explain the behaviour of judges. They did not exclude the fact that the judges knowingly offered clearly illegal solutions.

It seems that many investigation judges and prosecutors are not fully aware of the fact what reasonable suspicion means and how its existence needs to be verified. After having examined several hundreds of case-files concerning the arrest examined by the investigation judges in 2011, it was established that, in many cases, prosecutors either do not generally refer or refer extremely briefly to the reasonable suspicion. Judges accepted those requests.³⁷ Moreover, even if prosecutors invoke certain circumstances in supporting the reasonable suspicion, such information often is not found in the judgments of the investigation judges on arrest. It appears that this behaviour refers to a more general problem, and namely diligence and quality of the activity of investigation judges. This aspect is presented in the subchapter 6.3.2.3.

³⁷ The analysis of the case-files was carried out within the Project “Improvement of the right to liberty and security in Moldova”, implemented by the Soros-Foundation Moldova. The report on this analysis will be published in the spring of 2013.

In cases of *Hyde Park and Others (No. 4)* and *Brega*, the applicants were deprived of their liberty by police based on accusations that they have committed contraventions. Similar actions took place also in the case of *Mătăsarū and Saviṭchi*. In reality, the applicants were detained in order to prevent them from protesting. It appears that policemen did not take spontaneous decisions and acted upon indications from their superiors, because in the case of *Brega* domestic judges established that the applicant did not insult the policemen, and in the case of *Hyde Park and Others (No. 4)* the applicants had a court judgment allowing them to protest. This judgment was however neglected by the police. The coordinated character of these detentions is also confirmed by the fact that after the change of the MIA leadership in autumn of 2009, no more cases of detaining peaceful protesters in street and taking them to police were established. Despite the clearly illegal nature of police actions, it seems that no policeman was punished.

6.3.2.3 Insufficient reasoning of arrest

Until 31 December 2010, ECtHR found violation of Art. 5 § 3 as a result of insufficient reasoning of court orders authorizing arrest in the following 14 judgments: *Becciev* (04/10/2005) §§ 49-64; *Ṣarban* (04/10/2005) §§ 92-104; *Boicenco* (11/07/2006) §§ 139-145; *Castraveṭ* (13/03/2007) §§ 27-36; *Istratii and Others* (27/03/2007) §§ 73-78; *Modărcă* (10/05/2007) §§ 75-79; *Stici* (23/10/2007) §§ 41-46; *Ṭurcan and Ṭurcan* (23/10/2007) §§ 43-54; *Muṣuc* (06/11/2007) §§ 35-48; *Popovici* (27/11/2007) §§ 58-63; *Ursu* (27/11/2007) §§ 16-25; *Malai* (13/11/2008) §§ 36-41; *Străisteanu and Others* (07/04/2009) §§ 80-84 and *Oprea* (21/12/2010) §§ 43-48. A similar violation was also found by the ECtHR in 2011 in the *Ignatenco* judgment.

In the Republic of Moldova, arrest is ordered by the investigation judge. CrPC obliges judges to adequately justify/reason their judgments authorizing arrest. The same obligation also results from the decision of the Plenary of the SCJ No. 4, of 28 March 2005. Nevertheless, insufficient reasoning of judgments authorizing arrest issued in the Republic of Moldova was constantly criticized by the ECtHR starting from 2005.

In all those 14 cases mentioned above, arrest and/or prolongation of arrest was ordered based on simple reproduction of legal grounds provided by the CrPC, without indication of concrete grounds that served as the basis for the court to consider as valid the allegations that the applicant could hinder the examination of the case, that applicant could abscond or commit other crimes, and judges did not try to combat the arguments brought by defence against the arrest. In the *Muṣuc* judgment, ECtHR underlined the frequent and repetitive nature of this violation even two years after the first violation found (§ 43).

In several cases, failure to reason the arrest warrants was especially obvious. In the case of *Ṭurcan and Ṭurcan*, prolongation of arrest warrant was ordered without having at judges' disposal the materials of the case. In the same case, arrest warrant of one applicant (Dorel Ṭurcan) was prolonged because he refused to communicate to the accusation the names of witnesses who could prove his innocence³⁸, while the main accused person was released. The cassation lodged by Dorel Ṭurcan against this arrest warrant was rejected one day before

³⁸ This fact was interpreted by the prosecutor and judges as impeding carrying out of criminal investigation.

the expiry of the arrest warrant, based on the reason that he presented social danger, despite the fact that the cassation court was aware of the fact that prosecutor did not request prolongation of the arrest. In the *Ursu* case, judges reasoned prolongation of arrest warrant with grounds that, normally, would eliminate the need of arrest (failure to carry out criminal investigation measures, lack of criminal records, family relations and minor children, ownership over a house, existence of a place of work and serious health problems). In the *Oprea* case, judges did not take into consideration the poor health condition of the applicant, which should normally be an argument against his arrest. In the judgments of *Istratii and Others* and *Oprea*, ECtHR mentioned that, despite the fact that arrest should be ordered only in exceptional cases, no court refers to this aspect when prolonging the arrest, and several months later, the applicants were released based on grounds earlier rejected upon prolongation of arrest. In cases of *Țurcan and Țurcan* and *Oprea*, the judges also did not comment on the possibility to apply measures alternative to arrest.

Poor reasoning of arrest warrants could be explained by earlier practice of the courts to frequently order arrest, poor reasoning by prosecutors of requests to authorize arrest, heavy workload of the investigation judges and their professional background, limited time provided by law for the examination of the request, 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.

Despite the fact that preventive arrest needs to be applied as an exception, it was applied very often until adherence of the Republic of Moldova to the ECHR. The tendency to frequently resort to preventive arrest did not disappear yet. Table No. 20 presents statistical data about requests lodged to authorize arrest, which were examined in 2000, 2006, 2009, 2010 and 2011.³⁹ Thus, referring to the number of criminal cases sent to court, the percentage of requests to authorize arrest did not change significantly during this period. If in 2006 the number of submitted requests to authorize arrest represented 36.5% from the total number of criminal cases sent to court, in 2011 this percentage was of 32.8%. The rate of accepted requests even increased. If in 2006, 79.2% of requests were admitted, in 2010, a number of 85.6% requests were admitted, and in 2011 – 80.9%.

Table No. 20

Statistical data about requests to authorize arrest examined in 2000, 2006, 2009, 2010 and 2011

Year	No. of criminal cases examined by judges	No. of requests	Reported to the No. of criminal cases examined	Variation comparing to the earlier indicated year	Allowed requests by judges	% of admitted requests
2000		6,266			5,104	81.4%
2006	13,912	5,083	36.5%	- 18.9%	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%

Poor reasoning by prosecutors of the requests to authorize arrest was frequently invoked by the advocates and judges. In order to enhance the quality of requests to authorize arrest, General Prosecutor's Office elaborated a template of request to authorize arrest that

³⁹ This data was taken from annual statistical reports presented to the Department of Judicial Administration.

includes special sections on reasonable suspicion and grounds for arrest. After examination of several hundreds of requests to authorize arrest submitted in 2011, it was established that usually such requests reproduce accusation brought to the person, and the chapters concerning reasonable suspicion and reasoning of the arrest reproduce provisions of the CrPC. In case of a request to prolong the arrest warrant, its content differs very little from the earlier lodged request. The text of requests to authorize arrest lodged by the same prosecutors in different files is very similar. Moreover, despite the fact that clear grounds for arrest derive from the materials of the file, they are often invoked by the prosecutors orally in the court sittings and not in their written request. These facts suggest that prosecutors adjust only insignificantly the requests to authorize arrest from case to case. With such a poor quality of requests for arrest, it is difficult to rationally understand such a high percentage of requests for arrest admitted by judges.

In 2008, Plenary of the SCJ summarized the case-law concerning arrest (dec. No. 20, of 14 November 2008) and established that „court orders concerning the application of procedural constraint measures are insufficiently reasoned, the fact that contradicts provisions of Art. 306 of the Criminal Procedural Code” and asked judges „not to issue orders that are not reasoned enough upon examination of requests on application of preventive measures and their prolongation”. Nevertheless, after examining several hundreds of judgments concerning arrest adopted in 2011, no substantial improvement of court judgments issuing arrest warrants was noted. Although the length of the arrest judgments increased, the quality of reasoning remains the same. Usually, judges reproduce in their judgments the text of Art. 5 of ECHR extracted from the ECtHR case-law, however, without explaining the relevance of these references to the examined case. Reasoning of court judgments issued by the same judge is changing too little from case to case, and the grounds invoked in the judgment are, in fact, described in two-three short paragraphs. Usually, judges reproduce grounds stipulated by the law, do not explain how they are applicable to the examined case, do not explain why other preventive measures cannot be applied and do not combat the arguments of the defence.

Investigation judges invoked high workload and poor quality of requests to authorize arrest as an excuse for poor reasoning of their judgments. Information about the activity of the 41 investigation judges in 2011 is presented in table no. 21. It is very difficult have a qualitative delivery of justice with such a high workload, especially in case of the seven investigation judges from Chisinau. They dealt with about 50% of the activities presented in table no. 21. However, high workload could not be an excuse for lack of reasoning of arrest warrants. On the other hand, judges from the regions have much smaller workload than judges in the cities; nevertheless, the quality of arrest warrants does not vary significantly depending 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 solution. The impression is that the quality of the investigation judge’s performance mostly depends on the attitude of the judge. Thus, in the second half of 2011 in some courts the

rate of admitted requests was of 40-70%.⁴⁰ In other district courts all or almost all requests for arrest were admitted. Some interviewed judges mentioned that, due to a widespread practice of poor reasoning of the arrest warrants at the level of district and appeal courts, investigation judges are not interested to motivate better their arrest decision. 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 investigation judges complain that they do not have it.

Table No. 21
Statistical data about investigation judges' activity in 2006, 2009, 2010 and 2011

	Authorizing search	Authorizing confiscation of objects and documents	Authorizing confiscation of correspondence	Authorizing interception of communications	Complaints against actions of law enforcement bodies	Requests to authorize arrest examined	Total
2006	3,515	882	200	1,931	1,995	5,083	13,606
2009	5,437	1,890	57	3,848	1,985	3,427	16,644
2010	7,453	3,182	83	3,890	1,932	3,287	19,827
2011	8,759	3,939	160	3,586	2,190	3,306	21,940

Most of interviewed persons explained poor quality of investigation judges' performance by their professional career. The institution of investigation judges was introduced in the Republic of Moldova in 2003, after the entry into force of the new CrPC. Only judges with at least three years of experience, or prosecutors and investigation officers with at least five years of experience could become investigation judges. As a consequence, only prosecutors and investigation officers became investigation judges. No judge stood for the position of investigation judge. Authorities of the Republic of Moldova admitted that this was a problem. Further, the Law No. 153, from 5 July 2012, changed the manner of how the duties of investigation judges are exercised. These duties will be exercised by a common law judge appointed by the SCM for a certain period of time. Within the period of three years, investigation judges in office will be evaluated by the SCM, after which they need to be reconfirmed in their position by the President / Parliament at the SCM's proposal.

According to Art. 166 para. 7 of CrPC, the request to authorize arrest has to be submitted to the investigation judge at least three hours before the expiry of the apprehension term. According to Art. 305 para. 3 of CrPC, this request needs to be examined within maximum 4 hours after receiving it. The request is examined within a court sitting, with observation of the principle of adversarial proceedings. Taking into consideration the crowded agenda of the investigation judges and the complexity of arrest proceedings, the above mentioned terms may negatively influence the quality of examination of complex requests for arrest.

27 out of 33 seminars in the field of ECHR organized at the NIJ in 2011 referred to arrest proceedings. Almost all investigation judges were present at these seminars. Similar seminars for judges were organized also in the previous years. All ECtHR judgments in Moldovan cases are available in Romanian language. Information about them is widely disseminated in mass-media shortly after delivery. Decision of the Plenary of the SCJ No. 4, from 28 March 2005, describes in details the standards of the ECtHR on arrest issues. In 2008, Plenary of the SCJ (dec. No. 20, from 14 November 2008) criticized the performance

⁴⁰ 38% of requests were admitted in Șoldanesti District Court, in Bender District Court - 66%, and in Cahul District Court - 67%.

of investigation judges. Failure to apply the ECtHR case-law could be explained only by lack of diligence. Only three investigation judges were dismissed for their poor performance.⁴¹

The judgements of the investigation judge concerning arrest are contested to the appeal court. The interviewed investigation judges alleged that their practice was largely influenced by the judicial practice of the courts of appeal. Studying more than 50 orders authorizing arrest issued by courts of appeal in the second half of 2011, we concluded that, regretfully, courts of appeal from the Republic of Moldova are not the most loyal promoters of the standards instituted by the ECHR. On the contrary, many judgments of the courts of appeal are also similarly poorly reasoned as those of the investigation judges, and more than 70% of appeals on points of law against arrests examined by courts of appeal in the second half of 2011 were rejected. Courts of appeal mainly admitted appeals on points of law lodged by the prosecutors, and the reasoning found in their decisions suggests that they are not ready to apply ECtHR standards.

The insufficient quality of services provided by the advocates poorly influence the reasoning of arrest warrants. The files examined for this report confirmed that advocates submitted written pleas to the investigation judge quite rarely. This could be explained by short period of time available for examination of requests for arrest. Oral pleadings of the advocates rarely reference to the ECtHR. Even these references were usually extremely general and, at prima facie, insufficiently convincing.

Interviewed judges mentioned that, often, their arrest warrants are influenced by the attitude of the society. The Moldovan society still perceives arrest as a measure that needs to be automatically applied to persons charged with serious crimes. In case the arrest is not applied, judges are suspected of corruption. Despite the fact that the attitude of the society represents an important factor for assessing the courts' performance, it cannot be a factor for consideration when taking decision on a concrete case. It appears that, in fact, the attitude of the society regarding the arrest is mainly determined by a too frequent use by judges of arrest and by insufficient reasoning of arrest warrants.

Some advocates alleged that investigation judges easily order arrest also because of corruption in the judicial system.

6.3.2.4 Refusal to hear a witness when dealing with appeal on points of law against arrest

In judgments *Becciev* (04/10/2005) §§ 65-76 and *Turcan and Turcan* (23/10/2007) §§ 65-70, ECtHR found violation of Art. 5 § 4 based on the fact that the court that examined the appeal on points of law against the arrest refused to hear witnesses upon the request of the defence that could challenge the arguments invoked for arrest.

Despite of the fact that *Becciev* judgment was delivered back in 2005, in summer of 2012 judges from the Republic of Moldova were still refusing to hear witnesses during the arrest proceedings. This problem was discussed during seminars organized by the NIJ. The judges

⁴¹ Through decision No. 29/3, from 26 February 2009, SCM refused to propose to the President reconfirmation of the investigation judge from Orhei in this position until reaching the limit age. Following the events from April 2009, the other two investigation judges from Chisinau were relieved of their positions through the same procedure on the ground that they committed serious violations upon examination of requests for arrest.

mentioned that they do not hear witnesses, because they cannot express their opinion about the guilt of the accused person within the arrest proceeding. On the other hand, CrPC also did not include express provisions in this regard. Moreover, the judicial control over the legality of the arrest shall be exercised in a closed hearing (Art. 312 para. 3 CrPC).

Indeed, Art. 312 of CrPC, that regulates the judicial control over the legality of the court order on arrest, indicates in detail the persons who may be present in the court room and the steps to be taken by the court upon examination of the appeal on points of law. Art. 308 of CrPC that refers to the examination of requests concerning application of arrest does not explicitly refer to the possibility of the defence to request the hearing of witnesses. Neither the decision of the Plenary of the SCJ No. 4, of 28 March 2005, that was supplemented in 2008, refers to this aspect. However, Art. 2 para. 2 of CrPC expressly mentions that international treaties „generate human rights and liberties in the criminal procedure”.

Judges who examine cases on arrest are aware of ECtHR case-law mentioned above, however they do not apply it. It appears that certain investigative judges try to bring a change, however courts of appeal do not admit it. Thus, on 9 November, Court of Appeal from Balti (dos. No. 1-m-122/11) quashed an order refusing arrest, which was issued after hearing witnesses, inter alia, based on the reason that hearing of witnesses in arrest proceedings is inadmissible, because it violates Art. 308 para. 2 of CrPC. This Article requires that arrest proceedings need to be confidential. It appears that this negligence of ECtHR standards is mainly explained by the reticence of judges to give up on the existing practices that offer them more comfort, and by failure of the SCJ to intervene convincingly in order to settle the problem. Taking into consideration that, more than seven years after the *Sarban* judgment, this problem was still not solved through judicial practice, introduction in the CrPC of the right to hear witnesses pending court examination of the case could be a solution. CrPC was amended in 2012, however the new amendments do not refer to this aspect.

The ECtHR case-law shall not be understood as imposing hearing of witnesses requested by the defence. Only witnesses whose declarations are relevant for the arrest shall be heard. Moreover, the judge always has the right to refuse hearing a witness when he/she considers that the circumstance, which can be confirmed by the witness, was already proved through other evidence beyond reasonable doubt.

6.3.2.5 Refusal to provide access to the materials submitted in support of the request for arrest

In judgments *Turcan and Turcan* (23/10/2007) §§ 55–64 and *Musuc* (06/11/2007) §§ 49–56, ECtHR found violation of Art. 5 § 4 based on the fact that the defence did not have access to the materials submitted to the judge by the prosecutor in order to reason the arrest.

Art. 68 para. 2 p. 3 of CrPC regulates the right of the advocate to take a note of „the materials submitted to court by the criminal investigation body in order to confirm the apprehension or the need for arrest”. This right exists since entrance into force of the new CrPC (12 June 2003). However, in the two cases mentioned above, this norm was not observed.

According to Art. 308 para. 1 of CrPC, when filing a request for arrest, the prosecutor shall attach materials that confirm the justification of the submitted request. After examining several hundreds of files concerning the arrest from 2011, it was established that, usually,

prosecutors attach to the requests for arrest only procedural acts that confirm the apprehension. They usually do not confirm the circumstances invoked in the request for arrest. In very few cases, prosecutors attached to the request for arrest evidence that confirmed the need for arrest. In many cases, the file of the investigative judge where arrest was ordered includes only the request for arrest, without other evidence. Advocates alleged that, together with the request for arrest, the prosecutor also submits to the judge all materials of the criminal case. The interviewed judges confirmed the existence of such a practice. Investigative judges study all materials, however they refuse access of the defence to these materials, because, according to Art. 212 of CrPC, criminal investigation is confidential, and the defence is entitled to study them only after finalization of criminal investigation. Indeed, in many orders on arrest issued in 2011 investigative judges mentioned that they adopted their decisions after studying the materials of the criminal case. Moreover, in several arrest proceedings, courts of appeal requested from the prosecutor's office the materials of the criminal file in written form. In 2011, the Court of Appeal Chisinau, for instance, did not examine the appeal on points of law concerning the arrest without examining materials of the criminal file. This practice could implicitly result from Art. 311 para. 4 of CrPC, that obliges the prosecutor to send „the respective materials” to the cassation court within 24 hours after receiving notification about examination of the appeal on points of law.

References made by advocates to Art. 68 para. 2 p. 3 of CrPC and ECtHR case-law mentioned above are, usually, neglected by the advocates. In any case, due to a constant practice, very few advocates still insist on the access to the materials examined by judges. This attitude speaks about a distorted understanding of the role of advocates, as well as about tendency among judges to accept only ECtHR practices that are comfortable. Generally speaking, judges from the Republic of Moldova, as any other judges, are tempted to follow well-established practices and wait for a change from the Supreme Court.

In order to solve this problem, Art. 308 of CrPC was amended through the Law No. 66 (in force since 27 October 2012). According to the amendment, materials that confirm the need for arrest need to be attached to the request. These materials need to be submitted to the advocate together with the request for arrest. It is still too early to evaluate the impact of this amendment.

6.3.2.6 Other violations of Article 5

In the *Leva* judgment (15/12/2009) §§ 57-63, ECtHR found violation of Art. 5 § 2 because applicant was not informed about two criminal investigations that served as a ground for his apprehension and arrest. This situation is closely linked to the right of the defence to learn about the materials submitted by the prosecutor in order to reason the need for arrest. By improving this deficiency, the risks of similar situations will also be eliminated. In any case, judges need to examine the need for arrest only in what concerns the facts described in the request for arrest.

In the *Boicenco* judgment (11/07/2006) §§ 134-138, ECtHR found violation of Art. 5 § 3 because Art. 191 of CrPC prohibits application of bail or release under judicial control of the persons charged with committing crimes by intent for which the criminal law provides punishment of more than 15 years of imprisonment. Mr. Boicenco was accused of committing

a crime by intent for which the criminal law provides punishment of more than 15 years imprisonment. ECtHR mentioned that Art. 5 § 3 was violated because provisions of Art. 191 of CrPC were not allowing the judge to verify if deprivation of liberty was justified. Through the Law No. 410, of 21 December 2006 (in force since 31 December 2006), interdiction regulated by Art. 191 of CrPC concerning the gravity of accusation was excluded. However, another similar interdiction was not excluded from the same Article. The bail or the provisional release under judicial control is not granted to persons with previous criminal record not extinct for serious and for particularly serious or exceptionally serious crimes even today.

In judgments of *Castraveț* (13/03/2007) §§ 37-61; *Istratii and Others* (27/03/2007) §§ 79-101; *Modârca* (10/05/2007) §§ 80-99; *Muşuc* (06/11/2007) § 57 and *Leva* (15/12/2009) § 68, ECtHR found violation of Art. 5 § 4 based on the fact that the separation of the applicant from his advocate through a glass wall, during meetings in IDP of the CCCEC, allowed to reasonably believe that meetings were not confidential. In spring of 2007, the glass wall installed in the room for meetings between advocates and their clients was removed. Interviewed advocates declared that they do not encounter difficulties in communicating with their clients under conditions of confidentiality.

In *Șarban* judgment (04/10/2005) §§ 115-124, ECtHR found violation of Article 5 § 4 based on the ground that the appeal on points of law against arrest was examined after 21 days. According to Art. 311 of CrPC, the appeal on points of law against the court order on the application of arrest shall be lodged within three days. Within 24 hours from the moment of receiving the appeal on points of law, the court that issued the order on arrest must send the materials of the case file to the cassation court. According to Art. 312 para. 2 of CrPC, the cassation court shall examine the appeal on points of law within three days since receiving it. The mechanism instituted by law seems to ensure examination of the appeal on points of law within maximum ten days after issuing the order on arrest. However, in practice this time limit is not always observed. Thus, the appeal on points of law in the file of the investigative judge from Donușeni district court No. 16-4/11 was examined 15 days after it was lodged, and in the file of the investigative judge from Centru district court from mun. Chișinău No. 16-165/11 – 17 days after it was lodged.

6.3.2.7 Recommendations

Deprivation of liberty contrary to the national legislation

- a) Discipline of the police and supervision of the police by prosecutors shall be improved in order to exclude abusive contravention apprehension;
- b) Practice of forced hospitalization in psychiatric institutions without court order must be ceased;
- c) Excluding the practice of the accusation concerning deprivation of liberty of persons after the request for arrest is rejected. In case new charges are brought against a person and his/her arrest is sought based on these charges, the respective person should not be deprived of her/his liberty until the second request for arrest is admitted.

Insufficient reasoning of arrest

- a) In order to avoid bringing damages to the quality of work of the investigative judges, the quality and amount of their work shall be assessed;

- b) The time limits established by Art. 166 para. 7 of CrPC and Art. 305 para. 3 of CrPC for examination of requests for arrest shall be increased, in order to allow qualitative examination of requests for arrest;
- c) Courts of appeal need to radically review their practice, in order to provide exemplary reasoning of their judgments and quash any order on arrest that is poorly reasoned;
- d) Judges, prosecutors and advocates need to be continuously trained in the field of ECtHR standards concerning arrest. The training should not refer to the ECtHR standards only superficially, but also needs to include discussion of hypothetical and practical cases from the ECHR perspective. Participants need to elaborate reasoned documents based on ECtHR case-law.

Examination of the appeal on points of law against arrest

- a) SCJ needs to provide clear explanations that during examination of the appeal on points of law against arrest order it is admissible to hear witnesses who could communicate information relevant to the arrest proceedings;
- b) Within the arrest proceedings, judges need to give up the practice of examining materials of criminal case, in case the defence does not have access to them. SCJ needs to take decisive steps in order to support eradication of such practice;
- c) Art. 311 para. 4 of CrPC should be excluded.

Other violations of Article 5

- a) From Art. 191 para. 1 of CrPC the provision concerning interdiction to provisionally release under judicial control persons with previous criminal record not extinct for serious and for particularly serious or exceptionally serious crimes shall be excluded.

6.3.3 Article 6 of the European Convention of Human Rights

In the ECtHR judgments delivered until 31 December 2010, ECtHR found 103 violations of Art. 6. Out of them, 52 represent non-execution of judgments, 15 refer to improper quashing of final judgments, and eight judgments refer to extended period of time for examination of cases. In another six judgments, the Court found that the right to defence was violated because of the deficient summoning procedure, in another six judgments the right of access to the court was violated, and in five judgments ECtHR criticized the quality of reasoning of the judgments. ECtHR has also established several types of violations of Art. 6, however they were not found in many judgments. In 2011, ECtHR found 15 violations of Art. 6. Subsequently, we shall analyze the measures taken regarding each type of violation. The types of violations were arranged depending on the violation concerned and not depending on the number of violations found by the ECtHR.

6.3.3.1 Access to court

In the *Malahov* (07/06/2007) §§ 23-39; *Ciorap* (19/06/2007) §§ 90-96; *Clionov* (09/10/2007) §§ 35-42; *Istrate* (No. 2) (10/06/2008) §§ 17-20 and *Tudor-Comert* (04/11/2008) §§ 32-42, judgments ECtHR found violation of Art. 6 because of the refusal of courts to exempt applicants from court fees.

Violations found in cases *Clionov*, *Ciorap*, *Istrate* (No. 2) were determined by the blank prohibition when applying exemptions from payment of court fees from Art. 437 para. 2 CPC. In

the case of *Tudor-Comert*, apparently the applicant was not exempted, because Art. 85 of CPC did not allow exemption of legal entities from payment of the court fee. Through the Law No. 84, of 17 April 2008 (in force since 20 May 2008), interdiction from Art. 437 para. 2 of CPC was excluded, and through the Law No. 107, of 4 June 2010 (in force since 23 July 2010) Art. 85 para. 4 of CPC was supplemented in order to allow exemption of legal entities. Through these legislative amendments the general cause of these violations was eliminated.

In the judgment *Malahov*, ECtHR found a similar violation because the courts refused to examine the appeal and appeal on points of law lodged by the applicant without adequately examining his ability to pay court fees. It appears that this case refers to an exceptional situation. Generally speaking, judges from the Republic of Moldova are quite generous in awarding exemptions from payment of court fees.

In the judgment *Business Investiții pentru Toți* (13/10/2009) §§ 25-34, ECtHR found a violation following the refusal of the SCJ to admit the applicant to the proceedings where the fate of goods recently purchased by him was decided and prejudging his allegations from another case within these proceedings. Courts refused to admit the applicant into proceedings because he purchased goods after finalization of the proceedings in the court of appeal and was not part of these proceedings. On its behalf, CPC (Art. 449) did not allow reopening of the proceedings when the rights of a person not participating in the trial were affected through the judgment. Through the Law No. 155, of 5 July 2012 (in force from 1 December 2012), this situation was introduced into the CPC as a ground for revision (Art. 449 letter c). Revision may be lodged by the person not involved in the proceedings (Art. 447 letter b CPC). Through this legislative amendment the general reason of this violation was eliminated. However, it would have been more rational if courts would be more flexible when, pending court examination, the rights over the object of the dispute are transferred to another person. As ECtHR mentioned in its judgment (para. 31), the new owner needs to be able to claim in court all rights that the former owner could invoke.

6.3.3.2 Deficiencies in the summoning to courts

In judgments *Ziliberg* (01/02/2005) §§ 26-42; *Istrate* (13/06/2006) §§ 51-55; *Russu* (13/11/2008) §§ 19-28; *Masaev* (12/05/2009) §§ 16-18; *Godorozea* (06/10/2009) §§ 28-33 and *Bucuria* (05/01/2010) §§ 21-26, a violation of Art. 6 was found on the ground that cassation courts examined the case without adequately notifying the applicants and offering them the possibility to present their case. Judgments *Ziliberg*, *Russu* and *Masaev* refer to contravention proceedings, and cases *Istrate*, *Godorozea* and *Bucuria* – civil proceedings. In 2011, ECtHR also found similar violation in the judgment of *Rassobin* (18/10/2011) that referred to civil proceeding.

Usually summoning in the Republic of Moldova takes place through postal correspondence. Deficient summoning was always a problem. Moldovan authorities recognized this problem and, through the Action Plan (p.1.2.2.10) for implementation of the Strategy for Reforming the Justice Sector for 2011-2016 (SRSJ), it engaged to strengthen the mechanism of judicial summoning.

According to the procedural codes and SCJ case-law, it unambiguously results that an adequate summoning means summoning that allows confirmation of receiving summon.

Some courts summon parties through simple letters, presuming that the letter will reach the destination. Simple letters do not offer the prove of the fact that the summon was received, however judges use this mechanism because courts do not have sufficient money to send the correspondence by recommendation post. However, in 2012, situation on this chapter was better than in 2006. In 2012, it was established that many judges from Chisinau were sending the first summon through simple letter, and, in case of non-representation, the second letter by recommendation post.

In 2012, in many contravention cases, the Court of Appeal Chisinau was examining appeals on points of law even if there was not prove that the summons were received. It appears that this procedure was used because courts do not have resources for summoning through recommendation post. This fact is surprising, considering that this is the biggest court of appeal from the country, and its activity refers to a vast number of persons. It appears that the main reason for not sending letters by recommendation post is not lack of financial resources at the level of the country, but deficient budgeting of the postal expenses by courts. This fact explains why certain courts send all their correspondence through recommendation letters, and others do not. At the same time, through amendments introduced to the CPC (Law No. 155, of 5 July 2012), starting from 1 December 2012, examination of appeals on points of law in civil cases will not take place within court sittings. This innovation practically excludes similar situations to those found in cases *Istrate*, *Godorozea* and *Bucuria*.

6.3.3.3 Excessive length of judicial proceedings

In the following six judgments, ECtHR found a violation concerning the reasonable time requirement: *Holomiov* (07/11/2006) §§ 132-146; *Mazepa* (12/04/2007) §§ 38-50; *Gusovschi* (13/11/2007) §§ 30-45; *Cravenco* (15/01/2008) §§ 42-58; *Boboc* (04/11/2008) §§ 21-37; *Panzari* (29/09/2009) §§ 29-36; *Deservire SRL* (06/10/2009) §§ 34-49 and *Matei and Tutunaru* (27/10/2009) §§ 53-67. Five of those six cases (except the case of *Holomiov*) refer to the civil proceedings. In 2011, ECtHR also found a similar violation in the judgment *Oculist and Imas* (28/06/2011).

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. 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. According to the activity report of the SCM for 2010, from civil cases pending on 1 January 2011 (3,376), examination of 6.6% of cases lasted for more than 12 months, 2.3% of cases - for more than 24 months and only 1.9% of cases - for more than 36 months.

Despite of the fact that the length of examination of a case in court is overall acceptable, the persistent problem of the Moldovan system consists of frequent adjournments of the court hearings and practice of sending cases for re-examination. This fact leads to tergiversation in the examination of simple cases and superficial examination of complex cases.

Moldovan judges are extremely indulgent towards the requests of the participants in the trial to adjourn the 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 notification of the party, irresponsible 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.⁴² This finding was also valid in 2012. Usually, the periods between hearings do not exceed two months. However, in cases of *Deservire SRL, Holomiov, Matei and Tutunaru, Gușovschi* and *Cravcenco*, ECtHR found that there were long periods of time between the hearings without any explanation.

The persons interviewed within the study declared that the real reasons for adjourning the hearings are the fear of judges that their judgments will be quashed, tergiversation in the examination of the case by the parties, absence of witnesses, late drafting of expert reports and failure of judges to prepare for the examination of the case.

By amendments to the CPC that entered into force on 1 December 2012 (the Law no. 155, of 5 July 2012), a possibility was offered to judges to prepare examination of civil cases without convening court hearings and rules concerning submission of evidence were narrowed. These amendments could lead to decrease of the number of court hearings and a quicker examination of cases. Through the SRSJ, the authorities of the Republic of Moldova committed to strengthen the National Centre of Judicial Expertise. This measure could lead to a decrease of the time necessary for elaboration of the experts' conclusions. At the moment, they are available at least several months after.

Non-participation of the parties at the hearings is explained most often by the failure to ensure proper summoning. This issue was analyzed in the earlier sub-chapter. Non-participation of witnesses, especially in criminal cases, represents a serious problem in the Republic of Moldova. Mainly, the courts presume that witnesses are willing to come. However, often, witnesses do not come because they do not want to participate or they can come but hearings are adjourned. This problem needs to be redressed.

In the judgments *Mazepa* and *Gusovschi*, the ECtHR criticized the repeat re-examination of cases. Higher courts were resorting extremely often to the practice of sending cases for re-examination. According to the information concerning the activity of courts in 2009 published by the SCJ, out of 5,146 civil cases examined by the courts of appeal in that year, 1,296 (25%) were sent for re-examination, and out of 2,369 cases examined by the SCJ in 2009, 273 were sent for re-examination, which represents 53% of all admitted appeals on points of law (518).

Until 27 October 2012, the court of appeal was 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 amendments introduced to the CrPC that entered into force on 27 October 2012 (the Law no. 66), the court of appeal may now send cases for re-examination, however only in cases when the defendant was not summoned, was not provided the right to interpreter, was not assisted by an advocate or provisions concerning incompatibility of judges were violated (Art. 415 para. 1 p. 3). The appeal on points of law against the sentence of the appeal court may be admitted only if it falls within the grounds stipulated by Art. 444 of CrPC. It appears

⁴² Final Report of the OSCE Trial Monitoring Programme in the Republic of Moldova, especially pp. 60-61

that this type of 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, many criminal cases are sent by the SCJ for re-examination. Thus, according to the Activity Report of the SCJ for 2011, Criminal Section of the SCJ admitted in 2011 the appeal on points of law with reference to 292 persons. Cases of 198 (68%) persons were sent for re-examination. Therefore, following amendments introduced to the CrPC in 2012 the possibilities of courts to send cases for re-examination were enlarged.

Until 1 December 2012, civil cases could be sent for re-examination both by the SCJ as well as by the courts of appeal. Courts of appeal were obliged to send cases for re-examination when they established that procedural norms were violated (Art. 385 para. 1 d) of CPC). In three cases, however, upon the request of parties, they could examine the appeal without sending the case for re-examination. When SCJ finds that the judicial error cannot be corrected within the appeal on points of law, it can send the case for re-examination both in first instance, as well as in court of appeal (Art. 445 para. 1 c) CPC). By the Law no. 155, of 5 July 2012, Art. 385 of CPC was amended in the sense of limiting possibilities of the court of appeal to send the case for re-examination to only two cases: if the competence was violated and if the court ruled on the rights of persons who are not participants in the trial. The appeal court can also send a case for re-examination if the summoning procedure was violated and the parties request the sending of the case for re-examination. Through the same law the right of the SCJ to send civil cases for re-examination to the first court was limited to the same three cases.

The interviewed persons, including judges, declared that sending cases for re-examination happens both because of errors committed by courts as well as because of hesitation of judges to take a decision in complex or sensible cases.

In the judgment of *Matei and Tutunaru*, ECtHR criticized the failure to speed up the proceedings after sending cases for re-examination. After sending cases for re-examination, cases are examined according to the general order. Despite of the fact that formally some cases (see Art. 192 para. 1 of CPC) 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.

By the Law no. 88, of 21 April 2011 (in force from 1 July 2011), the accelerated appeal on points of law was introduced in the CPC (Art. 192 was supplemented). According to new amendments, in case there is danger that reasonable term for examination of a specific case will be violated; participants at the trial may ask the court that examines the case to accelerate the examination of the case. Such request shall be examined within 5 working days, by another judge. In case when 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. This mechanism was introduced recently and its efficiency was still not evaluated.

By the Law no. 87, of 21 April 2011 (in force from 1 July 2011), the compensatory appeal on points of law was introduced for violation of the reasonable term for examination of the case by court. For more details in this regard, see sub-chapter 8.3 of the study.

6.3.3.4 Insufficient reasoning of judgments

In judgments *Istrate* (13/06/2006), §§ 44-52; *Melnic* (14/11/2006) 35-43 and *Ceacbir* (15/01/2008) §§ 39-48, ECtHR found that courts that examined extraordinary appeal did

not rule on the objection concerning late appeal. CPC institutes higher standards than the ECHR concerning the reasoning of the judgments. Thus, it requests (Art. 373 para. 5 and Art. 442 para. 2) the appeal court and the cassation court to rule on all reasons invoked. Insufficient reasoning of judgments, regardless of the court, was and remains to be a serious problem within the Moldovan judicial system. This deficiency could be explained by large amount of work of some judges, by poor performance of the participants in the trial, by failure of judges to examine in details all circumstances of the case, by indulgence of higher courts towards judgments that are not sufficiently motivated, and also by insufficient professional training of some judges. In all these three cases, non-reasoning occurred or was supported within the appeal on points of law. However, it is less probable that there are judges with insufficient professional training within the cassation court. It is difficult to explain why these violations occurred, however it is clear that in all those three cases the state authorities were interested that the appeal (*Istrate*) or the appeal on points of law (*Melnic and Ceachir*) was admitted.

In order to improve the quality of judgments, in 2012, Parliament adopted a law (no. 153, of 5 July 2012) by which it provided assistants to all judges from the country and increased the number of assistants for the judges of the SCJ from one to three. Through amendments to the CPC (the Law no. 155), the right of the parties to submit evidence in appeal was considerably limited. These amendments will allow judges to delegate to their assistants many technical issues which were their responsibility until recently, will discipline parties in the trial, will simplify cases and will allow judges to concentrate on reasoning of the judgments.

In judgements *Gradinar* (08/04/2008) §§ 105-117 and *Vetrenko* (18/05/2010) §§ 43-59, ECtHR found that conviction sentences issued by the SCJ were not based on sufficient evidence. The alibi was not refuted, contradictions between evidence brought by the accusation were not explained, and evidence from the file was interpreted by judges in a distorted manner. In 2011, ECtHR found a similar violation in the judgment *Fomin* (11/10/2011) following the failure to motivate judgments on administrative liability. It is difficult to explain these deficiencies.

Apparently judges from the Republic of Moldova are not used to combat each argument invoked by the parties. The volume of judgments has increased lately. However, quite often, most of the judgment consists of describing positions of the parties. Reasons used by judges for the solutions offered in their judgments are usually described concisely and without touching upon all issues that, at the first sight, are essential for the case. SCJ tolerated or even generated such practices. It appears that, in order to improve the quality of judgments, judges need considerable training on how to provide reasons for the judgments. The degree of reasoning of SCJ judgments needs to be improved, in order to be an example for all other judges from the country.

6.3.3.5 Violation of the principle of *res judicata*

In the following 15 judgments, ECtHR found violation of Art. 6 as a result of admitting the appeal on points of law or improper application of the revision: *Roşca* (22/03/2005) §§ 23-32; *Asito* (08/11/2005) §§ 42-51 și 56-56; *Popov* (No. 2) (06/12/2005) §§ 40-58;

Josan (21/03/2006) §§ 25-33; *Ermicev* (11/08/2006) §§ 17-23; *Braga* (14/11/2006) §§ 18-23; *Nistas GMBH* (12/12/2006) §§ 33-44; *Oferta Plus SRL* (19/12/2006) §§ 86-115; *Mihalachi* (09/01/2007) §§ 36-41; *Bujnița* (11/01/2007) §§ 18-24; *Venera Nord-Vest-Borta AG* (13/02/2007) §§ 21-22 și 41-44; *Moldovahidromaș* (27/02/2007) §§ 42-62; *Ovciarov* (12/04/2007) §§ 24-29; *Tudor Auto SRL and Triplu-Tudor SRL* (09/12/2008) §§ 43-53 and *Eugenia and Doina Duca* (03/03/2009) §§ 28-45.

In cases of *Roșca*, *Asito*, *Josan*, *Ermicev*, *Braga*, *Nistas GMBH*, *Mihalachi*, *Bujnița*, *Venera Nord-Vest-Borta AG*, *Moldovahidromaș* and *Ovciarov* the final judgments were quashed through the cassation appeal. All these cases, except the case of *Bujnița*, refer to civil proceedings, and quashing took place before 12 June 2003. The new CPC that entered into force on 12 June 2003 does not regulate the cassation appeal as an appeal remedy.

In the case of *Bujnița*, applicant's acquittal sentence was quashed following the cassation appeal. The new CrPC, in force from 12 June 2003, allows challenge of SCJ final judgments by cassation appeal, „in order to repair errors of law committed during the trial of the case, in case the fundamental flaw within earlier proceedings affected the appealed judgment” (Art. 453 of CrPC). It appears that SCJ interprets the ground stipulated in Art. 453 of CrPC as allowing revision of any judgment where serious procedural violations occurred related to assessment of evidence. According to the Activity Report of the SCJ for 2011, in 2011, the cassation appeal was examined with reference to 160 persons. The appeal on points of law with reference to 13 persons (8.1%) was admitted. Despite of the fact that the number of cassation appeals is not very high comparing to the total number of cases examined, it is difficult to believe that SCJ, whose judgments were challenged with cassation appeal, commits so many errors that would truly justify cassation of a final judgment.

According to Art. 449 of CPC, a final judgment may be quashed through revision in case when the judgment establishes that crimes were committed during the examination of the case in court, if new essential circumstances were discovered concerning the case that could not be earlier discovered, if the judgment affects the rights of persons who are not participating at the trial, if the judgment that served as the basis for the appealed judgment was quashed or changed, if the Constitutional Court declared the law that served as the basis of the judgment as unconstitutional, if the Government initiated a procedure concerning friendly settlement or submitted a request to the ECtHR, or if the ECtHR judgment or unilateral declaration of the Government recognized a violation of the ECHR that could be remedied, at least partially, by quashing of the judgment. A revision request can be submitted only within three months. In cases of *Popov (No. 2)*, *Tudor Auto SRL and Triplu-Tudor SRL*; *Oferta Plus SRL* and *Eugenia and Doina Duca*, ECtHR criticized the manner in which Art. 449 of CPC was applied. In 2011, the Republic of Moldova was convicted four times for improper quashing of final judgments through revision.

In all those four judgments mentioned above, ECtHR found that, despite of the fact that the SCJ admitted revision requests following discovery of new circumstances, they, in fact, were not new or could be earlier collected by the parties who submitted the revision request. SCJ also did not rule on the objection of the applicant concerning late submission of the revision request. It appears that in these cases the revision was admitted only because the opponent of the applicant did not agree with the final judgment in favour of the

applicant. While quashing of the judgment in *Popov (No. 2)* case could be motivated by lack of knowledge about the ECtHR case-law, it is impossible to rationally motivate the fact that the revision request was admitted in the case of *Eugenia and Doina Duca*, that took place two years after the *Popov (No. 2)* judgment. Some interviewed persons explained that these judgments could be a sign of corruption.

Apparently, following the ECtHR case-law, the number of revision requests lodged to the SCJ and percentage of applications admitted by the SCJ decreased. Even if the number of requests for revision admitted by the SCJ decreased from 11.9% in 2006 until 27% in 2011, it appears that sometimes requests for revision admitted in 2012 are difficult to justify.⁴³ At the same time, the percentage of requests for revision in civil cases admitted in 2009 by lower courts was very high.⁴⁴

Table No. 22

Information about requests for revision in civil cases examined in 2006, 2008, 2010 and 2011⁴⁵

The year	Applications submitted	Variations comparing to earlier mentioned year	Admitted applications	% of submitted applications
2006	670		80	11.9%
2008	670	0	66	9.8%
2010	562	-16.1%	35	6.2%
2011	476	-17.1%	13	2.7%

6.3.3.6 Conviction in appeal on points of law without direct examination of evidence

In judgments *Popovici* (27/11/2007) §§ 64-75 and *Navoloaca* (16/12/2008) §§ 59-66, ECtHR found violation of Art. 6 based on the ground that SCJ quashed the acquittal sentence and convicted the applicant without direct examination of evidence and without hearing the applicant personally. In 2011, ECtHR found a similar violation in judgment *Dan* (05/07/2011) concerning the similar conviction in appeal. On 30 October 2009, Plenary of the SCJ adopted the explanatory decision no. 9. It mentions in p. 49 that „the appeal court, as well as the cassation court... must examine a case de facto and de jure and they cannot globally assess the innocence or the guilt of the defendant without hearing him/her and without evaluating, directly, the elements of evidence submitted by the parties.”. The current practice of the SCJ seems to follow this decision of the Plenary.

6.3.3.7 Non-enforcement of court judgments

ECtHR found violation of ECHR as a result of non-enforcement of final court judgments in 52 judgments delivered by the ECtHR until 31 December 2010. The first Moldovan case where thus type of violation was found is *Prodan* (18/05/2004). The vast majority of ECtHR judgments concerning non-enforcement of court judgments were delivered in 2008. In 2011, seven judgments of this type were delivered, however they are quite different from earlier delivered judgments.

⁴³ See solutions of the SCJ in cases no. 3rh-12/12 and no. 3rh-73/12.

⁴⁴ According to the information concerning the activity of courts in 2009, from the total number of revision requests examined in 2009 by courts from the Republic of Moldova (1,282), 20.4% (261) were admitted.

⁴⁵ These figures were taken from the activity reports of the SCJ

Reasons for non-enforcement of court judgments may, conventionally, be divided in three categories: concerning payment of certain amounts of money by state authorities, concerning obligation of public authorities to act and against private persons.

a) Judgments concerning obligation to pay certain amounts of money by state authorities

The cases of *Luntre and Others*, *Pasteli and Others*, *Bocancea and Others*, *Croitoru*, *Moisei*, or *Oferta Plus SRL* referred to non-enforcement of court judgments related to payment of certain amounts of money by the MF. Cases *Sirbu and Others*, *Țîmbal*, *Lupacescu and Others*, *Lungu*, *Bita and Others*, *Becciu*, *Cogut*, *Unistar Ventures Gmbh* and *Biserica Adevărat Ortodoxă din Moldova* referred to non-enforcement of court judgments related to payment of certain amounts of money by other central authorities. These non-enforcements are dated from 2002–2004. In these cases, judgments were not executed because the state authorities did not want to execute them, and bailiffs could not forcibly collect money from the treasury accounts. Shortly after the *Prodan* case was declared admissible (January 2003), MF enforced several thousands of judgments of this type within only several months.

According to Art. 36¹ para. 3 of the Law on budgetary system and budgetary process (No. 847, of 24 May 1996), enforcement warrants against the state authorities may be forcedly executed in case they are not executed voluntarily during six months. At the moment, the amounts awarded through the judgments are paid by the MF within several months after submitting the enforcement warrant (for more details, see sub-chapter 5.2 of the study).

Cases such as *Prodan*, *Dumbrăveanu*, *Scutari*, *Daniliuc*, *Baibarac*, *Draguța*, *Buianovschi*, referred to the non-payment by local authorities of the amounts of money awarded through court judgments. Such cases are still problematic, because there are no resources in the local budgets (except bigger localities). On average, in 2010, 70% of the local public administration budget was formed of the allocations from the state budget. Local authorities were paying the amounts awarded through court judgments after longer periods of time, usually after money were allocated from the state budget specifically for this purpose. The table no. 23 presents information about the amounts allocated by the Government to the local authorities for this purpose in the period 2008–2011. These data confirm the fact that the amounts awarded by the Government constantly increased. Within this study we could not establish the total amount due to be paid by local administrations based on the court judgments.

Table No. 23
*Information about amounts allocated in 2008–2011*⁴⁶
by the Government to local authorities for enforcement of the court judgments

The year	The amount allocated (MDL)	The equivalent in Euro	No. of the Governmental decision
2008	925,000	59,375	1067, 1392
2009	4,601,710	287,600	393, 444, 687, 884
2010	20,357,844	1,272,365	287, 460, 647, 842, 846, 1055, 1122, 1144
2011	24,927,259	1,557,950	305, 402, 792, 822, 975, 976, 977

⁴⁶ This data was accumulated following analysis of the judgments by the Government published in MO.

b) Judgments concerning obligation of public authorities to act

The most serious problem related to enforcement of judgments represents non-enforcement by local authorities of judgments related to providing social housing. In the judgment *Olaru and Others*, ECtHR mentioned that non-enforcement of judgments related to providing social housing represented a practice incompatible with the ECHR and asked the Government to offer a redress „to all victims of the non-enforcement... of final judgments, which provided state social housing, in cases submitted to the Court before delivery of this judgment”. According to the judgment *Olaru and Others*, about 150 similar applications were pending before the ECtHR in 2009.

Despite of the fact that through *Olaru and Others* judgment, the Government was obliged to resolve the problem of those more than 150 cases pending before the ECtHR, even in 2012 most of these judgments were still not executed. According to the information submitted by the National Union of Bailiffs, at the beginning of 2012, bailiffs had to manage more than 800 enforcement warrants concerning obligation to provide social housing, and more than 700 of them referred to Chişinău. During development of the study we did not manage to receive information on the number of judgments related to social housing which were enforced during last years by the Municipal Council of Chişinău. However, it appears that several judgments were executed.

During the interview, GA declared that local authorities from Chisinau and central authorities are trying to identify a solution in order to execute all judgments related to providing social housing in Chişinău. However, in summer of 2012, decision on how to solve this problem was still not taken.

In order to prevent the increase in the number of judgments related to obligation to provide social housing, at the end of 2009, the Parliament excluded from the legislation the right of the most of categories of public officials to state social housing (by the Law no. 90, of 4 December 2009). However, it appears that this measure did not fully eliminate the possibility of adopting new similar judgments. Therefore, on 6 August 2012, a document with recommendations of the SCJ related to the application of the legislation was published on the web page of the SCJ. It mentions that „judges, who at the moment of revocation [of the provision providing the right to social housing] were not provided with the housing, are entitled, within three years from the moment of revocation of the law, to request housing from local public authorities”.

c) Judgments against private persons

Cases such as *Istrate*, *Mazepa*, *Grivoneac*, *Clionov* or *Decevl* referred to non-enforcement of court judgments by private bailiffs. The obligation of the state concerning judgments against private persons is limited to instituting a functional mechanism concerning enforcement of court judgments. On 17 June 2010, the Parliament of the Republic of Moldova adopted the Law no. 113, and according to this Law all bailiffs became private and they were entitled to receive fees for providing the enforcement services. Apparently there is no assessment of the efficiency of the new enforcement system. However, according to the information submitted by the National Union of Bailiffs, in 2011, 52.5% of the enforcement warrants received were enforced. According to the Union, this coefficient denotes the efficiency of the new enforcement system.

6.3.3.8 Other violations of Article 6

In the judgment *Petru Roșca* (06/10/2009) §§ 51-58, a violation of Art. 6 was found based on the fact that the applicant did not have the possibility to prepare his defence. This violation occurred because of the examination of the administrative case related to an apprehended person on the same day when he was brought before the judge for the first time, and because he was detained until being brought before the judge. Despite of the fact that the number of administrative apprehensions decreased substantially after entrance into force in 2009 of the new CC, such situations are not excluded, because judges often examine administrative cases on the same day when the person was apprehended.

Within this study, we did not manage to examine the other violations of Art. 6 found in ECtHR judgments delivered until 31 December 2010.

6.3.3.9 Recommendations

- a) Courts need to have certain flexibility when, pending trial, the rights over the subject of the dispute are transferred from one person to another, and need to offer possibility to the new owner to intervene in the proceedings instead of the old owner;
- b) Strengthening the judicial summoning system and improving the system of budgeting postal expenses by courts;
- c) Judges must be trained in providing reasons for the court judgments, and the level of providing reasons for the SCJ judgments needs to be an example for all judges;
- d) Judges need to provide reasons for any adjournment of court hearings for longer periods of time;
- e) The system of ensuring the presence of third parties (witnesses, experts, etc.) summoned to the court needs to be strengthened;
- f) Amendment of the CrPC in order to ensure that criminal cases are not sent for re-examination to the court of appeal without justification;
- g) Amendment of Art. 444 of CrPC in order to eliminate the need of the SCJ to send cases for re-examination when the judgment that needs to be adopted places the defendant in unfavourable position;
- h) SCJ should limit its practice of sending cases for re-examination;
- i) Courts need to introduce practices to ensure that cases sent for re-examination are examined in a priority order;
- j) Courts, especially SCJ, need to take measures in order to increase efficiency of the accelerated appeal on points of law within civil proceedings;
- k) SCJ needs to evaluate its own case-law and the case-law of the courts of appeal, in order not to admit unjustifiably the cassation appeals in criminal cases and revisions in civil cases;
- l) State authorities need to take firm and joint measures in order to comply with the court judgments related to providing social housing.

6.3.4 Article 8 of the European Convention on Human Rights

In the judgments delivered until 31 December 2010, the ECtHR has found ten violations of Art. 8. In the judgment *Iordachi and Others* (10/02/2009) §§ 19-54 it has been

found that the domestic legislation on phone tapping did not contain sufficient guarantees against the arbitrary. In the judgment *Mancevschi* (07/10/2008) §§ 39–51, it has been established that the decision authorising the search of the promises of the advocate was vague. In *Meriakri* (01/03/2005) §§ 25–35, *Ostrovar* (13/09/2005) §§ 92–102; *Ciorap* (19/06/2007) §§ 97–104, the issue at stake was the interception of the detainees correspondence, in *Ostrovar* (13/09/2005) §§ 103–108 and *Ciorap* (19/06/2007) §§ 105–122 the detainees were not allowed to meet with their relatives. In *Guțu* (07/06/2007) §§ 63–69, *Petrenco* (30/03/2010) §§ 44–68 and *Ciubotaru* (27/04/2010) §§ 36–59, other three violations of article 8 have been found. In the ECtHR judgments delivered in 2011, other three violations of article 8 have been found. Having in view the limited time and amount of the study, we will examine here only the measures undertaken to execute the *Iordachi and Others* judgment.

In *Iordachi and Others*, the ECtHR reviewed the legislative provisions on interception of communications. Although in the Republic of Moldova the phone tapping is authorised by a judge, the ECtHR did not consider this system in compliance with ECHR. Thus, the CrPC provided vaguely the situations when the interception could take place, the interception was applied too often, the law did not define the categories of people that could be intercepted, the law did not exclude in absolute terms the limitations of the interception to six months, it was not clear the purpose of the phone tapping, the role of the judge in this procedure was not clearly defined, the law did not provide how to examine, keep and destroy the results of the interception, the law did not establish an effective mechanism of parliamentary control over the observance of the legislation on interception of the correspondence, and the law did not regulate what happens when the conversation between the client and the advocate is tapped. Also, the law did not state that the tapping could take place as a ultimate resort. Table no. 24 presents information on examining the requests for telephone tapping in Moldova.

Table no. 24
Information about phone tapping requests for 2006, 2009–2011⁴⁷

Year	Examined	Variation as to the previous year mentioned	Allowed	% of allowed requests
2006	1931		1891	97.9%
2009	3848	+199%	3803	98.8%
2010	3890	+1.1%	3859	99.2%
2011	3586	- 7.8%	3539	98.7%

The figures from the table above confirm that, although the *Iordachi and Others* judgment has been delivered in February 2009 and was widely disseminated, the number of requests for interception increased. In its judgment, the ECtHR noted the extremely high percentage of interceptions authorised by the investigative judges. After the ECtHR judgment, the percentage of authorised requests has even increased to almost 100%. These figures suggest that the ECtHR findings have not been taken seriously by the investigative judges and prosecutors.

As a follow-up to the ECtHR judgment, a new special chapter was introduced in CrPC on special measures by the Law no. 66 (in force form 27 October 2012). The new provisions

⁴⁷ This information has been taken from annual reports of the Department of Judicial Administration.

harden the conditions for tapping. Art. 132¹ para. 1 CPP provides that special measures are applied only within criminal proceedings, thus excluding the practice of telephone tapping based on 'operative files'. Moreover, para. 2 of the same article provides that special measures of investigation are applied only if the following three conditions are met:

- „1) it is impossible to reach the objective of the criminal proceedings by other measures and/or the administration of evidence could be seriously hindered;
- 2) there is a reasonable suspicion on planning or committing a serious, very serious or exceptionally serious crime, with the exceptions established by law;
- 3) the measure is necessary and proportionate to the interference in the fundamental human rights and freedoms of a person.”

Art. 132⁴ par. 7 CrPC provides that special investigation measures are applied for 30 days. It can be extended to six months. At the expiration of the 6-month period, no repeated request can be lodged, except if new circumstances appeared. Para. 10 of this article prohibits applying special investigation measures to the communications between advocate and client when providing legal assistance. However, it does not explain what is happening with the results of the phone tapping made by accident.

The articles above refer to all special investigation measures, Art. 132⁸ para. 1 CrPC contains special limitations on telephone tapping. Thus, the crimes that can serve as ground for tapping are exhaustive. Also, para. 3 provides that only the accused or persons who contribute to the crime can be tapped. These provisions limit substantially the possibilities of unjustified tapping. However, a special issue is the judges' diligence when authorising tapping. Until now, this has done it with a particular generosity and it is difficult to imagine that substantial change will take place immediately. Nevertheless, it is yearly to assess the impact of these provisions.

It appears that after *Iordachi and Others* there were no measures undertaken to strengthen the parliamentary control. Although the CrPC prior to the amendments provided the right of person to be informed about tapping, the information was taken place in less than 5% of cases.

Recommendations

- a) Judges dealing with requests for tapping must be trained on ECtHR standards under Article 8;
- b) The mechanism of notification of the person about the tapping shall be improved;
- c) In 2013, SCJ shall evaluate the practice based on new provisions on the interception of communications.

6.3.5 Article 9 of the European Convention on Human Rights

Three violations of the art. 9 were found in the judgments pronounced by the ECtHR concerning Moldova until 31 December 2010. In two judgments, the ECtHR found a violation because of the state authorities' refusal to register a religion violated art. 9 (*Mitropolia Basarabiei*, 13/12/2001 and *Biserica Adevărat Ortodoxă din Moldova*, 27/02/2007) and in one judgment the cause of an unjustified contravention sanctioning for practicing a religion that was not registered (*Masaev*, 12/05/2009).

CM has monitored in detail the execution of *Mitropolia Basarabiei* and *Biserica Adevărat Ortodoxă din Moldova*. By the Interim Resolution ResDH(2006)12, of 28 March 2006, CM

has called on the Government in Chişinău to adopt the necessary legislation for ensuring the respect of freedom of religion. On 15 May 2007, the Parliament from Chişinău has adopted the Law nr. 125 on freedom of conscience, thought and religion. On 31 May 2009, the new CC entered into force, which does not sanction the activities related to practicing of a religion that is not registered. By CM Interim Resolution CM/ResDH(2010)8, of 4 March 2010, CM has closed the monitoring of these cases, due to the fact that these legislative measures, corroborated with the practice related to registration of religions, are sufficient for executing the ECtHR judgment.

According to data offered by the Ministry of Justice in November 2012, during 2010-2011 the Ministry of Justice received 5 requests for registering a religion. Four out of these requests were registered, while one was rejected on the ground that the attached documents were not in line with the requirements. This refusal was not challenged in court.

Although the Law nr. 125 represented an important progress, it contains some provisions that could be contrary to the ECHR. For example, it art. 19 para. (1) let. d) of the Law provides that, for registering a religion, 100 founders are necessary at a minimum, physical persons, citizens of the Republic of Moldova, with the residence in Moldova. Art. 33 of the Law also provide that the leaders of the religions of a national level must be citizens of the Republic of Moldova. Also, the Law provides an excessively dominant position to the Orthodox Church of Moldova, which could negatively affect other religions.

In *Masaev*, the ECtHR has found a violation of art. 9 because the sanctioning, on the bases of art. 200 of the Code of administrative contraventions (CAC), with a contravention fine for practicing, in a private space, of a religion that was not registered, could not be justified. The main reason for the violation found in *Masaev* is the legal provision provided in para. 3 art. 200 CAC, which prohibited „exercise, on behalf of a registered or not registered religion, or on someone’s own name, of unlawful religious beliefs practices or rituals” is allowed the application of contravention sanctions simply for the exercise of some religious beliefs or rituals by the representatives of a not registered religion. The new CC (in force since 31 May 2009) has maintained the provision from art. 200 para. 3 CAC in art. 54 para. 3. As a result of *Masaev*, the Law nr. 25 of 4 March 2010 was excluded the phrase „registered or not registered”, which makes it impossible to sanction for similar facts as found in the judgments. It appears that the respective amendment has solved the problem found in *Masaev*.

6.3.6 Article 10 of the European Convention on Human Rights

In the judgments delivered until 31 December 2010, the ECtHR has found violations of article 10 in respect of whistleblowers (*Guja*, 12/02/2008), sanctioning for the criticism of judges (*Amihalachiaoie*, 20/04/2004), ensuring the editorial independence of the public broadcasting companies (*Manole and Others*, 17/09/2009), or closure of a newspaper for the criticism of the authorities (*Kommersant Moldovy*, 09/01/2007). However, more than a half of violations found in respect of article 10 refer to the incorrect examination of defamation cases.

As a follow-up to the judgment *Guja*, CFEC has developed a draft-law on whistle blowing. Although the draft law was developed several years ago, it was not adopted by the Parliament yet. Moreover, it appears that this draft-law refer only to the protection of persons who inform about a crime. The protection that results from the ECtHR judgment should be larger.

The legislation on the public broadcasting company was amended shortly before the decision on admissibility in the case of *Manole and Others* (September 2006). Thus, the Audiovisual Code (Law no. 260, of 27 July 2006) changed the procedure of appointing the leadership of Teleradio-Moldova Company. Although, after 2009, the editorial policy and the quality of programs of the company have improved, it seems that these were due the new leadership of the company, not to the legislative framework. Having in view the limited time and resources, we will not refer to this in the study.

In the following 13 judgments, ECtHR found a violation of Art. 10 due to the wrongful examinations of accusations and defamation cases: *Busuioc* (21/12/2004) §§ 41-97; *Savițchi* (11/10/2005) §§ 29-60; *Flux (nr. 3)* (12/06/2007) §§ 15-26; *Flux (nr. 2)* (03/07/2007) §§ 30-46; *Țara and Poiată* (16/10/2007) §§ 16-32; *Flux and Samson* (23/10/2007) §§ 20-28; *Flux* (20/11/2007) §§ 21-35; *Timpul Info-Magazin and Anghel* (27/11/2007) §§ 24-41; *Flux (no. 4)* (12/02/2008) §§ 24-42; *Flux (no. 5)* (01/07/2008) §§ 16-26; *Flux (no. 7)* (24/11/2009) §§ 27-46; *Gavrilovici* (15/12/2009) §§ 45-61 and *Șofranschi* (21/12/2010) §§ 21-34.

In *Timpul Info-Magazin and Anghel*, the court took out of the context the statements of the newspaper and distorted their meaning, while in *Flux (no. 3)* the judge obliged the journalist to publish a denial of a passage which was true and was not challenged by the plaintiff. In *Busuioc*, *Savițchi*, *Flux (no. 2)*, *Flux (no. 4)* and *Șofranschi* the court asked the applicants to prove the truth of the statements, but did not consider the evidence presented by them or did not offer them a chance to present the evidence. In *Busuioc*, *Savițchi*, *Țara and Poiată*, *Flux and Samson*, *Flux*, *Timpul Info-Magazin and Anghel*, *Flux (no. 4)* and *Șofranschi* judgments the courts did not make a distinction between facts and value judgments. In *Savițchi*, *Țara and Poiată*, *Flux and Samson*, *Flux (no. 4)* and *Flux (no. 5)* the courts obliged the journalists to pay damages for the mere fact of disseminating the statements of third persons. In the case of *Flux*, the applicant has encountered difficulties to prove the truth of the information that he disseminated, because the action has been filed after one year from the publication of the article. In *Timpul Info-Magazin and Anghel* and *Flux (no. 7)* the judges did not consider the good faith of the journalists and the reasonable effort taken by them. The case of *Șofranschi* refers to a defamation action against the applicant, because he wrote a letter to the leadership of the country. In the same case, the domestic judges mentioned that no one can publicly accuse a person until his/her conviction.

In 23 April 2010, the Moldovan Parliament adopted the Law no. 64 on freedom of expression, in force from 9 October 2010. This law was developed at the initiative of an NGO and incorporates CoE and ECtHR standards on the freedom of expression. This, when filing and application to the court, the person must indicate the challenged statement and to provide the text of the denial or reply (Art. 18 para. 3). The Law changes the burden of proof in the cases of defamation. Both the applicant and the defendant in the proceedings will have to prove that defamation took place (Art. 24). The law on freedom of expression requires that the defamed person should demonstrate that the case concerns facts and not value judgments (Art. 24 para. 1c) and in case of reasonable doubt it is presumed that is the case of value judgment (Art. 25 para. 3). The law also provides that the journalist is not liable for the mere fact he disseminated the statements of a third person (Art. 28 para. 2). The law requires the judge

to take into consideration the good-faith of the defendant and mentions that the defamation action cannot be filed based on letters sent to the authorities (Art. 8 c)). The efficient application of this law shall substantially reduce the risk of violation of ECHR.

However, the persons who studied closely this issue stated that within the judicial proceedings the law on freedom of expression had a reduced impact during the first two years of its application, because of lack of information among judges and citizens on the law.⁴⁸ The same is confirmed by the data from the table no. 25. Thus the percentage of the defamation application that were admitted has increased after the adoption of the law, although the law has worsened the position of the plaintiff in the defamation proceedings. To ensure a better impact of this law, in the fall of 2012 the Plenary of the CSJ worked on a decision on application of the Law on the freedom of expression.

Table no. 25⁴⁹
Information about civil defamation actions for 2006, 2009–2011

Year	Examined actions	Allowed actions	% of allowed actions
2006	109	63	57.8%
2009	88	45	51.1%
2010	76	43	56.6%
2011	82	50	61%

Recommendations

- a) Developing the legislative framework for the efficient protection of whistleblowers both by protection proceedings and administrative tools;
- b) Trainings for judges on the Law on freedom of expression should be organized.

6.3.7 Article 11 of the European Convention on Human Rights

Nine violations of art. 11 were found in the judgments the ECtHR has issued against Moldova until 31 December 2010. In the following seven judgments, the ECtHR has found that the refusal to authorize peaceful assemblies or interruption of public assemblies: *Hyde Park and others* (31/03/2009) §§ 21–32; *Hyde Park and others. (nr. 2)* (31/03/2009) §§ 18–28; *Hyde Park and others (nr. 3)* (31/03/2009) §§ 18–28; *Hyde Park and others (nr. 4)* (07/04/2009) §§ 45–55; *Partidul Popular Creștin Democrat (nr. 2)* (02/02/2010) §§ 15–30; *Brega* (20/04/2010) §§ 44–47 and *Hyde Park and others (nr. 5 și 6)* (14/09/2010) §§ 36–49. In the judgment *Partidul Popular Creștin Democrat* (14/02/2006), the ECtHR has found a violation because the suspension of an opposition party for 30 days for organizing peaceful assemblies that were not authorized was unjustified. In *Roșca, Secăreanu and others* (27/03/2008), the ECtHR has found a violation because the sanctioning of the organization and/or active participation at unauthorized peaceful assemblies, at which issues of public interest were raised was not justified.

⁴⁸ See the Report of the Centre for Independent Journalism from Moldova: The impact of the law on freedom of expression, available at http://www.ijc.md/Publicatii/studii_mlu/Impactul%20legii%20cu%20privire%20la%20libertatea%20de%20exprimare.pdf.

⁴⁹ This information has been taken from the annual statistic reports of the Department of Judicial Administration.

6.3.7.1. Refusal to authorize peaceful assemblies or interruption of peaceful assemblies

In *Hyde Park and others*, including *Hyde Park and others* (nr.2) and *Hyde Park and others* (nr. 3) a violation of art. 11 was found because of the unjustified refusal of the authorities, including the court, to authorize peaceful assemblies, on ground not provided by law. In *Partidul Popular Creștin Democrat* (nr. 2) the authorities refused to issue the authorization because „there was convincing evidence that calls for aggression or violence will be made during the assembly”, in *Hyde Park and others* (nr. 5 and 6) a violation was found for interrupting three assemblies and for apprehending in contravention procedures of protesters that wanted to protest against the actions of MIA and Prosecution. In *Brega* the applicant was apprehended in contravention procedures during the protest, based on false accusations (resisting arrest and participation at an unauthorized assembly).

On 22 February 2008 the Law nr. 25 on assemblies was adopted, which annulled the procedure for authorizing the assemblies, replacing it with a procedure of notification of local public administration authorities. Moreover, any assembly of less than 50 people does not need a notification (art. 3). Also, the Law has clarified the reasons for prohibiting an assembly, which should contribute to avoid similar situations as described above in the future.

The incidents that lead to violation of ECHR in the above mentioned judgments took place between 11 May 2006 and 20 February 2008. During the interviews with some representatives of the applicant organizations in these cases, they shared that they continue organizing many assemblies. However, after the change of power in 2009 it appears that there were no similar incidents, which suggests that the respective violations found by the ECtHR had a political ground. According to Promo-LEX Report on Human Rights in Moldova in 2009–2010, the atmosphere during public assemblies has improved substantially after 2009, cases of apprehensions have diminished from 4.9% in 2008 to 0.2% in 2010.

The April 2009 events are not analyzed in the context of art. 11, due to their extraordinary nature and the complexity of factors that led to sanctions and apprehensions, both in criminal and in contravention procedures.

6.3.7.2 Sanctioning for active participation and organizing unauthorized assemblies

In *Roșca, Secăreanu and Others* (27/03/2008), the ECtHR has found a violation of art. 11 for sanctioning in 174¹ CAC for organizing and/ or active participation at unauthorized peaceful assemblies. Art. 67 of the new CC provides a similar sanction for failure to notify an assembly of more than 50 participants. It appears that the legislation has not been substantially changed in this regard. However, the judicial practice in this regard is more important, which so far does not appear to be sufficiently uniform.

6.3.7.3 Suspension of a political party

In *Christina Democratic People's Party*, the ECtHR found a violation of art. 11 for suspending an opposition party for 30 days for organizing unauthorized peaceful assemblies. It appears that this was a single incident of this type. This case might not require general measures.

6.3.8. Article 13 of the European Convention on Human Rights

By 31 December 2010, the ECtHR found 40 violations of art. 13. 20 violations concerned the impossibility to oppose the ECHR violations, while other 20 violations – the impossibility to obtain compensations for the violation of ECHR at domestic level.

These subjects have been analyzed in the research. As regards the possibility to obtain compensations at the domestic level for the violation of the ECHR, see subchapters 3.2.2 and 8.3 of the research. As concerns the right to oppose to ECHR on account of excessive length of proceedings, see subchapter 6.3.3.7.

6.3.9. Article 34 of the European Convention on Human Rights

In *Ilașcu and others* (08/07/2004) the applicant was criticized by the President of the Republic of Moldova because he did not withdraw his application at the ECHR after he was set free from detention in 2001; in *Oferta Plus SRL* (19/12/2006) a criminal case was initiated against the applicant, who was later arrested, in order to discourage the applicant from pursuing the proceedings at the ECtHR; in *Colibaba* (23/10/2007) the representative of the applicant was threatened with criminal investigation because he was endangering the image of the country by applying to the ECtHR.

The incidents that led to the violation of art. 34 in the three cases described in the paragraph above have an isolated character, determined by the political realities at that time. Since 2007 such incidents did not occur, nor were clients intimidated in any way in relation to the application at the ECtHR.

In *Oferta Plus SRL* and *Cebotari* (13/11/2007), ECtHR has found a violation of art. 34 because of the impossibility of the applicant to discuss with his lawyer, that was representing him before the ECtHR, issues related to his application at the ECtHR without the glass wall that was separating them in the IDP of the CCCEC. The glass wall was demolished in the spring of 2007.

In *Boicenco* (11/07/2006), the ECtHR found a violation of art. 34 for the impossibility of the applicant to present his observations regarding the material damages (the cost of the medical treatment) due to the refusal of the authorities to allow access of the lawyer and a doctor of his choice to the client and to his medical file. This problem is still valid, because, often, criminal investigation bodies refuse access of the defence to the case file because of the confidentiality of criminal investigation. In practice, the lawyers that have cases at the ECtHR can request access to the case file through the ECtHR, who requests the case file from the Government and later on sends it to the applicant. However, this modality is not always satisfactory, because, from the moment the case file was sent to the ECtHR and until the time for presenting the observations there can appear new evidence essential for the observations before the ECtHR. Art. 212 para. 2 CPP does not allow disclosure of criminal investigation materials to third parties. This provision should be amended. For more information on this subject please see the sub-chapter 6.3.1.2.

In *Paladi* (10/03/2009), the ECtHR has found a violation of art. 34 for late execution of the interim measure indicated by the ECtHR to provide medical assistance. After 2008, the ECtHR did not issue any interim measures against Moldova.

6.3.10. Article 1 of the Protocol no. 1 to the European Convention on Human Rights

In the majority of cases, the ECtHR has found a violation of the right to protection of property as a result of a violation of Art. 6. Those violations were examined in the context of Art. 6.

Due to the limited period of time, we did not succeed to do a detailed analysis on annulment of the sale contracts concerning state property (i.e. *Dacia SRL*, 18 March 2008). However, in the table no. 26, we present statistical data about these cases. From this data result that between 2007 and 2011 the number of this type of actions filed by prosecutors has reduced by more than 65%. However, the percentage of the actions that were admitted by the court has slightly changed.

Table no. 26⁵⁰
Information about actions lodged by prosecutors
with the economic courts in 2007, 2009 and 2011

Year	Lodged actions	Variation as to the previous year mentioned	Examined actions	Allowed actions	% of allowed actions
2007	492		360	280	77.8%
2009	376	-23.6%	301	225	74.7%
2011	161	-57.2%	182	134	73.6%

6.3.11. Article 3 Protocol nr. 1 to the ECHR

In *Tănase* (27/04/2010), the ECtHR has found a violation of art. 3 Prot nr. 1 to the ECHR for the prohibition imposed to the persons with double or multiple citizenship to become deputies in the Parliament. This prohibition was introduced by Law nr. 273 of 7 December 2007, in force from 13 May 2008. The Law nr. 127 of 23 December 2009 has amended the Law nr. 273 by excluding the restriction to become a deputy. This amendment has abolished the main reason that led to a violation of art. 3 Prot nr. 1 to the ECHR. It is worth mentioning that this amendment was adopted by the Parliament even before the adoption of the Grand Chamber Judgments, perhaps due to the major political interest of the governing coalition.

⁵⁰ This data has been provided by the General Prosecutor's Office

National mechanism of execution of judgments of the ECtHR

7.1 Introduction

Out of 156,000 applications pending at the ECtHR on 1 January 2012, about 52,000 applications were allocated to the committees or chambers. These are applications with considerable chances of success. More than 70% of them concerned a legal issue that have already been decided in earlier judgments of the ECtHR. A high number of repetitive cases confirms that insufficient measures were taken at the domestic level to prevent violations of the ECHR. Adequate execution of ECtHR judgments is a complex process that may require joint efforts. For this reason, special mechanisms for execution of ECtHR judgments were created in many countries.

This chapter presents the main institutions of the Republic of Moldova with direct or indirect responsibilities related to execution of ECtHR judgments. This chapter describes the role of the GA, of the permanent governmental Commission for execution of ECtHR judgments, of the Parliament, and that of the SCJ and General Prosecutor's Office.

7.2 Governmental Agent

The GA is appointed by the Government, upon proposal of the minister of Justice. In performing its functions, the GA is supported by the Department of the Governmental Agent of the Ministry of Justice. In August 2012, seven persons were working in this Department.

In addition to representation of the Government in the ECtHR proceedings, GA is also responsible for overseeing the measures taken for execution of ECtHR judgments. In this regard, GA shall propose general measures to avoid similar violations of the ECHR, ensure information of judges, prosecutors and public officials about ECtHR case-law and inform the Ministry of Foreign Affairs and European Integration about measures to be taken by national authorities for execution of ECtHR judgments (Art. 6 of the Law no. 353, of 28 October 2004, on Governmental Agent). The latter informs the Department of the CoE for Execution of ECtHR judgments (Department for execution) about measures taken to ensure execution of ECtHR judgments. The GA may also request reopening of civil proceedings (according to Art. 447 of CPC, in force from 1 December 2012). In criminal cases, the GA can only recommend prosecutors to request reopening of proceedings.

It appears that the GA took numerous measures to amend legislation that is contrary to the ECHR. Thus, following the *Boicenco* judgment, the CrPC was amended, following

the *Malabov* judgment – CPC was amended, and following the *Olaru* judgment a new law introducing the right to compensation for violation of the reasonable time requirement was adopted (no. 87, of 21 April 2011). However, some legislative measures were adopted too late¹, or they did not fully remedy the existing problem in the ECtHR judgment.²

Concerning providing information to legal specialists, until 2009, the GA was periodically informing public authorities, courts, SCM and General Prosecutor's Office about judgments adopted in Moldovan cases and about certain communicated cases. Also, the GA ensured translation in Romanian of the majority of judgments concerning the Republic of Moldova. Translations are available free of charge on the web page of the Ministry of Justice. Judges and prosecutors could individually request the GA to translate a judgment or a decision of the ECtHR, or to prepare a summary of the judgment in Romanian. It appears that such requests were few, and one of the interviewed judges declared that he requested the GA to translate an ECtHR judgment. She was refused because there were no resources to translate the judgment. In 2011, the translation in Romanian of the Guide elaborated by the ECtHR concerning admissibility criteria was published on the web page of the Ministry of Justice, and in 2012 – a Guide concerning the ECtHR standards on reasonable time was published on the same web page. In the summer of 2012, the GA and the president of the SCJ issued an opinion concerning just satisfaction that shall be awarded for violation of the ECHR. Starting from 2011, the GA extended the practice of issuing press releases and organizing press conferences about the main ECtHR judgments and decisions concerning the Republic of Moldova. For more details in this regard, please see sub-chapter 6.2.4 and 6.2.5 of the study.

Until 1 December 2012, reopening of domestic proceedings following ECtHR proceedings could be requested by the general prosecutor or his/her deputies, upon the proposal of the GA. Starting from 1 December 2012, civil proceedings can be reopened upon the request of the GA, without intervention of prosecutors. However, in criminal and contravention cases, reopening could be requested only by the prosecutors. The GA frequently requested reopening of domestic proceedings from the prosecutor's office (for more details, please see sub-chapter 5.3 of the study).

On 1 January 2012, more than 300 Moldovan applications communicated to the Government were still waiting for a ECtHR judgment (see sub-chapter 4.3 of the study). CM supervises execution of more than 200 Moldovan judgments (see sub-chapter 4.5 of the study), and annually ECtHR communicates more than 100 applications (see Table 3 of the study). It is quite difficult to carry this amount of work qualitatively by only eight persons (GA and staff of the department). Moreover, because of low salaries, only persons

¹ In the judgment *Iordachi and Others*, ECtHR mentioned that national legislation concerning interception of telephone conversations does not include sufficient guarantees. Despite the fact that the ECtHR judgment became final in September 2009, legislation concerning interception was amended only in April 2012 (Law No. 66, from 5 April 2012).

² In the *Boicenco* judgment, ECtHR found a violation of Art. 5 § 3 of ECHR, because CrPC (Art. 191) did not authorize release of two categories of accused on judicial control or bail. Through Law No. 410, of 21 December 2006, only one category of accused was excluded from Art. 191 of CrPC, and the interdiction still exists concerning the second category.

without practical experience are working within the Department of the Governmental Agent. The activity within the department is perceived by them as a step towards a more attractive position. In recent years, no one worked within this department for more than 18 months, except for the head of the department and the GA. This staff turnover does influence the quality of the performance of the GA. The current situation could be remedied by introducing in the law the possibility of delegating judges and prosecutors to the Department of Governmental Agent for a period of at least 12 months. Delegation of judges and prosecutors to the GA for a limited period of time would contribute to a better knowledge of the ECHR by judges and prosecutors.³

Until 2011, no one was responsible for supervising the execution of ECtHR judgments within the Department of Governmental Agent. All employees of the Department were primarily engaged in preparing observations in cases communicated to the Government. According to the interim GA, one person from the department was appointed to deal with execution of ECtHR judgments in 2011.

According to Art. 6 letter f) of the Law on Governmental Agent, GA shall submit information concerning execution of ECtHR judgments in Moldovan cases to the Ministry of Foreign Affairs and European Integration. Ministry of Foreign Affairs and European Integration shall further submit this information to the Department for execution. During an interview with an employee of the Department for execution, carried out in November 2011 for this study, she declared that the Department received modest information from the Government of the Republic of Moldova about execution of ECtHR judgments. This confirms that the current mechanism of communicating information about the execution of ECtHR judgments is deficient. It would be more efficient if the GA would be given the right of direct communication with the Department for execution and would take over the initiative concerning elaboration of action plans for implementation of each judgment, without involvement of the Ministry of Foreign Affairs and European Integration.

Even if the GA is the most competent body to assess the compatibility of draft laws with the ECHR standards, it is consulted on draft laws only occasionally. This deficiency is mainly explained by the circulation of documents within the Ministry of Justice, since it elaborates or submits opinions on all draft laws related to human rights. Because of limited human resources, the GA is not actively involved in this process. This deficiency needs to be remedied.

Until 6 October 2012, court claims based on Law no. 87 (violation of reasonable time requirement) and Law no. 1545 (illegal actions of the criminal investigating body, prosecutor's office or courts) were initiated against the Ministry of Finance. Usually, the latter was requesting a substantial decrease of compensations awarded for violations of the ECHR. Starting from 6 October 2012, these actions are initiated against the Ministry of Justice (see the Law no. 96, of 3 May 2012). Taking into consideration that the GA functions within

³ Art. 24¹ of the Law on the Status of Judges (No. 544, of 20 July 1995) allows detachment of judges for a period of up to 18 months, however only in order to act within the SCJ or the NIJ. Art. 64 para. 3 of the Law on Prosecutor's Office (No. 294, of 25 December 2008) allows detachment of prosecutors for a period of maximum 18 months in order to act within the NIJ or in other positions related to carrying out tasks of the prosecutor's office.

the same Ministry, these amendments will provide for the possibility to monitor closely the efficiency of these remedies and intervene in urgent cases.

Criminal legislation does not authorise the GA to submit legal opinions in criminal cases. This is, however, allowed in civil cases (Art. 74 para. 1 CPC), but it appears that the GA has never used this procedure. The possibility to submit legal opinions concerning application of the ECHR in complex cases could largely contribute to adequate application of the ECHR on the domestic level. Apparently, GA informally currently delivers its opinions concerning pending domestic proceedings that are of an interest for the ECtHR proceedings, such as, for example requests to reopen domestic proceedings following communication of the application by the ECtHR.

According to Art. 6 of the Law on Governmental Agent, an advisory council is functioning alongside the GA. Its nominal composition was approved through Decision no. 1041 of the Government of 4 October 2005. The council is composed of 12 members, nine of them are representatives of public authorities and courts, and three are law professors. It appears that this council did not convene for a long time, because the designated persons has not held the positions indicated in the decision of the Government for the last three years, and two of the three law professors are not teaching at the faculty anymore. On the other hand, the law does not define the role of this council. It also appears that the council does not have internal rules of activity. Defining the role of this council is especially important, considering the fact that another special governmental commission responsible for organizing execution of ECtHR judgments exists in the Republic of Moldova (see sub-chapter 7.3 of the study). The authorities should also use all opportunities offered by the existence of the advisory council.

7.3 The governmental commission for organizing execution of judgments of the ECtHR

The Law on Governmental Agent does not refer to any commission responsible for organizing execution of ECtHR judgments. However, two months after adoption of the Law, „Permanent Governmental Commission responsible for organizing execution of final judgments of the ECtHR versus the Republic of Moldova” (*Governmental commission*) was created in order to organize and supervise the execution of ECtHR judgments in Moldovan cases. Nominal composition of the governmental commission was established through the same decision of the Government and amended in 2005, 2008 and 2009. In October 2009, this commission was composed of nine persons, including the GA, the minister of justice, the minister of finances, the deputy general prosecutor and head of the Department for execution of domestic judgments.

It appears that the Governmental commission is responsible for coordinating the adoption of general measures. The Governmental commission, however, has never tried to evaluate if the adopted measures were adequate and what their impact was. The Governmental commission convenes in sittings whenever necessary and adopts enforceable decisions for the competent authorities. In practice, the GA was convoking sittings of the Governmental commission and was setting up agenda of the sittings. The Governmental commission was

periodically informing the Government about measures taken in order to organize execution of ECtHR judgments in Moldovan cases.

The contribution of the Governmental commission in execution of ECtHR judgments was not very visible. No report informing the Government about measures taken in order to organize execution of ECtHR judgments was ever made public. Information concerning sittings of the commission is also not available to the public. It appears that in the period of 2011–2012, the Commission met only twice, once in 2011 and once in 2012. During the sitting held in 2011 the commission discussed execution of the *Olaru and Others* judgment in order to grant social housing based on court judgments, and the mayor of the municipality of Chisinau was invited to the sitting. This issue was not solved until present.

There are no Parliament representatives in the Governmental commission. It appears that the commission has not cooperated with the Parliament in order to monitor execution of ECtHR judgments until present.

The Strategy for reforming the justice sector for 2011–2016 (Law no. 231, of 25 November 2011) acknowledges that the current mechanism of monitoring execution of ECtHR judgments is inefficient. No complex assessment of the process of executing ECtHR judgments by the Republic of Moldova was carried out on the domestic level. P. 3.3.1 of the Strategy provides for „evaluation... implementation mechanisms... of ECHR judgments” and P. 3.3.1.3 of the Action Plan for implementation of the Strategy provides for „elaboration of the regulation concerning execution of the judgments of the European Court of Human Rights”.

7.4 Parliamentary control

Through Resolution 1823 (2011), of 23 June 2011,⁴ PACE encouraged member states of the CoE to introduce adequate parliamentary structures for ensuring rigorous and permanent monitoring of the compatibility and execution of international obligations in the field of human rights, such as for instance Commission for Human Rights or other adequate structures regulated by law. It is recommended that the competence of these structures should include introducing adequate procedures for systematic verification of the compatibility of legislative initiatives with the ECHR, including through monitoring of all ECtHR judgments that might affect the legal system; introduction of the obligation of the government to regularly submit reports concerning ECtHR judgments and their execution, the right of these structures to request documents and to hear witnesses. Commissions for human rights or other similar structures need to have access to independent expertise in the field of human rights, and deputies and staff of the Parliament should be trained in the field of human rights.

In the report attached to the Resolution,⁵ PACE put forward several examples of best practices. Starting from 2001, the Joint Parliamentary Commission for Human Rights of Great Britain, composed of 12 members and assisted by two independent human rights

⁴ Available at <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/ERES1823.htm>

⁵ Available at <http://assembly.coe.int/Documents/WorkingDocs/Doc11/EDOC12636.pdf>

experts, systematically assesses compatibility of the acts adopted by the Government with the ECHR, regularly monitors responses of the Government in order to ensure execution of ECtHR judgments, carries out thematic investigations concerning certain rights, and monitors implementation of recommendations put forward by international human rights organizations. In particular, the Commission requests to be promptly notified by the Government about any relevant judgments; the experts of the Commission must be informed about the detailed plan of the government concerning execution of judgments within four months from the judgment, and the Government needs to send the final decision for resolution of the problem to the Commission within six months after the judgment. The Commission may accumulate information concerning proposals of the Government and may hear individuals. The Commission shall submit annual reports to the Parliament.

There is no particular parliamentary procedure for verification of the compatibility of draft laws with the ECHR in the Netherlands; however the Directorate for Human Rights of the Ministry of Justice usually verifies such compatibility. In case the Parliament expresses doubts concerning compatibility of the draft law with human rights standards, after several years it requests an evaluation of the application of the respective legislation. The GA is annually presenting a Report to the Parliament on execution of ECtHR judgments concerning the Netherlands. Starting with 2006, this report also refers to judgments delivered against other countries, in case they can affect the Dutch legal system directly or indirectly.

Starting with 2004, the German Ministry of Justice annually submits a report on ECtHR judgments and decisions concerning Germany and their execution to the Parliament. From 2010, this report also refers to judgments delivered against other countries. Every two years, the Government sends a general report concerning human rights and action plan for improving the situation to the Parliament. Moreover, the specialized commission of the Parliament writes reports for the United Nations.

In 2011, similar mechanisms of periodic parliamentary control concerning execution of ECtHR judgments existed in Finland, Romania, Macedonia, Italy and Ukraine.

Legislation of the Republic of Moldova does not foresee special competences of the Parliament concerning supervising execution of ECtHR judgments. However, Art. 4 para. 1 of the Law on Legislative Acts (no. 780, of 27 December 2001) stipulates that legislative acts shall correspond to the provisions of international treaties to which the Republic of Moldova is a party. Art. 54 letter b) of the Regulation of the Parliament (Law no. 797, of 2 April 1996) requires that any draft law needs to be transmitted to the Legal Department of the Parliament's Secretariat, which shall verify if the initiative is in compliance with international treaties to which the Republic of Moldova is a party. Even though the Legal Department shall submit its conclusions concerning the draft law, apparently the knowledge of its employees in the field of ECHR is quite general, and the Parliament quite rarely asks for assistance from human rights experts in the process of elaborating draft laws.

The Parliament of the Republic of Moldova has a permanent commission for human rights. With the approval of the permanent Bureau of the Parliament, parliamentary commissions may initiate parliamentary investigations concerning the activity of public authorities. While writing a report, the commission may request documents and hear individuals

(Art. 31 of the Regulation of the Parliament). On 19 July 2007, Legal Commission for Appointments and Immunities and Parliamentary Commission for Human Rights organized joint public hearings concerning „execution of judgments of the European Court of Human Rights cases that led to conviction, as well as measures aimed at prevention and non-admission of future convictions of the Republic of Moldova”. Reports of the GA, general prosecutor, Chairperson of the SCM and Director of the CCCEC were heard at the hearings. After the presentation of the reports, members of the parliamentary commissions addressed questions to the rapporteurs. After answering questions, two representatives of the non-governmental sector were heard. The hearings lasted more than two hours. The Parliament did not publish any information related to this hearing and it is not clear whether, following these hearings, the parliamentary commissions adopted any act.

Art. 126 of the Regulation of the Parliament provides that, upon the proposal of the Permanent Bureau, permanent commissions or parliamentary fractions, The Parliament may initiate hearings on issues of major public interest. On 21 March 2008, the Parliament organized hearings in Plenary on „reasons of the judgments delivered by the European Court of Human Rights against the Republic of Moldova, their execution and preventing violation of the human rights and fundamental freedoms”. During these hearings, reports were presented by the GA, the minister of justice, the president of the SCM, the general prosecutor, the minister of finance, and a representative of a non-governmental organization. After listening to all reports, deputies raised their questions. The hearing lasted more than four hours. Based on these hearings, on 28 March 2008, the Parliament adopted Decision no. 72. This decision enumerates violations of the ECHR found by the ECtHR and objective and subjective factors that contributed to violations of human rights and freedoms. The decision includes the following:

„The Government did not undertake all necessary normative, organizational or financial measures in order to create adequate conditions of detention and ensure corresponding functioning of the penitentiary system and of the law enforcement bodies. No sufficient measures were taken in order to ensure timely execution of final judgments by the public authorities on all levels.

The activity of law enforcement bodies, the prosecutor’s office, the police and courts concerning the respect and correspondence with requirements of the Convention is insufficient. Public officials whose activity generated violations of fundamental rights and freedoms of citizens were not sanctioned. The right of the state to regress against those responsible was not ensured at the corresponding level.

Cases of non-application of case-law and practice of the ECtHR by domestic courts and by collaborators of the law enforcement bodies as a result of the lack of an efficient system of initial and continuous training, of inexistence of systematic analysis of the criminal investigation practice and non-examination of cases through the ECtHR case-law, are still persisting.

Inactivity, apparent lack of determination of the Superior Council of Magistrates and of the Supreme Court of Justice in dealing with problems related to unification of case-law, application of disciplinary and other types of sanctions towards judges who delivered erroneous judgments or violated discipline and ethics, is noticeable.

In some cases deficiencies were noticed in the activity of the Governmental Agent and of the main Department of Governmental Agent related to deficient organization and failure to use all mechanisms allowed by the ECHR for representing the position of the state.

Despite the fact that the number of applications submitted to the ECtHR is increasing, there is no individual appeal to the Constitutional Court that would be capable of ensuring an efficient control of the observance of the Convention and remedying situations related to violations of fundamental human rights and freedoms, guaranteed by the Convention, at the domestic level.”

The Parliament introduced a series of responsibilities, both general, as well as specific, for the public authorities and courts of law that aimed at identifying and remedying the problems that led to violations of the ECHR, and that aimed at effective execution of ECtHR judgments. These specific responsibilities include improvement of the execution system, reform of the penitentiary system, transferring isolators of temporary detention from the subordination of the MIA to the subordination of the MoJ, intensifying efforts aimed at ensuring friendly settlement of cases pending at the ECtHR, and consolidation of the Department of Governmental Agent. The decision calls upon all public authorities to respect the ECHR, the General Prosecutor's Office – to ensure the quality of criminal investigation and implementation of regress actions, SCM – to examine applications related to the ethics and discipline of judges, SCJ – to systematize case-law in order to ensure its uniform application and its application in accordance with the ECtHR case-law, as well as to adopt explanatory decisions in the context of judgments delivered by the ECtHR in cases against Moldova, NIJ – to ensure corresponding training of judges, prosecutors and of other persons that contribute to the administration of justice. The Parliament instructed the Government, General Prosecutor's Office, SCM and SCJ to inform the Parliament annually by year's end, of measures undertaken in order to ensure the execution of the respective decisions of the Parliament. The Parliament has also organized hearings concerning execution of ECtHR judgments.

Despite the fact that through decision no. 72, Parliament requested authorities to annually inform it about measures carried out for the execution of the respective decisions, this requirement was apparently forgotten by the relevant authorities, except the SCJ, as well as by the Parliament. During the interview, the interim GA declared that he was never contacted by the Parliament concerning the process of supervising execution of ECtHR judgments, and that he sends the respective information only to the Government. It appears that the General Prosecutor's Office has not sent the requested information to the Parliament either. In December 2009, SCJ informed the Parliament about their activities aimed at executing decision no. 72.⁶

The initiatives of the Parliament from 2007 and 2008 concerning monitoring execution of ECtHR judgments are appreciated. However, they are apparently not followed up. For more than four years, the Parliament has not organized hearings and has not collected reports from authorities. Moreover, measures undertaken by the executive power for execution of ECtHR judgments were not subject to detailed parliamentary control, which does not seem to be in accordance with the Resolution of the PACE 1823(2011). The application of a periodic parliamentary control mechanism, similar to the one of Great Britain or Germany, would substantially enhance the contribution of the Parliament in the process of execution of ECtHR judgments.

⁶ See http://www.csj.md/news.php?menu_id=197&clang=5.6.pdf.

7.5 Supreme Court of Justice

The SCJ examines requests for reopening of all civil and criminal cases based on proceedings of the ECtHR. It is also called to ensure correct and uniform application of the legislation by all courts. In this sense, the SCJ adopts explanatory judgments, summarizes case-law and offers explanations on its web page.

Following ECtHR proceedings, until 2012, the SCJ examined requests for reopening of more than 50 civil and criminal proceedings. The vast majority of these requests were admitted, and the reasoning of the SCJ in these judgments was, in general, in compliance with ECtHR standards (for more information in this regard, see sub-chapter 5.3 of the study).

In order to ensure correct application of the ECHR, the SCJ adopted a number of decisions of the Plenary (for more information in this regard, see sub-chapter 3.2.1 of the study). *De jure*, they are not mandatory; however *de facto* they serve as guidelines for judges. By autumn of 2012, SCJ was working on draft decisions of the Plenary concerning compensations for violations of Art. 3, 5 and 8 of the ECHR, and on application of the Law on freedom of expression. Usually, the Plenary of the SCJ includes principles concerning interpretation of the ECHR following Moldovan judgments in its decisions, without however, explaining in details how these principles shall be applied in concrete situations.

In order to unify case-law and ensure a better application of the ECHR, the SCJ elaborated several explanations and recommendations on its web page (for more information in this regard, see sub-chapter 3.2.1 of the study). More recently, on 2 November 2012, through recommendation no. 16, the SCJ recommended judges to apply ECtHR standards directly and to oblige authorities to rectify civil status documents following change of sex, despite the fact that national legislation does not allow this. Even though the SCJ applied this mechanism only for four times, this initiative seems to gain momentum.

The SCJ summarizes case-law (for more information in this regard, see sub-chapter 3.2.1 of the study). Most of the summarized documents are public. Documents elaborated following summarizing case-law on preventive arrest, home arrest, and on interception of telephone conversations established that, generally, practices that led to the convictions at the ECtHR were persisting. SCJ was usually sending documents resulting from their analysis to the courts for information. The SCJ did not monitor in detail how changes of case-law were taking place.

Despite the fact that the SCJ always played an important role in establishing a uniform case-law, until 2012, it did not take advantage fully of this role. Explanatory judgments and explanations issued did not prove to be sufficient for ensuring uniform application of the legislation. Quite often, judgments adopted by the SCJ in concrete cases were contradictory between themselves or even contrary to ECtHR judgments as well as to the explanatory decisions of the Plenary.⁷ Recent activities of the SCJ support the aspiration to have a more uniform case-law of the SCJ.

⁷ In December 2005, ECtHR delivered the first judgment in a case against Moldova (*Popov no. 2*), where it found that an improper application of revision was contrary to the ECHR. Despite this judgment and heated discussions about this problem, similar deviations were made by the SCJ in 2009 and 2010 (see, for more details, cases mentioned in table no. 11 of the study).

7.6 General Prosecutor's Office

There is a department on analysis and implementation of ECHR within the General Prosecutor's Office. Only one person is working in this department. According to the Regulation of the General Prosecutor's Office, this department analyzes and systematizes the ECtHR case-law against Moldova, collaborates with the Department of the Governmental Agent, and upon the request of the GA, as well as *ex officio*, prepares information necessary for drafting observations concerning cases pending at the ECtHR. Furthermore, it checks the possibility of submitting regress actions for compensating amounts paid by the state based on ECtHR judgments and decisions, examines the degree of correspondence of the national legal framework with the ECHR, prepares proposals for amendments to the legislation, initiates reopening of proceedings at the domestic level following ECtHR proceedings, and participates in examining revision requests in civil and contravention cases.⁸

In 2012, after receiving translations of ECtHR case-law in Moldovan cases from the GA, the above mentioned department sent them to the prosecution. In cases communicated by the ECtHR related to the prosecutor's office, the department was assisting the GA in writing observations. The interim GA assessed the collaboration with this department as very good. Upon request by the GA, the department was deciding whether the request for reopening domestic judicial proceedings was justified, following the ECtHR proceedings. In case the request for reopening was considered justified, the department was encouraging the General Prosecutor to initiate the respective proceedings. Up to 2012, the General Prosecutor lodged more than 30 requests for reopening of judicial proceedings. Also, following ECtHR judgments, a number of criminal investigations were reopened (for more information in this regard, see sub-chapter 5.3 of the study). Despite the fact that the department on analysis and implementation of the ECHR mostly carried out actions aimed at ensuring compliance with ECtHR judgments, it appears that it did not evaluate the impact of its actions aimed at solving general problems.

Art. 17 of the Law on Governmental Agent authorises regress actions for compensating amounts paid by the state based on ECtHR judgments and decisions. Regress actions are initiated by the general prosecutor. The general prosecutor initiated several actions of this type. For more information in this regard, see sub-chapter 8.4 of the study.

7.7 Conclusions

- a) The existing mechanisms in the Republic of Moldova concerning supervision of execution of ECtHR judgments are overlapping and offer insufficient leverages in order to ensure an effective execution. Thus, the activity of the governmental commission for organizing execution of ECtHR judgments is not very efficient and visible. The GA does not have sufficient responsibilities nor political influence in order to promote an efficient execution, and parliamentary control is not exercised continuously and coherently;
- b) The Governmental Agent is the authority that holds all information about all ECtHR judgments, and is the most competent to report on the effective execution of ECtHR judgments, as well as to have a more active role in preventing violations of the ECHR

⁸ P. 2.3.4.4.3 of the Regulation, available at <http://procuratura.md/md/leg2/>.

in the future. However, the normative framework and the resources allocated to the GA are not sufficient for effective exercise of this responsibility. For instance, the GA is not always consulted on compatibility of draft-laws with the ECHR standards;

- c) The current mechanism concerning execution of ECtHR judgments needs to be improved. The need to improve the mechanism for executing ECtHR judgments is included in the Strategy on reforming the justice sector for 2011-2016.

7.8 Recommendations

- a) To consolidate the capacities of the Department of the Governmental Agent by creating a mechanism for delegating judges and prosecutors to work within the Department for at least 12 months; Reanimate the council created within the GA;
- b) To improve proceedings within the Ministry of Justice, so that the GA is offered a real possibility to revise draft laws concerning their compatibility with ECHR provisions;
- c) To supplement CrPC with the right of the GA to submit legal opinions in criminal cases, and to take full advantage of the proceedings provided by Art. 74 of CrPC in cases where it is possible to change or unify case-law pertaining to application of the ECHR;
- d) To authorize the GA to contact CM directly concerning execution of ECtHR judgments;
- e) To put an obligation in the law for the GA to analyze each judgment delivered by the ECtHR, and to formulate proposals concerning measures that need to be carried out for its execution;
- f) To instruct the GA to publish annually reports on execution of ECtHR judgments. The report needs to be made public and to be presented to the Parliament;
- g) To create a new mechanism for supervising execution of ECtHR judgments. The supervision of execution may be assigned to a permanent parliamentary commission, or to a special parliamentary commission. This Commission shall constantly monitor the process of execution of ECtHR judgments. It shall annually submit a report to the plenary of the Parliament concerning execution of ECtHR judgments. Consequently, decision no. 1488 of the Government, of 31 December 2004, concerning a governmental commission for organizing execution of ECtHR judgments shall be abrogated;
- h) To continue the efforts of the SCJ, through decisions of the Plenary recommendations placed on the web page and advisory opinions, aimed at ensuring unification of case-law in accordance with ECtHR standards;
- i) To introduce a mechanism of periodical review of the impact of measures for execution of ECtHR judgments carried out by the SCJ and the General Prosecutor's Office.

Contribution to reducing the number of applications to the ECtHR

8.1 Introduction

On 1 January 2012, more than 150,000 applications were pending before the ECtHR that is three times more than the number of cases examined by the ECtHR in 2011. The large number of applications to the ECtHR jeopardizes the entire mechanism established by the ECHR. For this reason Lord Woolf recommended in 2005 to apply more often to ombudsmen's services and other methods of alternative dispute resolution.¹ In some countries, such as Russia, Serbia, Slovenia and Spain an appeal to the Constitutional Court was introduced for alleged violations of human rights and fundamental freedoms. In the pilot judgments delivered so far,² the ECtHR suggested the introduction at the national level of a compensatory remedy to address systemic or structural problems found in the ECtHR judgment. In case of serious violations, 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 analyzes the efficiency of these mechanisms in Moldova.

8.2 Constitutional appeal and the ombudsman

The main task of the Constitutional Court of the Republic of Moldova is the verification of the constitutionality of normative acts issued by Parliament, President and Government. Special subjects can apply to the Constitutional Court. The Constitution (Art. 135) does not grant powers to the Constitutional Court to examine claims of individuals or legal persons on alleged infringement of their rights.

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 initiative (no. 142, of 13 January 2005) did not meet the required number of votes, because it did not define clearly the powers of the Constitutional Court when dealing with individual appeals.

¹ See page 4 of the Report, available at <http://www.echr.coe.int/NR/rdonlyres/40C335A9-F951-401F-9FC2-241CDB8A9D9A/0/LORDWOOLFREVIEWONWORKINGMETHODS.pdf>.

² See, for example, judgments *Broniowski v. Poland* (22 June 2004); *Burdov (no. 2) v. Russia* (15 January 2009); *Olaru and others v. Moldova* (28 July 2009); or *Ananiev and others v. Russia* (10 January 2012).

On 12 May 2011, the Parliament of Moldova adopted NHRAP (decision no. 90), which provides in section 7 the introduction of individual appeals to the Constitutional Court by the end of 2011. It seems that this provision has not been taken seriously. By November 2012, the opinion of the Constitutional Court on initiating the procedure of revision of the Constitution has not been requested. Neither thorough discussion on this initiative has been launched.

Since April 1998 in Moldova there are four ombudsmen, officially called “parliamentary advocates”. The parliamentary advocates investigate individual complaints of human rights violations. However, they are entitled to examine complaints that may be appealed according to CiPC, CrPC or Civil Code, as well as those concerning labor law (Art. 16 of the Law no. 1349 of 10 October 1997 on Parliamentary Advocates). The parliamentary advocates can appeal to the Constitutional Court. In 2011 the parliamentary advocates received more than 1,500 complaints and filed 17 applications to the Constitutional Court. Parliamentary advocates also present an annual report on human rights in Moldova.³

Even though the parliamentary advocates have been instituted in Moldova for more than 14 years, they are not yet perceived by the society as an instrument capable to remedy the violations of the ECHR at the national level. In fact, Art. 16 of the Law on Parliamentary Advocates does not allow them to examine the vast majority of situations that can be appealed at the ECtHR. 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 applications to the ECtHR against Moldova concern the decisions of the courts of law. It is unlikely that any parliamentary advocate would agree to act as an institution which reexamines court decisions.

8.3 Compensatory remedy for the breach of the reasonable time requirement

In its judgment *Olaru and others* (28 July 2009), 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. For this reason, 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 and be available within six months of the date on which the present judgment becomes final.”

In order to comply with the judgment *Olaru and others*, on 21 April 2011 the Parliament passed the Law no. 87 on the redress by the state of damages caused by the violation of the right to trial within a reasonable time or of the right to enforcement of the judicial decision within a reasonable time. 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

³ Annual activity reports of parliamentary advocates are available at <http://ombudsman.md/md/anuale/>.

damages are redressed by the state and the defendant is the Ministry of Justice.⁴ The law entered into force on 1 July 2012.

By autumn 2012, the complaints regarding the non-enforcement or delayed enforcement of judicial decisions had to be submitted to the Rîșcani District Court, mun. Chișinău, and the complaints on the breach of the reasonable time requirement during the criminal investigation or the trial – at the Chișinău Court of Appeal. The decision of the trial court could be challenged only by appeal on points of law, and the retrial of the case was not allowed. According to legislative amendments adopted in 2012 (Law no. 96 of 3 May 2012 and Law no. 155 of 5 July 2012), all applications made under Law no. 87 have to be filed with the Buiucani District Court mun. Chisinau. The decisions of that court can be challenged with appeal and appeal on points of law.

According to the Law no. 87, the applications have to be filed within the proceedings or within six months from the date when the proceedings are finalized (Art. 3 para. 2). In case of proceedings pending before the ECtHR, the application could be submitted until 1 January 2012 (Art. 7). The application shall be examined by the trial court within three months.

In the decision *Balan* (24 January 2012), the ECtHR accepted, *prima facie*, that the remedy introduced by the Law no. 87 is effective. According to the most experienced Moldovan lawyer from the Registry of the ECtHR, the ECtHR has given Moldova a good level of trust; 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 ECHR⁵. Following the adoption of the Law no. 87, 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 the domestic remedies. The applicants were suggested to bring actions under the Law no. 87.

On 1 June 2012, the Ministry of Finance was aware about 634 applications filed under the Law no. 87. Although the Law no. 87 entered into force 11 months ago and the law required the examination of applications by the trial court within three months, by that time, decisions were taken in only 121 cases (19.1%). The lawyers acknowledged that the period of three months set to consider the case by the trial court is not respected. The Chișinău Court of Appeal considered the appeals on points of law between two and six months. SCJ examined the appeals on points of law against the decisions of the Court of Appeal between three and four months (see tables nos. 27 and 28). The average length of judicial proceedings under the Law no. 87 examined until 1 December 2012 did not exceed 12 months. However, cases were found where the trial court has delivered its decision after more than 12 months.

Since 1 December 2012, all cases under the Law no. 87 shall be examined by a district court; the judgments of that court can be challenged with appeal and appeal on points of law

⁴ By 6 October 2012, these applications were filed against the Ministry of Finance. By Law no. 96 of 3 May 2012, Art. 2 para. 7 of the Law no. 87 was amended indicating that the applications shall be filed against the Ministry of Justice. The Law no. 96 entered into force on 6 October 2012.

⁵ See his speech available on la http://csj.md/news.php?menu_id=460&clang=5

and the case can be sent for reexamination. These changes will extend the period in which the person may obtain compensation for the breach of the reasonable time requirement.

In order to harmonize the judicial practice on the application of the Law no. 87, the Governmental Agent has developed a guidebook on the application of the ECtHR jurisprudence on non-enforcement of judicial decisions and excessive length of proceedings.⁶ On 25 May 2012 it was placed on the webpage of the Ministry of Justice. The guidebook contains an analysis of the ECtHR standards, its jurisprudence regarding Moldova and a summary on pecuniary, non-pecuniary damages and costs and expenses awarded by the ECtHR in Moldovan cases on non-enforcement of judicial decisions and excessive length of proceedings.

Table no. 27⁷
Information about lawsuits filed under the Law no. 87 which concern the non-enforcement or delayed enforcement of judicial decisions

Case, court, and the length of non-enforcement	Date of decision	Trial court decision	Date of decision on appeal on points of law	Decision on appeal on points of law
S.A. "Institutul pentru Proiectări Drumuri Auto" – Economic District Court (case file no. 2e-890/12) – non-enforcement during six years and nine months of a judicial decision on the transfer of an immovable.	23/02/2012	Pecuniary damages - EUR 40,000 and Non-pecuniary damages - EUR 10,000.	12/09/2012	The Ministry of Finance appeal on points of law has been admitted and only MDL 10,000 (EUR 625) have been awarded as non-pecuniary damages.
Denis Hohlov – Rîșcani District Court mun. Chișinău (case file no. 2-7023/11) – non-enforcement during two years and three months of a judicial decision on providing social housing.	28/03/2012	Non-pecuniary damages – MDL 10,000 (EUR 625) and Costs and expenses – MDL 5,400 (EUR 338).	20/09/2012	The applicant's appeal on points of law has been dismissed.
Marcel Cigoreanu - Rîșcani District Court mun. Chișinău (case file no. 2-7900/2011) – non-enforcement during two years and four months of a judicial decision on providing social housing.	21/05/2012	Pecuniary damages – MDL 52,000 (EUR 3,250) and Non-pecuniary damages – EUR 10,000.	03/10/2012	The Ministry of Finance appeal on points of law has been admitted and only MDL 5,000 (EUR 313) have been awarded as non-pecuniary damages.

⁶ http://www.justice.gov.md/public/files/file/GHID_PRACTIC_DAG_MJ_mai_2012.pdf

⁷ The table has been completed based on the information from the court decisions.

<p>Petru Molceanu ș.a. 9 persoane – Rîșcani District Court mun. Chișinău (case file no. 2-6947/2011) – non-enforcement during three years and 27 days of a judicial decision on delays in payment of salaries (for ten applicants).</p>	30/03/2012	<p>Non-pecuniary damages - MDL 2,000 (EUR 125) for each applicant; Costs and expenses – the total amount of MDL 5,000 (EUR 313) and Costs and expenses - MDL 1,807 (EUR 115).</p>	07/08/2012	<p>The applicants' appeal on points of law has been dismissed.</p>
<p>Gheorghe Marian – Rîșcani District Court mun. Chișinău (case file no. 2-5253/11) – non-enforcement during 12 years and eight months of a judicial decision on providing social housing.</p>	21/12/2011	<p>Non-pecuniary damages - MDL 76,000 (EUR 4,921).</p>	05/04/2012	<p>The Ministry of Finance appeal on points of law has been admitted and MDL 10,000 (EUR 625) have been awarded as non-pecuniary damages.</p>
<p>Oxana Vameș - Rîșcani District Court mun. Chișinău (case file no. 2-5155/11) – non-enforcement during one year and ten months of a judicial decision on providing social housing.</p>	04/01/2012	<p>Pecuniary damages – MDL 25,180.64 (EUR 1,574); Non-pecuniary damages - EUR 16,000 and Costs and expenses – MDL 8,400 (EUR 525).</p>	21/03/2012	<p>The Ministry of Finance appeal on points of law has been admitted and the non-pecuniary damages award has been reduced to MDL 30,000 (EUR 1,875).</p>
<p>Natalia Axenova – Rîșcani District Court mun. Chișinău (case file no. 2-7227/11) – non-enforcement during four years and seven months of a judicial decision on the payment of the salary by a State Agency.</p>	12/03/2012	<p>Non-pecuniary damage – EUR 2,000.</p>	20/06/2012	<p>The applicant's appeal on points of law has been dismissed.</p>
<p>Igor Colodrovschi – Chișinău Court of Appeal (case file no. 2r-2979/11) – non-enforcement during three years and five months of a judicial decision on providing social housing.</p>	21/10/2011	<p>Pecuniary damages - MDL 33,600 (EUR 2,100); Non-pecuniary damages - MDL 40,000 (EUR 2,500) and Costs and expenses - MDL 100 (EUR 6).</p>	18/04/2012	<p>The Ministry of Finance appeal on points of law has been admitted and the non-pecuniary damages award has been reduced to MDL 22,000 (EUR 1,375).</p>

<p>Maria Grossu – Rîșcani District Court mun. Chișinău (case file no. 2-6946) – non-enforcement during three years and four months of a judicial decision on providing social housing.</p>	11/06/2012	<p>A violation of Article 6 and Article 1 Protocol 1 has been found; however no non-pecuniary damages were awarded because they were not claimed; and no pecuniary damages were awarded because they were not justified.</p>	28/08/2012	<p>The applicant's appeal on points of law has been dismissed.</p>
<p>Valentin Cristea – Rîșcani District Court mun. Chișinău (case file no. 2-6859/11) – non-enforcement during three years and ten months of a judicial decision on providing social housing.</p>	26/01/2012	<p>Pecuniary damages - MDL 24,000 (EUR 1,500) and Non-pecuniary damages - MDL 10,000 (EUR 625).</p>	11/04/2012	<p>The Ministry of Finance appeal on points of law has been admitted and the applicant's case has been dismissed because he is no longer employed at the Ministry of Interior.</p>
<p>Viorel Roman – Rîșcani District Court mun. Chișinău (case file no. 2-6638/11) – non-enforcement during two years and five months of a judicial decision on providing social housing.</p>	07/05/2012	<p>Pecuniary damages - MDL 37,451.61 (EUR 2,341); Non-pecuniary damages - MDL 165,000 (EUR 10,312) and Costs and expenses - MDL 555 (EUR 35).</p>	25/09/2012	<p>The Ministry of Finance appeal on points of law has been admitted and the non-pecuniary damages award has been reduced to MDL 15,000 (EUR 938).</p>
<p>Nicolae Salcuțan – Rîșcani District Court mun. Chișinău (case file no. 2-6788/11) – non-enforcement during two years and ten months of a judicial decision on providing social housing.</p>	06/04/2012	<p>Pecuniary damages - MDL 20,000 (EUR 1,250) and Costs and expenses - MDL 2,400 (EUR 150).</p>	<p>The decision has been challenged with appeal on points of law by both parties.</p>	<p>The appeals on points of law are pending before the Chișinău Court of Appeal.</p>
<p>Grigore Novac - Chișinău Court of Appeal (case file no. 2r-884/12) – non-enforcement during three years and three months of a judicial decision on the payment of an amount of money by an individual.</p>	07/03/2012	<p>The case has been dismissed because the non-enforcement cannot be imputed to the bailiff.</p>	22/05/2012	<p>The applicant's appeal on points of law has been dismissed.</p>

Ivan Vilcu – Chişinău Court of Appeal (case file no. 2r-794/12) – non-enforcement during four years and ten months of a judicial decision on the payment of an amount of money by an individual.	23/02/2012	Non-pecuniary damages - MDL 7,513 (EUR 470).	21/06/2012	The applicant's appeal on points of law has been admitted and MDL 7,513 (EUR 430) have been awarded as pecuniary damages.
Tatiana Carabadjac – Rîşcani District Court mun. Chişinău (case file no. 2-7039/11) – non-enforcement during one year and nine months of a judicial decision on the payment of an amount of money by an insolvent legal person.	05/03/12	The case has been dismissed because the state cannot be held liable for the non-enforcement of a judicial decision by an insolvent debtor.	06/06/2012	The applicant's appeal on points of law has been dismissed.
Ganna Bolotova – Chişinău Court of Appeal (case file no. 2r-1570/12) – non-enforcement during four years and eight months of a judicial decision on the payment of an amount of money by an individual.	03/02/2012	The case has been dismissed because the non-enforcement cannot be imputed to the bailiff.	26/04/2012	The applicant's appeal on points of law has been dismissed.
Dmitrii Sarov – Chişinău Court of Appeal (case file no. 2r-1276/12) – non-enforcement during three years of a judicial decision on the payment of an amount of money by an individual.	31/01/2012	The case has been dismissed because the non-enforcement cannot be imputed to the bailiff.	20/06/2012	The applicant's appeal on points of law has been dismissed.
Vera Rotari – Chişinău Court of Appeal (case file no. 2-747/12) – non-enforcement during two years and ten months of a judicial decision on the payment of an amount of money by an individual.	26/01/2012	Non-pecuniary damages - MDL 11,200 (EUR 700).	05/06/2012	The case has been dismissed because the non-enforcement cannot be imputed to the bailiff and was delayed.

Table no. 28⁸
Information about lawsuits filed under the Law no. 87
which concern the non-enforcement or delayed enforcement of judicial decisions

Case, court, and the length of proceedings	Date of decision	Trial court decision	Date of decision on appeal on points of law	Decision on appeal on points of law
SRL "Auto-Mar" – Chişinău Court of Appeal (case file no. 2-473) – the examination of a criminal case, where the applicant was the injured party, during ten years (six years during the criminal investigation and four years in the court).	06/03/2012	The case has been dismissed because the delays were not caused by the state authorities.	28/06/2012	The applicant's appeal on points of law has been admitted. The SCJ has awarded MDL 80,000 (EUR 5,000) as non-pecuniary damages.

⁸ The table has been completed based on the information from the court decisions.

SRL „Planta Vin” – Chişinău Court of Appeal (case file no. 2-52/12) – the examination of a civil case during more than nine years.	17/05/2012	The case has been dismissed because the delays were not caused by judges.		It is not known if the applicant has challenged the decision.
Zinaida Zvezdenco – Chişinău Court of Appeal (case file no. 2-241/12) – the examination of a civil case during almost nine years.	08/05/2012	The case has been dismissed because the delays were not caused by judges.	16/08/2012	The applicant's appeal on points of law has been admitted. The SCJ has awarded him MDL 15,000 (EUR 938) as non-pecuniary damages and MDL 8,500 (EUR 531) as costs and expenses.
Gheorghe Străisteanu – SCJ (case file no. 2r-355/12) – the examination of a civil case during a period of one year and eight months.	15/03/2012	The case has been dismissed.	29/05/2012	The applicant's appeal on points of law has been admitted. The SCJ has awarded him MDL 5,000 (EUR 313) as non-pecuniary damages.
Ion Şiman – SCJ (case file no. 2r-353/12) – The examination of a civil case during one year and six months.	17/02/2012	The case has been dismissed as ill-founded.	06/06/2012	The applicant's appeal on points of law has been dismissed.
Ghenadii Tcacenco – Chişinău Court of Appeal (case file no. 3-3405/11) – the examination of two civil cases during two years and four months and during one year and nine months, respectively.	30/01/2012	Non-pecuniary damages – MDL 15,000 (EUR 938).	25/04/2012	The parties' appeals on points of law have been dismissed.
Şiman Ion - SCJ (case file no. 2r-392/12) The examination of a civil case during three months.	02/04/2012	The case has been dismissed as ill-founded.	06/06/2012	The applicant's appeal on points of law has been dismissed.
Anatolii Țiganenco, Alexandru Beţişor, Margareta Strugac şi Serghei Trofimov – Chişinău Court of Appeal (case file no. 2-36/12) – the examination of a civil case during three years and five months.	26/03/2012	The case has been dismissed as ill-founded, because the case has been examined in a reasonable time.	20/06/2012	The applicants' appeal on points of law has been dismissed.

Daniela Secrieru – Chişinău Court of Appeal (case file no. 2-611/11) – the examination of a civil case during 14 months.	19/04/2012	The case has been dismissed as ill-founded.		It is not known if the applicant has challenged the decision.
Nicanor Ciorba – Chişinău Court of Appeal (case file no. 2-538/11) – the examination of a civil case during one year and six months.	30/01/2012	The case has been dismissed, because the court has postponed the judicial hearings according to the law.	25/04/2012	The SCJ has admitted the appeal on points of law; it annulled the decision of the trial court and sent the case for reexamination.
Grigore Bărnaz – Chişinău Court of Appeal (case file no. 2-607/11) – the examination of a civil case during eight years.	27/02/2012	Pecuniary damages - MDL 3,000 (EUR 188) and Costs and expenses - MDL 1,000 (EUR 63).	06/06/2012	The SCJ has admitted the appeal on points of law and increased the amount of compensation to MDL 6,000 (EUR 376) as non-pecuniary damages and MDL 2,000 (EUR 126) as costs and expenses.
Gheorghe Străisteanu – SCJ (case file no. 2r-273/12) – the examination of a criminal case against the applicant during two years and five months.	19/01/2012	Non-pecuniary damages - MDL 6,000 (EUR 375).	21/06/2012	The SCJ has admitted the Ministry of Finance appeal on points of law and reduced the amount of non-pecuniary damages to MDL 4,000 (EUR 250).
Aurel Bodiu - Chişinău Court of Appeal (case file no. 2-486/2011) – the examination of a simple civil case during 12 years, three months and 15 days.	06/03/2012	Non-pecuniary damages – MDL 10,000 (625 EUR) and Costs and expenses - EUR 900 and MDL 5,400 (338 EUR).	06/06/2012	The SCJ has admitted the applicant's appeal on points of law and increased the amount of non-pecuniary damages to MDL 15,000 (EUR 938). The SCJ has awarded additional MDL 500 (EUR 33) as costs and expenses.

The information from the two tables above confirms that the non-pecuniary damages awarded by judges under the Law no. 87 are extremely inconsistent. Generally, they are much smaller than the ones awarded by the ECtHR in similar cases. Thus, in the case of S.A. “*Institutul pentru Proiectări Drumuri Auto*”, the SCJ has awarded EUR 625 for the non-enforcement of a judicial decision during six years and nine months. In the case of *Gheorghe Marian* the SCJ has awarded the same amount for the non-enforcement of a judicial decision during 12 years⁹. However in the cases of *Oxana Vameș*, *Igor Coldorovschi* and *SRL ‘Auto-Mar’* the amounts of non-pecuniary damages seem to be consistent with the amounts of non-pecuniary damages awarded by the ECtHR.

It appears that the SCJ has recognized that the amounts of non-pecuniary damages awarded for the violations of the ECHR are small, and the judicial practice in this field was not uniform. On 23 July 2012, on the webpage of the SCJ has been placed the joint opinion of the president of the SCJ and the Governmental Agent on the just satisfaction which shall be awarded for the violation of the ECHR¹⁰. In this research we were unable to evaluate the impact of this opinion; however it seems that the compensations awarded by the SCJ have been moderately increased. For more details on this matter, see subchapter 3.2.2 of the research.

The applications under the Law no. 87 are not subject to court fees. This fact is welcomed. However, usually, the proceedings under this Law represent a heavy financial burden for the applicant because a very small part from the lawyers’ fees is compensated. Thus, in none of the cases presented in the tables nos. 27 and 28, with the exception of the cases of *Oxana Vameș* and *Aurel Bodiș*, the amount of costs and expenses exceeded EUR 350, although many of these cases were initially filed at the ECtHR and afterwards declared inadmissible due to the adoption of the Law no. 87. The insufficient compensation of the costs and expenses is specific for all categories of cases and not only for those concerning the Law no. 87. For more details on this matter, see subchapter 3.2.2 of the research.

8.4 Proceedings against perpetrators and the regress action

In many Moldovan cases, the ECtHR has found very serious violations of the ECHR. For example in the case of *Gurgurov* (16 June 2009), the ECtHR has concluded that the prosecutors tried to impede the applicant’s efforts to hold responsible the persons who ill-treated him, in the case of *Stepuleac* (6 November 2007), the criminal case file against the applicant was falsified by the criminal investigator, in the case of *Oferta Plus SRL* (19 December 2006), the executive director of the company was arrested to discourage the applicant company from pursuing its case before the ECtHR and in the case of *Baroul Partner-A*

⁹ According to the most experienced Moldovan lawyer from the Registry of the ECtHR, “analyzing the ECtHR case law in the cases of non-enforcement, one could conclude that the amount [of non-pecuniary damages] is of approximately EUR 600 for 12 months of delay and EUR 300 for each of the following period of 6 months of delay” (the opinion is available on http://csj.md/news.php?menu_id=460&clang=5). In the judgment of *Olaru and Others*, the ECtHR has awarded EUR 2,000 as non-pecuniary damages for the non-enforcement of a judicial decision during six years, and in the judgment of *Mubin* – EUR 6,500 as non-pecuniary damages for the non-enforcement of a judicial decision during 11 years.

¹⁰ <http://csj.md/admin/public/uploads/Opinie%20privind%20satisfac%C5%A3ia%20echitabil%C4%83.doc>

(16 July 2009) the ECtHR held that the Government acted in bad faith and pursued the aim of expropriating the applicant company's property. In other ten cases delivered until 31 December 2010, the ECtHR has concluded that the applicant was ill-treated. These cases could have served as grounds for disciplinary proceedings or criminal investigations against the perpetrators.

From those 11 cases delivered until 31 December 2010 in which the ECtHR concluded that the applicant was ill-treated, only two cases (*Corsacov* and *I.D.*) were sent to court. The other cases were either suspended or discontinued by the prosecutors or are still pending before the prosecution office. The criminal case on the ill-treatment of Mr. Corsacov has been discontinued due to the expiration of the statute of limitations for the criminal liability because the case has been sent for retrial. The criminal case file on the ill-treatment of Mr. *I.D.* is still pending before the district court (for more details on this matter, see subchapter 5.3.1.1 of the research).

The members of the SCM can initiate disciplinary proceedings if from a judgment of the ECtHR it results that a judge has committed a disciplinary violation. The Law on the status of judges provides the disciplinary accountability of judges for "the inconsistent application of the legislation, intentionally or by serious negligence, if this fact has been concluded by the higher court and has led to the annulment of the wrong decision" (Art. 22 para. 1 let. b). Art. 23 para. 4 of this Law suggests that if a disciplinary violation results from a decision of an international court, the disciplinary sanction can be applied within one year from the date when the decision of the international court became final. We are convinced that such proceedings should be initiated only for very serious violations. Although the ECtHR has found many very serious violations committed by judges, no disciplinary sanctions were applied. It is difficult to explain why the SCM did not act in cases when the requests for revision were admitted without justification, as for example in the cases of *Eugenia and Doina Duca* (3 March 2009) or *Oferta Plus SRL* (19 December 2006). In fact, after the judgment in the case of *Oferta Plus SRL*, the applicant requested the initiation of disciplinary proceedings against judges involved in its case; however, on 25 January 2007, the SCM has denied the request stating that "there are no grounds to initiate disciplinary proceedings against those judges". When monitoring the SCM sessions we noticed that the Governmental Agent informs the SCM about the ECtHR judgments. However, in 2012, the SCM has never discussed in details during its sessions the findings of the ECtHR in its judgments received from the Governmental Agent, although the discussions on the ECtHR judgments were regularly introduced on the agenda of the SCM.

The Law on the prosecution service provides as disciplinary violations the inappropriate exercise of the professional duties and the interpretation or the incorrect or biased application of the legislation, intentionally or by serious negligence, or the unjustified refusal to undertake professional duties (Art. 61). However, for these violations the sanctions can be applied in maximum one year after the violation has been committed (Art. 63 para. 4). Although the ECtHR has found the inappropriate investigation of the ill-treatment in four cases that were pending on the date of the ECtHR judgment, it appears that the disciplinary proceedings against prosecutors did not follow. One of those four cases is *Corsacov* – in

this case the criminal investigation has been discontinued and re-opened at least 12 times. It is difficult to imagine that such shortcomings can be committed by a person who acts in good faith or that these shortcomings cannot be considered as “an unjustified refusal to undertake professional duties”.

In the cases of *Oferta Plus SRL* (19 December 2006) and *Cebotari* (13 November 2007), the ECtHR has concluded that the criminal proceedings did not pursue a legitimate aim. As a follow-up to the judgment in the case of *Oferta Plus SRL*, the applicant has requested the initiation of disciplinary proceedings against prosecutors involved in its case. On 16 March 2007, a prosecutor from the General Prosecutor’s Office has denied the request on the ground that the actions of the prosecutors were legal. Moreover, after the judgment in the case of *Oferta Plus SRL*, during more than a year, the prosecution office continued to insist on the conviction of the executive director of *Oferta Plus SRL*¹¹.

Art. 17 of the Law on the Governmental Agent refers to the regress action to compensate the amounts of money paid as a result of the proceedings before the ECtHR. The Governmental Agent is obliged to inform the General Prosecutor and the SCM about all cases in which as a follow-up to a judgment of the ECtHR or to a friendly settlement agreement, the Republic of Moldova is obliged to undertake payments. The regress action is initiated by the Prosecutor General within one year from the date when the term of the payment set by the Court or by the friendly settlement agreement expired. The regress action is initiated according to the civil procedure rules and only against persons who acted intentionally or by serious negligence.

We are convinced that the regress action against a judge or a prosecutor should be initiated only if their guilt has been already found in disciplinary or criminal proceedings. It appears that the regress action provided in Art. 17 of the Law on the Governmental Agent has been applied against a judge only once on the ground of the ECtHR judgment in the case of *Tocono și Profesorii Prometeiști* (26 June 2007). 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 found subsequently that he was in conflict with one of the parties. The Prosecutor General has asked the permission of the SCM to initiate the regress action, but the permission was dismissed¹².

The initiation of the regress actions by the General Prosecutor seems strange because as of 1 January 2012 the prosecution office does not longer have the competence to reopen the civil proceedings, and the Ministry of Justice has created a division in charge with representing the state’s interests in the proceedings initiated according to the Laws no. 1545 and no. 87.

Starting with 2008 the Prosecutor General has initiated ten regress actions according to Art. 17 of the Law on the Governmental Agent. Five actions were admitted, four were

¹¹ The prosecutors requested the conviction of the executive director of *Oferta Plus SRL* to 15 years of imprisonment. On 28 June 2007 the Centru District Court mun. Chișinău acquitted the executive director of the applicant company on the ground that his actions did not constitute a crime. On 12 October 2007 the Chișinău Court of Appeal has dismissed the appeal of the prosecutor. On 1 April 2008 the appeal on points of law filed by the prosecution office has been dismissed by the SCJ.

¹² According to the legislation in force on that date, the regress action against a judge could not be initiated without the agreement of the SCM.

dismissed, and in one case a judicial decision has not been taken yet. Information on these actions is presented in the table below.

*Table no. 29
Information about the regress actions initiated according to Art. 17
of the Law on the Governmental Agent*

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 as inadmissible.
Corsacov (18944/02) Judgment 04/04/2006	Art. 3 ECHR – 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.

Frunze (22545/05) 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 (6914/08) 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 Office appeal on points of law, quashed both decisions and delivered a new decision by which it obliged 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 (37763/04 and others) Judgment 27/01/2009	Art. 6 § 1 ECHR and Art. 1 Prot. 1 – non-enforcement of a judicial decision on the payment of invalidity benefit by a private company.	Alexandru Ştirbu, former bailliff	10,000	The Ialoveni District Court admitted the action. The judicial decision was not appealed.
Lazo (45602/07) 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.
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 Şarban, former mayor of Orhei	620	On 28 June 2010, the Orhei District Court admitted the action. The judicial decision was not appealed.

Dimitrov <i>(56555/07)</i> 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 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. The General Prosecutor's Office intends to file an appeal on points of law.
---	--	---	-------	---

Eight from those ten regress actions refer to the compensations paid for the non-enforcement of domestic judicial decisions. The other two cases which refer to the compensations paid for ill-treatment in the case of *Corsacov* and for the illegal deprivation of liberty and the police officers' entry into the applicant's house without any legal grounds in the case of *Guțu*, have been dismissed as ill-founded.

Along with the regress action, the damages caused to the state can be compensated and after the re-opening of civil proceedings, as a follow-up to the ECtHR judgments. For example, in the judgments 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 as a follow-up to the domestic judicial decisions (see table no. 10); the action of the opponent was dismissed. The Government paid more than EUR 210,000 as a follow-up to the judgment in the case of *Pîrnău ș.a.* (31 January 2012) due to the shortcomings 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 and the obligation of the opponent in the domestic proceedings to reimburse at least the real damage. It seems that the authorities have never applied this procedure so far.

8.5 Conclusions

- a) The Constitutional Court of the Republic of Moldova cannot examine the individual complaints on the violations of the ECHR. The Moldovan authorities undertook to introduce the constitutional appeal until the end of 2011; however, this did not happen;
- b) Even though the parliamentary advocates have been instituted in Moldova for more than 14 years, they are not yet perceived by the society as an instrument capable to remedy the violations of the ECHR at the national level. In Moldova the contribution of the parliamentary advocates to reducing the number of applications filed to the ECtHR cannot be very effective because most applications to the ECtHR against Moldova concern the decisions of the courts of law;
- c) The average length of judicial proceedings under the Law no. 87, examined until 1 December 2012, did not exceed 12 months. However, cases were found where the trial court has delivered its decision after more than 12 months. Due to the legislative amendments which entered into force on 1 December 2012, the length of the proceedings under the Law no. 87 will increase;

- d) The amounts of non-pecuniary damages awarded by the SCJ under the Law no. 87 are extremely inconsistent. Generally, they are much smaller than those awarded by the ECtHR in similar cases. On 23 July 2012, on the webpage of the SCJ has been placed the joint opinion of the president of the SCJ and the GA on the just satisfaction which shall be awarded for the violation of the ECHR. In this research we were unable to evaluate the impact of this opinion, however it seems that the compensations awarded by the SCJ have been moderately increased;
- e) The legislation provides the application of disciplinary sanctions to judges and prosecutors on the grounds of the findings from the ECtHR judgments. Such proceedings should be initiated only for very serious violations. Although the ECtHR has found many very serious violations committed by judges or prosecutors, no disciplinary sanctions were applied;
- f) Starting with 2008 the Prosecutor General has initiated ten regress actions according to Art. 17 of the Law on the Governmental Agent. Five actions were admitted, four were dismissed, and in one case a final judicial decision has not been taken yet.

8.6 Recommendations

- a) Art. 16 from the Law on the parliamentary advocates shall be amended to allow them to examine more situations when there are violations of the ECHR;
- b) The SCJ shall intensify its efforts to ensure that all courts of law examine promptly the actions filed under the Law no. 87 and award adequate compensations for the non-pecuniary damages for the violation of the reasonable time requirement;
- c) The SCM and the SCP must study carefully the judgments of the ECtHR to ensure that any serious violations which result from those judgments lead to disciplinary sanctions;
- d) Amendment of the Art. 17 of the Law on the Governmental Agent in order to give the Ministry of Justice the competence to file regress actions;
- e) After the reopening of the proceedings, the state authorities should request from the opponents in the domestic proceedings of the applicants in the proceedings before the ECtHR, the reimbursement of real damages paid as a follow-up to the ECtHR judgments.