

To the Department for Execution of Judgments of the
European Court of Human Rights,
Committee of Ministers of the Council of Europe

Chişinău, 19 February 2018

COMMUNICATION

in accordance with Rule 9.2 of the Rules of the Committee of Ministers for the supervision
of the execution of judgments and of the terms of friendly settlements

CIORAP v. MOLDOVA group of cases (conditions of detention)

INTRODUCTION

This submission is aimed at providing alternative information to the Committee of Ministers of the Council of Europe about the general measures taken for execution of the [Ciorap group of cases](#). It is prepared by the [Legal Resources Centre from Moldova](#) (LRCM), a not-for profit non-governmental organization based in Chişinău, Republic of Moldova¹. In 2016, the LRCM made [a similar submission on Ciorap group of cases](#).

The *Ciorap* group of cases mainly concern poor conditions of detention in the Prison No. 13 from Chisinau and lack of effective domestic remedies in this respect. On 21 October 2013 the Government of the Republic of Moldova submitted an [action plan for the execution of the judgments in Becciev, Ciorap and Paladi groups of cases](#). It proposed, *inter alia*:

- a. to improve the penitentiary legislation and detention facilities;
- b. to increase the funding for penitentiary system;
- c. to review the manner and the practices in application of remand in order to reduce the number of remanded persons; as well as,
- d. to introduce an effective remedy for poor conditions of detention.

On 11 January 2018, the Government of the Republic of Moldova submitted a [revised Action Plan](#) for the execution of these judgments. In respect of general measures, it mainly refers to a compensatory remedy that became available on 20 December 2017. The Action Report was presented 3 weeks later and, for obvious reasons, it does not contain information about the impact of this remedy. The Government admitted that the overcrowding of the Prison No. 13 is still a problem, as well as the “massive granting of prosecutors’ motions for pre-trial detention”.

¹ LRCM has extensive expertise in human rights reporting, representation before the European Court of Human Rights (ECtHR) and monitoring of execution by Moldova of ECtHR judgments. It published reports on the execution of ECtHR judgments by the Republic of Moldova, for the period [1997 to 2012](#) and [2013 to 2014](#).

The submission is exclusively focused on material conditions of detention in the Prison No. 13, as well as on the domestic remedy introduced for detention in poor conditions. It also assesses to what extent the Moldovan Government complied with the undertakings from the action plans and the impact of the measures taken by the Government. It uses the official data presented to LRCM in February 2018 [by the Moldovan Penitentiary Department](#) and by the [Moldovan Agency of Administration of Courts](#). The submission is presented only on 19 February 2018 as the last action plan of the Government was published on 12 January 2018, while the official statistical data became available to LRCM in mid-February 2018.

MATERIAL CONDITIONS OF DETENTION IN THE PRISON NO. 13

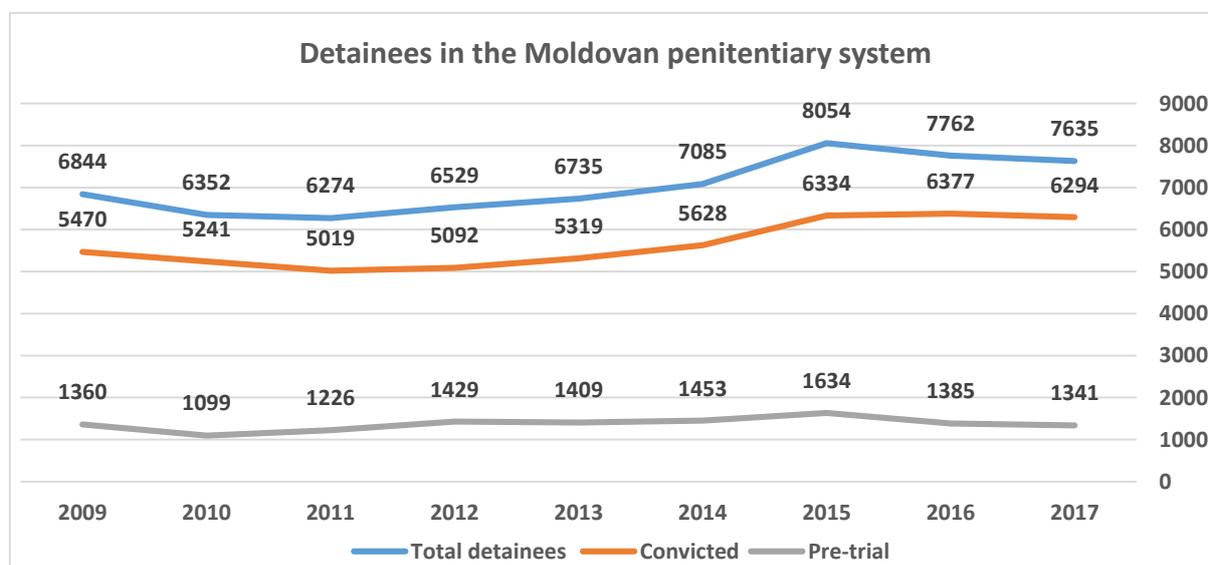
In the *Ciorap* group of cases, the ECtHR found the following main problems regarding the conditions of detention in the Prison No. 13:

- a) (extreme) overcrowding;
- b) unsanitary conditions / hygiene;
- c) insufficiency and low quantity of food.

a) Overcrowding

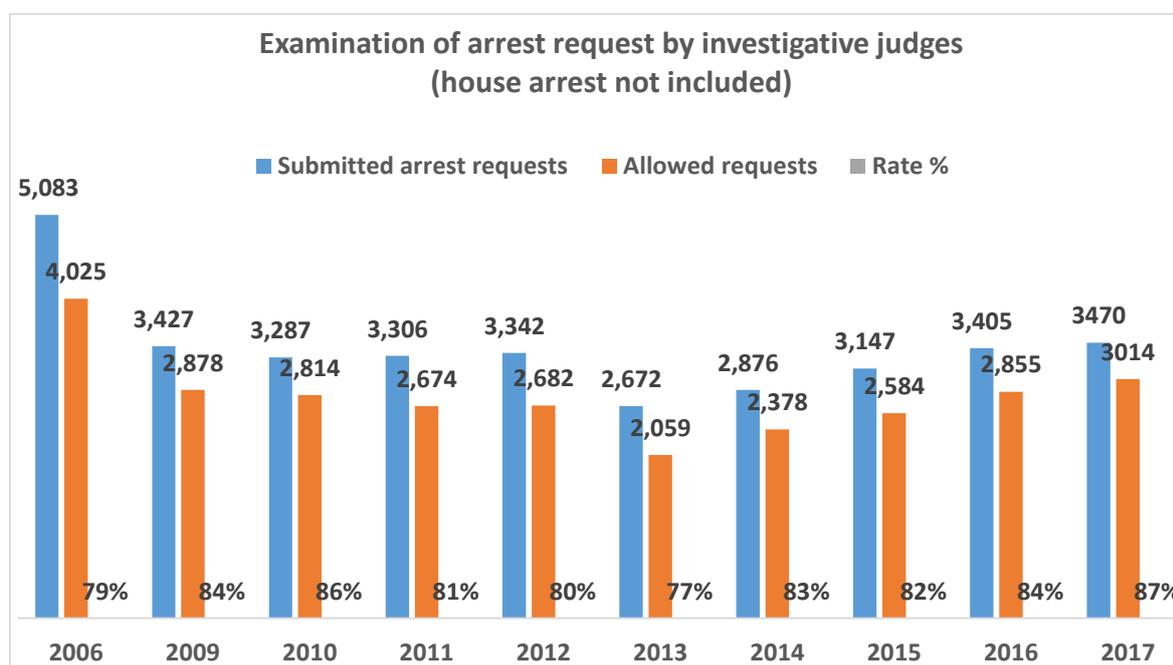
The Prison No. 13 is situated in a XIX century building. It has 171 cells. The total space of the cells is 2,521 m², including the dining space and the space of the lavatories. The [Moldovan authorities consider](#) that the maximum capacity of the Prison No. 13 is 1,000 detainees, i.e. they allocate 2.5 m² per detainee. The CPT standard is 4 m² per detainee, which does not include the lavatories and the space used for dining. In other words, the Moldovan authorities, ab initio, when establishing the capacity of the Prison No. 13, create preconditions for severe overcrowding. The real situation is even more serious. In the Prison No. 13 are always detained more than 1,000 detainees. For instance, on 31 December 2016, there were 1,029 detainees in it and 1,069 on 31 December 2017.

By its 2013 action plan, the Government undertook to reduce the number of the remanded persons and, implicitly, the prison population. The official statistics (see the next table) proves the contrary. The prison population in Moldova increased from 6,735 in December 2013 to 7,635 (+ 13.4%) in December 2017.



More than 15% of the prison population are the persons arrested pending trial. Most of pre-trial detainees are detained in the Prison No. 13. Thus, as of 31 December 2017, out of 1,069 persons detained in that prison, 826 (77%) were pre-trial detainees. In fact, the reluctance of judges and prosecutors to apply non-privative measures pending trial is the main reason of overcrowding of the Prison No. 13.

By the 2013 Action Plan, the Government undertook to reduce the number of remanded persons. In the next figure are presented the official statistical data concerning the arrest procedures. It confirms that the number of the prosecutors' arrest requests increased by 30% since 2013. Thus, the prosecutors lodged 2,672 arrest requests in 2013 and 3,470 in 2017, with a permanent increase trend since 2013. The rate of arrests authorized by judges also increased, from 77% in 2013 to 87% in 2017. In fact, the systemic problem of excessive use of arrest in Moldova is being discussed by the Committee of Ministers for more than 12 years in the context of *Sarban* group of cases.



In [the last published Report on the visit to the Republic of Moldova \(2015\)](#), the CPT noted 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 (Prison No. 13) and Soroca Prisons, the levels of overcrowding reaching disturbing proportions. It requested the authorities to take urgent measures to reduce occupancy levels at Chişinău Prison (see paragraph 59). The above data suggest that no substantial changes occurred following the 2015 CPT Report.

b) Unsanitary conditions / hygiene

In [the last published Report on the visit to the Republic of Moldova \(2015\)](#), the CPT observed that the material conditions of detention at the Prison No. 13 were inadequate 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.).

We are not aware of any important measure, and the Government also did not mention any, that would improve the sanitary conditions/hygiene in the Prison No. 13. In May 2017, the Ombudsman paid a monitoring visit to the Prison No. 13. [The report issued in July 2017](#) (in Romanian), mentions

inter alia that the detainees do not have sanitation / laundry / linen cleaning services, while the problem of poor hygiene persists. It appears that all the governmental efforts were directed towards building a new Prison in Chisinau. However, the construction will last at least other 3-4 years. In this period, the detainees cannot be kept in inhuman conditions.

c) insufficiency and low quantity of food

The July 2017 Ombudsman report mentioned above notes that in May 2017 the food for detainees in the Prison No. 13 was of a poor quality. The fact that the situation on this head did not improve is also confirmed by the official statistics on costs spent for the food of detainees from the Prison No. 13. The detailed data in that respect are presented in the next table. The data confirm that the allocations for food of detainees of the Prison No. 13 did not increase considerably since 2012. On the contrary, since 2015 these allocations decreased.

Year	Total amount (MDL)	Amount per detainee per day (MDL) ²	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
2016	5,649,945	15,04	0,68
2017	5,431,441	13,92	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, due to inflation, since 2012 the real value of the allocated daily amount per detainee decreased from EUR 0.93 to EUR 0.67. This finding does not tie at all with 2013 Action Plan of the Government.

BUILDING OF THE NEW PRISON IN CHISINAU

The problems of the Prison No. 13 are acknowledged by national authorities. According to the 2013 Government's Action Plan, 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 Moldovan authorities shall also invest about EUR 6 million. The capacity of the new prison should be of about 1,600 detainees. It will merge two prisons from the Chisinau region, including the Prison No. 13.

The construction should have started in 2014, but this was not the case. In November 2016 the project design of the new prison started. A plot of land was identified, but no construction started. According to the representatives of the Penitentiary Department, it will take from 3 to 4 years to build this prison. Due to planning constraints, there are small chances that the construction will start in 2018. In other words, under the best scenario, there will be no new prison in Chisinau by the end of 2021.

THE NEW DOMESTIC REMEDY

² The data provided by authorities for 2014 and 2015 include only the annual overall amount. We have established the daily amount for that years by dividing the total annual amount to the annual average of 1,150 detainees and 365 days.

On 20 December 2017, the Law No. 163, of 20 July 2017, entered into force. It provides, inter alia, for a compensatory and restorative remedy for the persons detained in bad prison conditions. The compensatory remedy provides that the persons detained in conditions contrary to Art. 3 of the Convention can request a reduced imprisonment sanction, waiving of the non-privative sanctions or monetary compensations. One day of the detention in bad conditions counts as two days of imprisonment (art. 385 para. 5 of the Criminal Procedure Code). If the detention in bad condition lasted for more than 3 months at the investigation stage, the detainees convicted to non-privative sanctions is fully liberated of the fine, community work or of the ban to hold a public office (art. 385 para. 6 of the Criminal Procedure Code).

The detainees, before or after conviction, can also seek for a restorative remedy. They can lodge an action to the investigative judge. The investigative judge shall deal with it in one month and, if finding that the conditions of detention were contrary to Art. 3 of the Convention, should order the prison administration to improve the conditions of detention of the applicant in 15 days. The judge can also apply the facilities provided by art. 385 para. 5 and 6 of the Criminal Procedure Code and, if this is not possible, order a monetary compensation of MDL 100 (EUR 5) per each day of detention in bad conditions (see Art. 473³ and Art. 473⁴ of the Criminal Procedure Code). However, Art. 473³ and Art. 473⁴ of the Criminal Procedure Code will enter into force only on 1 January 2019 (see art. VI of the Law No. 163). It is a mystery for us why the entrance into force of these provisions was suspended.

The remedies look efficient in theory. Similar remedies did not exist in the Republic of Moldova and every legal novelty meets practical challenges. The Moldovan judges and prosecutors should be trained in order to reduce the eventual risks of improper application of the new legislation. We recall that the Moldovan judges were reluctant so far to act proactively in ordering a redress for the violation of the Convention. The ECtHR established at least 13 violations of the Convention for the insufficient compensations granted to the applicants, 4 of which concern insufficient compensations for the violation of Art. 3 of the Convention.

RECOMMENDATIONS

We call the Committee of Ministers to recommend the Moldovan authorities the following:

- a) As top priority, to comply with their undertaking and to build, without delay, a new prison to replace the Prison No. 13;
- b) Until the construction the new prison is finished, take measures to eliminate the overcrowding and to improve the hygiene in the Prison No. 13. The problem of overcrowding can be achieved through application of non-custodial preventive measures;
- c) Increase substantially the funds allocated for detainees' food;
- d) Provide training for the relevant stakeholders to ensure that the new remedy introduced to address the problem of detention in bad conditions is effectively applied in practice. The Moldovan Government shall also inform the Committee of Minister periodically of the impact of this remedy.