

13 SEPTEMBER

2016

SUBMISSION

SUBMISSION

in accordance with Rule 9.2 of the Rules of the Committee of Ministers on *Ciorap v. Moldova* group of cases (conditions of detention)

EXECUTIVE SUMMARY

This submission is presented by the Legal Resources Centre from Moldova. It analyses the impact of measures taken by the Moldovan authorities to execute the *Ciorap* group of cases. The *Ciorap* group of cases mainly concern poor material conditions of detention in Penitentiary No. 13 from Chisinau and lack of effective domestic remedies in respect of poor conditions of detention. This submission is focused on conditions of detention from Penitentiary No. 13 from Chisinau.

In more than 15 cases, the European Court of Human Rights (ECtHR) found that the conditions of detention in the Penitentiary No. 13 were contrary to Article 3 of the Convention due to (extreme) overcrowding, unsanitary conditions/hygiene and low quantity and quality of food. Although the cases refer to the situation back in 2000s, it has not improved significantly to date.

On 21 October 2013 the Government of the Republic of Moldova submitted the Action Plan for the execution of the judgments in *Becciev, Ciorap* and *Paladi* groups of cases (DH-DD(2013)1168). It proposed, *inter alia*, to improve the penitentiary legislation and detention facilities, to increase the funding for penitentiary system, to review the manner and the practices in application of remand measures in order to reduce the number of remanded persons, as well as to introduce an effective remedy for poor conditions of detention. Only few of these measures were implemented. Their impact is not visible. On the contrary, comparing to 2013, the amount of allocations for the food for detainees decreased, while the number of detainees increased. Moreover, the rate of the approved arrest requests also increased comparing to 2013.

INTRODUCTION

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

LRCM has an extensive expertise in analyzing the activity and reforming the justice sector, reporting on human rights, representation before the European Court of Human Rights (ECtHR) and monitoring of execution by Moldova of ECtHR judgments. It published two reports on the execution of ECtHR judgments

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by the Republic of Moldova, for the period 1997 to 2012¹ and 2013 to 2014².

The *Ciorap* group of cases includes 14 judgments³. These judgments concern mainly poor material conditions of detention in Penitentiary No. 13 from Chisinau and lack of effective domestic remedies regarding poor conditions of detention.

On 21 October 2013, the Government of the Republic of Moldova submitted the Action Plan for the execution of the judgments in *Becciev*, *Ciorap* and *Paladi* groups of cases (DH-DD(2013)1168).⁴ It proposed, *inter alia*, to improve the penitentiary legislation and detention facilities, to increase the funding for penitentiary system, to review the manner and the practices in application of remand measures in order to reduce the number of remanded persons, as well as to introduce an effective remedy for poor conditions of detention.

On 15 September 2015, the ECtHR indicated in the *Shishanov* case that the Moldovan authorities should, without delay, put in place an effective preventive and compensatory remedy, or a combination of remedies, concerning inadequate conditions of detention in Moldova.

This submission analyses the impact of measures taken by the Moldovan authorities to execute the *Ciorap* group of cases. It is focused on conditions of detention in Penitentiary No. 13 from Chisinau.

ECTHR FINDINGS IN CIORAP GROUP OF CASES

The ECtHR found the following main problems regarding the conditions of detention in Penitentiary No. 13:

- a) (extreme) overcrowding⁵;
- b) unsanitary conditions / hygiene⁶;
- c) insufficiency and low quantity of food⁷.

¹ Legal Resources Centre from Moldova, Execution of judgments of the European Court of Human Rights by the Republic of Moldova: 1997–2012, available in English at http://crjm.org/wp-content/uploads/2014/04/Execution_of_Judgments_of_the_ECHR_by_the_Republic_of_Moldova_1997-2012.pdf.

² Legal Resources Centre from Moldova, Execution of judgments of the European Court of Human Rights by the Republic of Moldova: 2013–2014, available in English at <http://crjm.org/wp-content/uploads/2015/09/LRCM-Report-ECTHR-31-03-2015.pdf>.

³ The *Ciorap* group of cases includes the following cases: *Ciorap*, judgment of 19/06/2007; *Arseniev*, judgment of 20/03/2012; *Ciorap No. 3*, judgment of 04/12/2012; *Constantin Modirca*, judgment of 13/11/2012; *Culev*, judgment of 17/04/2012; *Hadji*, judgment of 14/02/2012; *Haritonov*, judgment of 05/07/2011; *Holomiov*, judgment of 07/11/2006; *I.D.*, judgment of 30/11/2010; *Istratii and others*, judgment of 27/03/2007; *Meriakri*, judgment of 01/03/2005; *Mitrofan*, judgment of 15/01/2013; *Ostrovar*, judgment of 13/09/2005; *Rotaru*, judgment of 15/02/2011.

⁴ The Government's Action Plan for the execution of the judgments in *Becciev*, *Ciorap* and *Paladi* groups of cases (DH-DD(2013)1168) is available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804af1co.

⁵ *E.g.* in *Ciorap case*: occasionally 2–3 detainees for each 2m² of space; in *Arseniev case*: 1.3m² per person; in *Mitrofan case*: between 1.85 and 2.36m² per person; in *Constantin Modirca case*: between 1.51 and 2.5m² per person; in *Istratii and others case*: between 1.6 and 2.5m² per person; in *Ostrovar case*: between 1.78 and 2.02m² per person and between 1.5 and 1.93 m² per person

⁶ *E.g.* in *Ciorap case*: parasitic insects, presence of damp, lack of beds, presence of rodents, lack of proper ventilation and access to daylight; in *Mitrofan case*: mattress infested with parasitic insects.

⁷ *E.g.* in *Ciorap case*: the applicant submitted that food portion for one day consisted of 100 grams of porridge with water twice a day and a soup consisting mostly of water for lunch, with an additional 400 grams of bread for the whole day. In *Istratii and others case*: the applicant submitted that the budget reserved for detainees was EUR 0.28 a day per person or 30% minimum as estimated by the authorities. In *Rotaru case*: the authorities acknowledged that due to a lack of funding, such items as meat, fish and dairy products were provided “within the limits of available funds” and that products such as eggs, butter and milk were soon to be included on the menu

The ECtHR found that the Moldovan legislation did not authorise a court or any other administrative body examining a complaint to order the immediate improvement of a prisoner's conditions of detention, which depended on the allocation of resources from the State budget (*Mitrofan*, para 58).

CONDITIONS OF DETENTION IN PENITENTIARY No. 13

1. Findings for the last CPT Report on the visit to the Republic of Moldova (2015)⁸ (relevant excerpts)

“The delegation observed that the national standard of at least 4 m² of living space per prisoner was far from being met in most of the prisons visited; in particular at Chişinău and Soroca Prisons, the levels of overcrowding had reached disturbing proportions. Material conditions of detention in these two prisons were inadequate also in many other respects (e.g. poor, or even very poor, state of repair and hygiene; limited access to natural light; insalubrious sanitary facilities; infestation by vermin; worn-out and filthy mattresses; etc.) and, in the CPT's view, could be considered as amounting to inhuman and degrading treatment. At Chişinău Prison, the situation was further exacerbated by the impoverished regime to which remand prisoners were subjected. The Committee notes the Moldovan authorities' plans to construct a new prison near Chişinău; it recommends that, in the interim, measures be taken to bring conditions of detention in the existing prison to an acceptable level.” (*executive summary*)

“58. While there had been some improvements over the years concerning *material conditions* at Chişinău Prison – such as the partitioning of in-cell toilets in most cells and the renovation of the visiting facilities – the overall conditions of detention remained far from satisfactory. Many cells were in a poor state of repair and stuffy, and had limited access to natural light (due to the small size of the windows). Further, the state of hygiene in the cells usually left much to be desired and many of them were infested with cockroaches. Moreover, inmates often had to sleep on filthy – and sometimes bare – mattresses. The delegation also received many complaints that the cells could become very cold in the winter. In addition, in several multi-occupancy cells, the delegation saw in-cell toilets which were only partly partitioned (and partly screened by a curtain).

The situation was further aggravated by the fact that the majority of remand prisoners at Chişinău Prison were being held in very cramped conditions. The level of overcrowding observed by the delegation in a number of cells was quite simply unacceptable. For example, a cell measuring 8.2 m² (including the toilet area of some 1.5 m²) held six prisoners. Another cell holding 14 prisoners measured only some 23 m².

59. At the end of the visit, the delegation made it clear to the Moldovan authorities that such conditions of detention could be considered as amounting to inhuman and degrading treatment, all the more so when bearing in mind the often long periods of detention of persons on remand and the impoverished regime to which they were subjected (see paragraph 61). It requested the authorities to take urgent measures to reduce occupancy levels at Chişinău Prison.

⁸ The Report to the Government of the Republic of Moldova on the visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 25 September 2015, available at <http://www.cpt.coe.int/documents/mda/2016-16-inf-eng.pdf>.

In their letter of 15 January 2016, the Moldovan authorities informed the Committee that certain categories of prisoner had been sent to other prison establishments, without specifying the total number of transferred inmates or the places they were sent to. The CPT would like to receive further information in this respect.

60. The Committee understands that no further large-scale investment is planned to be made in the current establishment given the plans to construct a new prison near Chişinău (see paragraph 44). Nevertheless, pending the construction of the new prison, the CPT recommends that the Moldovan authorities step up their efforts to bring conditions of detention at Chişinău Prison to an acceptable level. In particular, measures should be taken to ensure that:

- cell occupancy rates are reduced in order to provide for at least 4 m² of living space per person in multi-occupancy cells (not counting the area taken up by in-cell toilets);
- cells are kept in an adequate state of repair and hygiene and that regular disinfestation of the premises is carried out;
- cells are adequately ventilated and heated;
- every prisoner has a clean mattress and clean bedding;
- all in-cell toilets are fully partitioned (i.e. from floor to ceiling).

61. As in the past, nearly all remand prisoners at Chişinău Prison were subject to an impoverished *regime* consisting of one to two hours of outdoor exercise per day, which was taken in small yards⁹ (some of which contained basic sports equipment such as weightlifting bars and a punching bag). Prisoners spent the rest of the day locked up in their cells, often for months or even years on end, in a state of enforced idleness. This is totally unacceptable.

62. The CPT shares the view of the prison management that it is unrealistic in the existing premises of Chişinău Prison to offer a satisfactory programme of out-of-cell activities (such as education, sports, recreation) to remand prisoners, due to a lack of appropriate facilities for organising such activities. However, in the Committee's opinion, extending the daily outdoor exercise period for remand prisoners could be usefully considered; the Committee would like to receive the Moldovan authorities' observations on this matter."

"88. In contrast to the situation observed at Rezina Prison, the regime offered to life-sentenced prisoners at *Chişinău Prison* was very impoverished; their out-of-cell time was limited to a maximum of two hours of outdoor exercise per day, which was taken in a small (some 14 m²) exercise box, strictly on a cell-by-cell basis. As was the case with the vast majority of the inmate population at Chişinău Prison, for the rest of the time life-sentenced prisoners remained in their cells in a state of total idleness, often for many months and at times even years."

"140. ...Further, at *Chişinău Prison*, several disciplinary cells located in Block 1 displayed similar deficiencies: they were in a poor state of repair and hygiene, dark (with hardly any access to natural light and dim artificial lighting), badly ventilated and too small (less than 5 m²)."

⁹ For example, some 16 m² in Block 1; some 20 m² in Block 3.

2. Ombudsman findings

In December 2014, a monitoring team of the Ombudsman office paid a monitoring visit to Penitentiary No. 13. In a report issued in February 2015¹⁰, the following problems were highlighted in respect of conditions of detention:

- a) only in 4 cells (75, 76, 99 and 105) the toilets were separated from the rest of the cells;
- b) detainees do not have access to the centralised washing space / machines, they wash and dry their clothes in their cells, which increases the levels of humidity / damp;
- c) poor conditions in many cells: mould (cells 88, 96, 108, 144, 163 –165); deteriorated walls (cells 66, 89, 102, 103); the need for urgent reparations in several cells (cells 01, 15, 23, 24A, 25, 26, 29, 30, 38, 52, 55, 56, 57, 58, 71, 115 – 123B, 125, 126, 146 – 151, 157);
- d) washbasins were missing in 60 cells;
- e) insufficient light in many cells (61–67, 73–92, 95, 98, 99, 100, 164, 165), in particular due to small windows in the cells placed in the semi-basement and lack of permanent artificial light (electricity was cut during 9:30 – 11:30 and 14:00 – 16:00);
- f) The inspection of the kitchen facilities found a series of shortcomings, including lack of required conditions for processing the different types of products, lack of detergents and hot water for washing the dishes and the kitchen.

A similar monitoring visit was paid in December 2015. The monitoring report reiterated the findings from the previous visit. The Ombudsman recommends closing down the Penitentiary No. 13 and, as a matter of priority, building a new prison. Pending construction of the new building, the conditions of detention in the Penitentiary No. 13 should be improved¹¹.

3. Recent Amnesty International – Moldova reaction

On 7 September 2016, Amnesty International – Moldova carried out a monitoring visit to Penitentiary No. 13 and found that some cells were overpopulated, the sanitary equipment was dirty and the ventilation system dysfunctional, while other cells were recently renovated on detainees' money and had fridge, TV sets, glazing windows and microwave ovens. Amnesty International – Moldova called the Government to close the Penitentiary No. 13 as it falls far below the international standards on conditions of detention¹².

4. Data provided by the Department of Penitentiary Institutions

At LRCM request, in September 2016, the Moldovan Department of Penitentiary Institutions¹³ provided information regarding the material conditions of detention in the Penitentiary No. 13. The received statistical data is presented in this section.

Overcrowding – Penitentiary No. 13 is a very old building, most of which dates back from second half of XIX century. The institution has 171 cells. The penitentiary institution includes both pre-trial and post-

¹⁰ The monitoring report is available in Romanian at: http://ombudsman.md/sites/default/files/document/attachments/raport_22_decembrie_p_13.pdf.

¹¹ The monitoring report is available in Romanian at: http://www.ombudsman.md/sites/default/files/advance_page/penitenciarul_13_decembrie_2015.pdf

¹² Press release available at <http://amnesty.md/ro/media/penitenciarul-13-inchisoarea-contrastelor/>.

¹³ Department of Penitentiary Institutions, reply to an access to information request by LRCM, 07.09.2016.

trial detainees. The overall capacity for the institution should be 700 detainees. The current number of detainees varies permanently between 1,100–1,200 detainees. Hence, the minimum of 4m² per detainee is generally not respected. In September 2016, the effective occupation rate per cell was the following:

- 3 cells = 7m² per person;
- 3 cells = 4–7m² per person;
- 14 cells = 3–4m² per person;
- 82 cells = 2–3m² per person;
- 69 cells = 1–2m² per person.

This data confirms that out of 171 cells, only in 6 (3.5%) the detainees have each more than 4m² of space. The effective space mentioned above is even lower, since the space mentioned above includes the space occupied by the lavatory and by the eating place. The problem of overcrowding remains to be extremely acute in this prison and is intensified by the increased number of pre-trial detainees, as shown below.

Low quantity and quality of food – during 2012–2016, some steps were taken to improve the kitchen equipment, such as rehabilitation of the electric boilers/kettles for cooking and the menu was changed (no further details were provided). The below table presents the data about the costs spent for the food for detainees from Penitentiary No. 13 in 2012–June 2016¹⁴.

Year	Total amount (MDL)	Amount per detainee per day (MDL)	Amount per detainee per day (EUR)
2012	5,119,800	13,17	0,93
2013	4,762,100	13,27	0,65
2014	4,813,589	11,46	0,63
2015	5,786,422	13,78	0,67
01–06.2016	3,113,241	14.84	0.67

The funds allocated for detainees' food are manifestly insufficient. It is impossible to ensure a minimal level of feeding by spending less than EUR 1 per detainee per day. Moreover, since 2012 this amount decreased from EUR 0.93 to EUR 0.67 (28%). This runs contrary to 2013 Action Plan of the Government.

5. Government's plans to build a new detention facility

The problems of Penitentiary No. 13 are acknowledged by national authorities. According to the 2013 Government's Action Plan for the execution of the judgments in Becciev, Ciorap and Paladi groups of cases (DH-DD(2013)1168), the authorities concluded an agreement with the Council of Europe Development Bank and have received a loan for construction of new prison in an amount of almost EUR 40 million. The authorities shall invest about 6 million EUR as well. New prison foresees to hold about 1,600 detainees and it will merge two acting prisons from the Chisinau region, inclusively the Prison No. 13. The construction was supposed to start in 2014. The construction of the new penitentiary institution has not started yet.

¹⁴ The data provided for 2014 and 2015 include only the annual overall amount. We have established the daily amount by dividing the total annual amount to the annual average of 1,150 detainees and 365 days.

NUMBER OF ARRESTED PERSONS

In the Prison No. 13 are detained both pre-trial and post-trial detainees. The overcrowding of this prison is determined to high extent by the high number of detainees held in preventive arrest. The preventive arrests are frequently requested by prosecutors and generously authorised by judges. The preventive arrest is rather seen as a rule than as an exception in criminal cases concerning criminal charges. The application of house arrest or bail is extremely limited.

In at least 18 judgments, ECtHR found that the orders of Moldovan judges authorizing arrests were not reasoned sufficiently. The first judgments where the Republic of Moldova was found in violation of Art. 5 para. 3 of the Convention for insufficient reasoning of arrest warrants were *Şarban* and *Becciev*, dating from October 2005. The progress made since 2005 is not impressive at all. The official data concerning arrest proceedings received by LRCM from the Department of Judicial Administration¹⁵ is presented in the below table.

Year	No. Criminal cases sent to trial court	No. Arrest requests (prolongations no included)	In relation to the No. of cases sent to trial court	Variation comparing to the previous year	Approved arrest requests	% of the approved arrest requests
2006	13,912	5,083	36.5%		4,025	79.2%
2009	9,525	3,427	36%	- 32.6%	2,878	84%
2010	9,387	3,287	35%	- 1.4%	2,814	85.6%
2011	10,088	3,306	32.8%	+ 0.6%	2,674	80.9%
2012	11,720	3,342	28.5%	+1.1%	2,682	80.3%
2013	9,797	2,672	27.3%	-20%	2,059	77.1%
2014	14,586	2,876	19.7%	+8.0%	2,378	82.7%
2015	14,402	3,147	21.9%	+9.4%	2,584	82.1%
01-06.2016	Data N.A.	1,674		+9.4%	1,386	81.8%

The official statistical data confirms that since 2013, when the action plan was presented by the Government, the number of arrest requests and of the arrested persons increased by 20-25%. The rate of the approved requests also increased from 77.1% to 81.8%. In fact, since 2009, the number of arrested persons did not change substantially. This confirms that the Moldovan authorities use insufficiently the alternatives to prison detention.

EFFECTIVE REMEDY FOR POOR CONDITIONS OF DETENTION

According to the Government's Action Plan for the execution of the judgments in *Becciev*, *Ciorap* and *Paladi* groups of cases (DH-DD(2013)1168), the Government was supposed to carry out an assessment regarding the possibility of introducing remedies dealing with conditions of detention. According to the

¹⁵ The data about the No. of criminal cases sent to the trial court was taken from the activity report of the General Prosecution Office, available in Romanian at: <http://procuratura.md/md/d2004/>

respective plan, the remedies must address two main issues (i) concerning compensatory aspects and (ii) measures that would improve or put at end inhuman conditions of detentions of a detainee.

On 6 July 2016, the Government has approved a draft law. It amends the Criminal Procedure Code, providing for a mechanism that would both put an end to the inhuman conditions of detention and, if requested, provide compensation for such conditions. The detainee will be able to address such a complaint to the investigative judge, who will be able to ask the penitentiary institution to remedy the situation in 15 days, provide compensation or reduce the term of imprisonment. The impact is this initiative will be however limited, as most of the detainees from Chisinau are detained in overcrowded cells and no alternative detention facilities to Penitentiary No. 13 are currently available in the city. The reduction of the number of detainees from one cell will automatically mean that other cells will be even more agglomerated, as the number of detainees did not change in the recent periods. On the other hand, it is only a draft law adopted by the Government, which was not adopted by the Parliament and does not generate yet any legal effects.

RECOMMENDATIONS

In light of the continuously problematic situation of the Penitentiary No. 13, in addition to the recommendations from the 2015 CPT report on the visit to Moldova, we call the Moldovan authorities to undertake the following:

1. As a matter of top priority, build a new prison in Chisinau to replace Penitentiary No. 13;
2. Until the construction of Penitentiary No. 13 is finished, take measures to reduce the overcrowding in this penitentiary. This can be done through extension of practice of application of non-custodial measures and transfer of convicted detainees from Penitentiary No. 13 to other prisons;
3. Increase substantially the funds allocated for detainees' food;
4. Set up an effective restorative and compensatory domestic remedy for poor conditions of detention.


In the light of the above, LRCM urges the Committee of Ministers to maintain the *Ciorap* group of cases under enhanced supervision.




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