

SUBMISSION

in accordance with Rule 9.2 of the Rules of the Committee of Ministers
on *Corsacov v. Moldova* group of cases (ineffective investigations of ill-treatment)

Chișinău, 21 November 2016

EXECUTIVE SUMMARY

The European Court of Human Rights (ECtHR) found that the Moldovan authorities failed to carry out effective investigations of ill-treatment and deaths in more than 45 cases. This submission analyses the measures taken by the Moldovan authorities to execute the *Corsacov* group of cases. The *Corsacov* group of cases mainly concern ill-treatment and the authorities' failure to carry out effective investigations of ill-treatment and deaths. This document covers only the general measures taken by the Moldovan authorities to comply with the procedural obligation under Articles 2 and 3 of the Convention. It focuses to a lesser extent on the achievements and analyses in detail the remaining problematic aspects for full execution of the respective group of cases.

In June 2014, the Government of the Republic of Moldova submitted an Action Plan for the execution of the judgments in *Corsacov* group of cases (DH-DD(2014)836). It proposed, *inter alia*, to remove the general causes and incentives leading to ill-treatment; adopt legislation avoiding impunity; enhance investigation capacities in cases of ill-treatment; improve remedies and compensations of the victims and raise awareness and non-tolerance of ill-treatment. Only some of these measures have been implemented or adequately implemented.

LRCM calls on the Committee of Ministers to maintain the *Corsacov* group of cases under enhanced supervision. We also believe that the following steps should be taken by the Moldovan authorities to ensure that ill-treatment is effectively prevented in Moldova:

1. The prosecutors shall improve the quality of investigations into the allegations of ill-treatment. These cases shall be treated by the prosecutors with utmost priority;
2. Investigation of ill-treatment allegations shall be conducted within opened criminal investigations. The dismissal of a case based on summary verification procedure provided by Article 274 of the Criminal Procedure Code shall take place only in manifestly ill-founded cases. In case of doubt, a criminal investigation shall be opened;
3. The Articles 58 para. 5¹, 60 para. 1¹ and 143 para. 1 p. 3¹ of the Criminal Procedure Code shall be amended to exclude the mandatory requirement for psychiatric examination of all victims of ill-treatment. Article 147 para. 1¹ of the Criminal Procedure Code shall be adjusted, to exclude the mandatory expert conclusion requirement for all torture cases. Psychological or psychiatric examination shall be complimentary and not mandatory for investigation of ill-treatment, on case by case basis;
4. The prosecutors shall be trained how to ensure an adequate involvement of the victims of ill-treatment in the criminal investigation. The Criminal Procedure Code shall be also amended (including Article 212), requesting prosecutors to inform periodically the victims about the

evolution of the criminal investigation and provide the right to the victim to have access to information about the development of the criminal investigation;

5. Article 166¹ para. 1 of the Criminal Code shall be amended limiting or excluding the possibility of sanctioning the inhuman and degrading treatment with a fine. The fine shall be applied as a cumulative sanction to imprisonment.

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

The *Corsacov* group of cases includes 26 judgments³. These judgments concern mainly ill-treatment⁴ in police custody, including with a view to extracting confessions, lack of effective investigations in this respect and lack of an effective remedy. Two cases also concern the violations of the right to life while in police custody and ineffective investigation in this respect.

On 19 June 2014, the Government of the Republic of Moldova submitted the Action Plan for the execution of the judgments in *Corsacov* groups of cases (DH-DD(2014)836).⁵ The Government undertook to remove the general causes and incentives leading to ill-treatment; adopt legislation avoiding impunity; enhance investigation capacities in cases of ill-treatment; improve the remedies and compensations of the victims; and raise awareness and non-tolerance for ill-treatment.

This submission analyses some of the measures taken by the Moldovan authorities to execute the *Corsacov* group of cases. It is focused on efficiency of criminal investigations carried out by prosecutors and on legislative gaps. The statistical data presented in the submission are the publicly available official data or the data presented to LRCM by the Prosecutor General's Office at our request in the context of elaboration of this submission. More detailed statistical data are available upon request.

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 *Corsacov* group of cases includes the following cases: *Corsacov* 18944/02, *Pruneanu* 6888/03, *Colibaba* 29089/06, *Levința* 17332/03, *Breabin* 12544/08, *Gurgurov* 7045/08, *Buzilov* 28653/05, *Valeriu and Nicolae Roșca* 41704/02, *Padureț* 33134/03, *Popa* 29772/05, *Matasaru and Savițchi* 38281/08, *I.D.* 47203/06, *Lipencov* 27763/05, *Bișir and Tuluș* 42973/05, *Ipate* 23750/07, *Taraburca* 18919/10, *Pascari* 53710/09, *Buzilo* 52643/07, *Ghimp and others* 32520/09, *Struc* 40131/09, *Gasnov* 39441/09, *Ipate* 55408/07, *Eduard Popa* 17008/07, *Iurcu* 33759/10, *Feodorov* 42434/06, *Buhaniuc* 56074/10.

⁴ In the current submission the term ill-treatment includes inhuman and degrading treatment and torture.

⁵ The Government's Action Plan for the execution of the judgments in *Corsacov* group of cases (DH-DD(2014)836) is available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804b23e1>.

ECtHR FINDINGS IN CORSACOV GROUP OF CASES

The ECtHR found the following main problems regarding ill-treatment and torture in police custody and ineffective investigations:

- a) lack of independence of the prosecutor dealing with the case (*Boicenco, Gurgurov*);
- b) failure to hear a witness who could confirm the ill-treatment (*Breabin*);
- c) failure to take proper account of medical reports regarding the ill-treatment (*Buzilov, Corsacov and Colibaba*);
- d) prosecutors' decisions were made solely on the basis of the statements of the police officers accused of ill-treatment with no regard to those of the applicants (*Buzilov and Pruneanu*);
- e) the authorities one-sided investigation of one version of events, without proper consideration of the applicant's submissions (*Eduard Popa*);
- f) no proper and official criminal investigation was promptly initiated and the existence of so-called preliminary inquiry of the applicants' complaints before the official initiation of criminal investigation (*Matasaru and Savitchi*);
- g) insufficient involvement of the victims in the investigation of ill-treatment or death (*Pădureț, Iorga, Anușca and Mătășaru and Savițchi*);
- h) impunity and the lack of preventive effect of the legislation prohibiting torture due to authorities' failure to apply to the perpetrators the sanctions corresponding to gravity of torture (*Valeriu and Nicolae Rosca, Pădureț*).

FINDINGS OF THE LAST CPT REPORT ON THE VISIT TO THE REPUBLIC OF MOLDOVA (2015)⁶ AND STATISTICS ON ILL-TREATMENT COMPLAINTS

“(Executive summary) The information gathered during the 2015 visit indicated that the situation as regards the treatment of persons detained by the police in the Republic of Moldova had improved since the CPT's previous visit in 2011. The great majority of persons interviewed by the delegation who were, or had recently been, detained by the police stated that they had been treated correctly whilst in custody. The delegation's discussions with various other interlocutors, such as non-governmental organizations and the Office of the Ombudsman, tended to confirm that there had been a decrease in recent times in the frequency and severity of alleged instances of police ill-treatment. It is also praiseworthy that no allegations of ill-treatment were received in respect of staff performing custodial duties in police temporary detention isolators.

However, the delegation did receive a number of allegations from detained persons of excessive use of force by the police at the time of apprehension, after the person concerned had been brought under control. Several allegations were also heard of physical ill-treatment during preliminary questioning by operational officers, in order to extract a confession. The alleged ill-treatment consisted essentially of slaps, punches and kicks, and in a few cases was of a severe nature (e.g. manual strangulation, severe beating, etc.).”

“20. The Committee acknowledges the progress made by the Moldovan authorities in recent years in combating torture and other forms of ill-treatment by the police. However, the picture which emerges from the information gathered by the CPT's delegation is not entirely reassuring. Additional vigorous action is still required to stamp out ill-treatment by the police, which often appears to be related to an overemphasis on confessions during criminal investigations. In this connection, careful selection at the

⁶ 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>.

recruitment stage, as well as appropriate training (both initial and ongoing) of police officers, is essential.

The Committee recommends that the Moldovan authorities redouble their efforts to combat ill-treatment by the police, in the light of the above remarks. In particular, all police officers should be reminded, at regular intervals, that all forms of ill-treatment (including verbal abuse) of detained persons are illegal and will be punished accordingly. Further, it should be made clear that the force used by police officers when performing their duties should be no more than is strictly necessary and that, once persons have been brought under control, there can be no justification for striking them.

21. As stressed in previous visit reports, it is axiomatic that the imposition of appropriate sanctions on those responsible for ill-treatment will have a highly dissuasive effect upon police officers who might otherwise be minded to ill-treat detained persons. In this context, it is striking that, according to the information provided by the Moldovan authorities by letter of 15 January 2016, no criminal proceedings were initiated against police officers for offences related to ill-treatment of persons in their custody during the period 2013 to 2015. Having said that, no reference is made in the letter to any disciplinary proceedings launched, nor to the number of complaints of ill-treatment lodged...”

The data from the annual reports of the General Prosecutor’s Office of the Republic of Moldova confirm that in majority of persons are claiming that ill-treatment is applied frequently in police facilities. In 2015, in 57 out of 633 complaints (9%), persons claimed that ill treatment was applied in penitentiary institutions and in 209 of complaints (33%) - in police facilities. In 533 complaints (84%), it was claimed that ill treatment was applied by police (criminal investigators, National Patrol Inspectorate, border police, Department Carabineer Troops, etc.). In 2014, in 102 out of 663 complaints (15%), persons claimed ill treatment was applied in penitentiary institutions and in 228 of complaints (35%) - in police facilities. For 2013 and 2012 the rate of complaints regarding ill treatment in police facilities was higher – 40% and 53%, respectively.

Year	Number of complaints by the place of committing the crime									Total number of complaints
	In penitentiary institution	In temporary detention isolator (TDI)	In police inspectorates (outside of the TDI)	In police units or other service places	In psychiatric institutions	In military units	At the domicile of the victim or whistle-blower	In the street or other public place	Other places	
2012	126	73	326	116	0	41	54	234	0	970
2013	102	26	195	68	3	36	42	237	10	719
2014	102	18	152	58	6	34	36	255	2	663
2015	57	21	126	62	7	36	45	273	6	633

These data show that although the number of complaints decreased from 970 in 2012 to 633 in 2015, the rate of complaints regarding ill-treatment in police facilities is still high. The Ministry of Interior Affairs (MIA) has to put more efforts to eradicate ill-treatment in subordinated institutions.

EFFECTIVE INVESTIGATION OF ILL-TREATMENT AND DEATHS

a. Thoroughness

Thoroughness of investigation was criticized in more than 45 judgments where ECtHR found violation by Moldova of Art. 2 or 3 of ECHR. 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 based exclusively on the statements of the police officers, while 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* several eye-witnesses were not 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 identification parade and confrontation were not carried out, despite the fact that the applicants declared that they could identify the perpetrators, while in the case of *Petru Roșca*, even though the investigative judge quashed an earlier order of the prosecutor, subsequently, the prosecutor issued a similar order without eliminating the deficiencies mentioned by the judge. Deficiencies mentioned above could disclose insufficient professionalism of the prosecutors.

All cases of ill-treatment in the Republic of Moldova are investigated by the prosecutors and not by the police. In 2014, prosecutors received 663 complaints on ill-treatment and initiated 118 criminal investigations (18% of the received complaints). In 2015, prosecutors received 633 complaints on ill-treatment and initiated 113 criminal investigations concerning ill-treatment (also 18% of the received complaints). The rate of opened criminal investigations shall be further analyzed in the context of the number of cases that reach the court. In 2014, prosecutors submitted to courts 46 cases concerning torture and ill-treatment, which represent 6.9% of the received complaints and 39% of criminal investigations initiated in 2014. In 2015, prosecutors submitted to courts 38 cases, which represent 6% of the received complaints and 34% of criminal investigations initiated in 2015. Hence, on average, less than 7% of received complaints on ill-treatment reach the court. This indicator did not change substantially since 2010, when 828 complaints were received and 65 cases (7.8%) were sent to trial court. Since 2010 the national authorities took several measures to fight ill-treatment and claim that substantive improvements took place. This indicator confirms that the rate of ill-treatment complaints that reach the court did not change, suggesting that the measures undertaken by the national authorities did not in fact lead to substantive changes.

Data for 2014-2016 (see the below table) show that ***the percentage of opened criminal investigations on allegations of torture and ill-treatment is below 20%***. This rate is comparable to 2009-2014.⁷ The low rate of opened criminal investigations demonstrates the prosecutors' reluctance to initiate criminal investigations into ill-treatment complaints. ECtHR was frequently criticizing Moldovan prosecutors for the refusal to open criminal investigations into the meritorious ill-treatment cases. The statistical data confirm that no substantial changes comparing to 2009 took place in practice, despite the fact that the first Moldovan conviction at ECtHR for insufficient investigation of ill-treatment took place back in 2005, 11 year ago.

Official statistical data about the ill-treatment cases⁸

⁷ See also for details Legal Resources Centre from Moldova, Execution of judgments of the European Court of Human Rights by the Republic of Moldova: 2013-2014, p. 58, available in English at <http://crjm.org/wp-content/uploads/2015/09/LRCM-Report-ECtHR-31-03-2015.pdf>.

⁸ The table is based on data published by the PGO and on the data presented to LRCM by PGO

Year	Number of complaints	Initiated criminal investigations	% of initiated criminal investigators compared to the total number of received complaints	Number of cases submitted to the court	% of cases sent to court compared to the total number of initiated criminal investigations
2009	992	159	16%	36	22%
2010	828	126	15%	65	52%
2011	958	108	11%	36	33%
2012	970	140	14%	46	33%
2013	719	157	22%	49	31%
2014	663	118	18%	46	39%
2015	633	113	18%	38	34%
01-06.2016	319	63	20%	17	27%

Criminal Procedure Code (CrPC) provides that criminal investigation is initiated based on an order issued by the criminal investigation body. ***In more than 80% of cases ill-treatment complaints are dismissed without a criminal investigation being officially opened, based on a summary verification conducted under Article 274 of the Criminal Procedure Code (CrPC).*** According to a well-established practice, prosecutors are initially verifying the circumstances of the case in detail and, if convinced that the case is well-founded, open the criminal investigation. It is understandable that some complaints can be *prima facie* ill-founded. However, it is highly unlikely that this represents more than 80% of the ill-treatment complaints.

In *Răilean* and *Mătășaru and Savițchi* judgments ECtHR found that examination of serious cases of ill-treatment in accordance with Art. 274 CrPC was contrary to Articles 2 and 3 of the Convention, because in these investigations the prosecutors could not use the full range of investigation actions. The Law no. 66, in force since 27 October 2012, amended the CrPC and extended procedural actions that can be carried out within the investigations conducted under Art. 274 CrPC. According to these changes, all procedural actions can be carried out before the order for initiating criminal investigation is issued, except for those which require the authorization of the investigating judge⁹.

On 23 April 2013, the Supreme Court of Justice (SCJ) issued a recommendation, suggesting that an expert conclusion cannot be called before criminal investigation is initiated. Most of ill-treatment cases cannot be effectively investigated without an expert conclusion, which is the key evidence in ill-treatment cases. Accordingly, in most of cases the ill-treatment complaints are dismissed by the Moldovan prosecutors without being entitled under law to obtain key evidence for deciding on an ill-treatment case. The practice of examination of ill-treatment cases under Art. 274 CrPC should be reviewed, limiting this practice only to manifestly ill-founded cases. In case of doubt about the merits of the complaint, a criminal case should be opened to clarify all the aspects of the case.

Even if the criminal investigation is initiated, the procedure of carrying out ***expert examination*** is questionable. According to Art. 143 para. (1) p. 3¹ and Art. 147 para. (1¹) CrPC, an expert examination must be ordered and conducted to establish the „physical and mental condition of the person against whom there are allegations of committing acts of torture, inhuman or degrading treatment”. Prosecutors interpret these norms as imposing an obligation to determine the mental condition of the victim in any case concerning ill-treatment. This interpretation is also supported by the language of Art. 58 para. 5¹ and 60 para. 1¹ CrPC. The determination of the mental condition is carried out during examination in psychiatric institutions, which are generally perceived in the society as centres where

⁹ Phone tapping or searches should be authorized in the Republic of Moldova by the investigative judge.

political dissidents were held in the soviet times. Many victims refuse to go to psychiatric institutions for examination. As a result, the criminal investigation cannot be finalized and cases cannot be sent to court. The obligation of victim of ill-treatment to be examined by a psychiatrist is questionable in itself. There is no sense to have such an examination when the injuries are self-evident or when there are other sufficient evidence to confirm the application of ill-treatment. Art. 58 para. 5¹, 60 para. 1¹, Art. 143 para. (1) p. 3¹ and Art. 147 para. (1¹) CrPC should be reviewed.

Despite considerable efforts of the General Prosecutor's Office, the quality of prosecutors' orders remains poor. Deficiencies mentioned in the ECtHR judgments are generally common for many recent investigations. Often the impression is that the prosecutors cannot sufficiently reason or deliberately do not take any effort to motivate their decisions. For that reason, many orders of the prosecutors are subsequently annulled by investigative judges. Thus, according to the Annual statistical report for 2014 prepared by the Department of Judicial Administration, in 2014 3,558 complaints against actions of the prosecutors were lodged to the investigative judges. 686 (19%) out of them were lodged by the injured party. 1,105 of the total number of examined complaints (31%) were admitted.

b. Promptness

Neither judges nor prosecutors treat cases of ill-treatment with priority. The length of the criminal investigation and trial continues to be problematic. Many serious ill-treatment cases are investigated or examined by courts for years. In 2012 – 2015, the trial courts discontinued criminal cases in respect of 40 persons (see the table with data concerning the decisions of the first instance court, page 9 of the submission). This represents 14.8% of all persons accused of ill-treatment. The main reason for discontinuance of the case by the court is the expiration of the statutory time limitation for application of the penal sanction¹⁰. The time-limitation varies depending on the seriousness of criminal charges but is not less than 5 years. This implicitly confirms that criminal investigation and first instance trials in respect of 14.8% of persons accused of ill-treatment lasted for more than 5 years. Moreover, at least four ill-treatment criminal investigations reopened following the ECtHR procedures continued after re-opening for more than four years¹¹. Such delays are not typical for the legal system of the Republic of Moldova. According to official statistics, 85% of first instance trial cases are examined in less than 12 months.

c. Involvement of victim in the investigation

In several judgments, ECtHR found that victims were not sufficiently involved in the investigation process. Thus, in cases *Pădureț, Iorga, Anușca* and *Mătășaru and Savițchi*, the applicants were not informed about the developments in the criminal investigation and in the case *Anușca*, information about discontinuation of the criminal investigation was passed with a one month delay. In the case of *Mătășaru and Savițchi*, the prosecutor did not inform the applicant about ordering an expert's opinion and about charging the suspects and subsequent revocation of charges and refused to provide access to some materials of the criminal investigation, including those prepared with the involvement of the applicant.

¹⁰ As stated below, the Law no. 252, in force from 21 December 2012, provides that this time-limitation is not applicable to torture and inhuman and degrading treatment acts. However, the Moldovan judges and prosecutor do not apply this norm retroactively to acts committed before 21 December 2012. Accordingly, in respect of these acts the case can be discontinued for the reason that the statutory time limitation expired.

¹¹ See 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>, pages 40-45.

Lack of proper involvement of the victims in the investigation of cases is due to the existing legal provisions or restrictive interpretation of the legislation by 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 investigation¹². Disclosure of this information by the criminal investigation body represents a crime provided by Art. 315 of the Criminal Code and is punished with up to three years of imprisonment. In the interviews conducted by LRCM, the prosecutors declared that Art. 212 of CrPC does not allow them to periodically inform the victims about the developments in the criminal investigation. CrPC does not provide the right of the victim to request information about the developments in the criminal investigation. Thus, CrPC shall be amended in order to comply with the ECtHR standards and prosecutors should be trained regarding the involvement of victims in the investigation of ill-treatment cases.

SANCTIONS FOR ILL-TREATMENT

In the judgments *Valeriu and Nicolae Roșca* (§§ 71-75) and *Pădureț* (§§ 70-77), the ECtHR found that the failure to apply sanctions or application of too lenient sanctions for torture was contrary to the obligation to prevent ill-treatment. 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 the judges did not refer at all to evident aggravated circumstances. The qualification of the acts as excess of power instead of torture was also criticized. The case of *Pădureț* refers non-application of the sanction for torture due to the expiration of the time limitation provided by law. In those cases, suspension from office was also not applied.

Until December 2012, the Criminal Code of the Republic of Moldova had concurrent provisions concerning incrimination of ill-treatment. Some cases concerning ill-treatment were qualified as excess of official authority (Art. 328 of the Criminal Code) and not as acts of torture (Art. 309¹ Criminal Code). The Criminal Code was amended by the Law no. 252, in force since 21 December 2012 and this problem is non-existent. As a result, inhuman and degrading treatment and torture are incriminated by one single article - Art. 166¹ of the Criminal Code. Inhuman and degrading treatment (Art. 166¹ para. 1 and 2) shall be punished by imprisonment of 2 to 8 years or with a fine, in both cases with the deprivation of the right to hold certain positions or to practice a certain activity for 3 to 10 years. The torture (Art. 166¹ para. 3 and 4) shall be punished with imprisonment of 6 to 15 years with the deprivation of the right to hold certain positions or to practice a certain activity for 8 to 15 years. Law no. 252 also provides that the statute of time limitation does not apply to acts of torture or inhuman and degrading treatment.

The Law no. 252 made it impossible to apply Art. 90 of the Criminal Code (suspended imprisonment) for acts of torture¹³, which is an adequate provision to prevent ill-treatment. However, in case of inhuman and degrading treatment the person may be sanctioned either with imprisonment for 2 to 8 years or with a fine. Applying a fine for inhuman or degrading treatment may often constitute a too lenient sanction. Moreover, due to the fact that inhuman and degrading treatment can be sanctioned

¹² This interdiction does not extend to the access to documents drafted with participation of the person.

¹³ The Criminal Code does not allow the suspension of imprisonment sanctions exceeding five years. Art. 166¹ par. 3 of the Criminal Code provides that the minimum sanction that can be applied for torture represent six years imprisonment.

with imprisonment of less than 5 years, the judge can suspend this the imprisonment (art. 90 of the Criminal Code).

In conclusion, the Government improved significantly the legislation to exclude any legal interpretation as to ensure adequate punishment of ill-treatment. Still, the Parliament shall amend Art. 166¹ para 1 of the Criminal Code to ensure that the inhuman and degrading treatment is not sanctioned with a fine. The initial version of the Law no. 252 provided that the fine shall be a cumulative sanction to suspended imprisonment. This aspect is particularly important bearing in mind that, often, it is hard to make a clear distinction between torture and inhuman and degrading treatment, while in practice Moldovan prosecutors are rather inclined to qualify the ill-treatment as inhuman and degrading treatment rather than as torture. In 2014, out of 118 initiated criminal investigations, 73 cases were qualified as inhuman and degrading treatment and 18 cases as torture. In 2015, out of 113 initiated criminal investigations on allegations of torture and ill-treatment, 72 cases were qualified as inhuman and degrading treatment and only 10 cases as torture.

Qualification of the opened criminal investigations concerning ill-treatment

Year	Initiated criminal investigations on allegations of torture and ill-treatment	Qualifications of the crime by prosecution service				
		1	2	3	4	5
		Art.309 (Coercion to testify)	Art.166 ¹ para. 1-2 (inhuman and degrading treatment)	Art. 166 ¹ para. 3- 4; (Torture)	Art.368 (Acts of violence against a serviceperson)	Art.370 (Abuse of power, excess of power)
2009	159	1	97	40	1	20
2010	126	0	54	46	2	24
2011	108	0	58	28	19	3
2012	140	1	55	54	27	3
2013	157	2	86	37	32	0
2014	118	0	73	18	27	0
2015	113	0	72	10	31	0

In 2014 and 2015 the Moldovan courts delivered a similar number of judgments on ill-treatment charges - 43. The 43 judgments delivered in 2014 concerned 62 accused persons. 46 of them were convicted, 10 acquitted and in respect of 6 the case was discontinued. The 2015 judgments concerned 63 accused persons. 13 of them have been acquitted, 49 convicted and in respect of one person the criminal investigation was discontinued. The acquittal rate in ill-treatment cases (16% in 2014 and 27% in 2015) is particularly high, bearing in mind the average acquittal rate in Moldova of 2%-2.5%. This data suggest that either the criminal investigations into the allegations of ill-treatment were poor or the judges are still hesitant to convict for ill-treatment. It should be however noted that the acquittal rate in ill-treatment cases in 2014 and 2015 was lower than in 2012 or 2013.

Decisions of the first-instance courts on ill-treatment cases

Year	Delivered judgements	TOTAL (persons)	Convictions			Discontinued criminal cases (persons)	Acquittals (persons)
			Imprisonment	Suspended imprisonment	Fine		
2012	35	60	2	28	3	11	16
2013	49	86	2	28	11	22	23
2014	43	62	14	27	5	6	10
2015	43	63	9	29	11	1	13

RECOMMENDATIONS

We are convinced that the Moldovan authorities shall take the following steps to effectively prevent ill-treatment in Moldova:

1. The prosecutors shall improve the quality of investigations into the allegations of ill-treatment. These cases shall be treated by the prosecutors with utmost priority;
2. Investigation of ill-treatment allegations shall be conducted within opened criminal investigations. The dismissal of a case based on summary verification procedure provided by Article 274 of the Criminal Procedure Code shall take place only in manifestly ill-founded cases. In case of doubt, a criminal investigation shall be opened;
3. The Articles 58 para. 5¹, 60 para. 1¹ and 143 para. 1 p. 3¹ of the Criminal Procedure Code shall be amended to exclude the mandatory requirement for psychiatric examination of all victims of ill-treatment. Article 147 para. 1¹ of the Criminal Procedure Code shall be adjusted, to exclude the mandatory expert conclusion requirement for all torture cases. Psychological or psychiatric examination shall be complimentary and not mandatory for investigation of ill-treatment, on case by case basis;
4. The prosecutors shall be trained how to ensure an adequate involvement of the victims of ill-treatment in the criminal investigation. The Criminal Procedure Code shall be also amended (including Article 212), requesting prosecutors to inform periodically the victims about the evolution of the criminal investigation and provide the right to the victim to have access to information about the development of the criminal investigation;
5. Article 166¹ para. 1 of the Criminal Code shall be amended limiting or excluding the possibility of sanctioning the inhuman and degrading treatment with a fine. The fine shall be applied as a cumulative sanction to imprisonment.

In the light of the aspects presented in this paper, the LRCM calls on the Committee of Ministers to maintain the *Corsacov* group of cases under enhanced supervision.