

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

Chişinău, 22 October 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

CORSACOV v. MOLDOVA group of cases

INTRODUCTION

This submission is aimed at providing alternative information to the Committee of Ministers of the Council of Europe about the **general measures** taken by the Moldovan Government for execution of the [Corsacov group of cases](#). It focuses on the measures aimed at preventing ill-treatment by police and facilitating the investigation of ill-treatments. The communication is prepared by the [Legal Resources Centre from Moldova](#) (LRCM)¹. In 2016, the LRCM made [another submission on Corsacov group of cases](#).

The *Corsacov* group of cases, which is comprising 26 judgements, mainly concerns:

- a) the ill-treatment and torture inflicted on the applicants while in police custody;
- b) the authorities' failure to carry out effective investigations of ill-treatment and;
- c) as a result of deficient investigation, the lack of an effective compensatory remedy.

On 19 June 2014 the Government of the Republic of Moldova submitted an [Action Plan](#) for the execution of the judgments in *Corsacov* groups of cases. It proposed, inter alia, to remove the general causes and incentives leading to ill-treatment and torture; adopt legislation avoiding impunity; enhance investigation capacities in cases of ill-treatment and torture; improve remedies and compensations for victims; as well as raise awareness and intolerance towards ill-treatment.

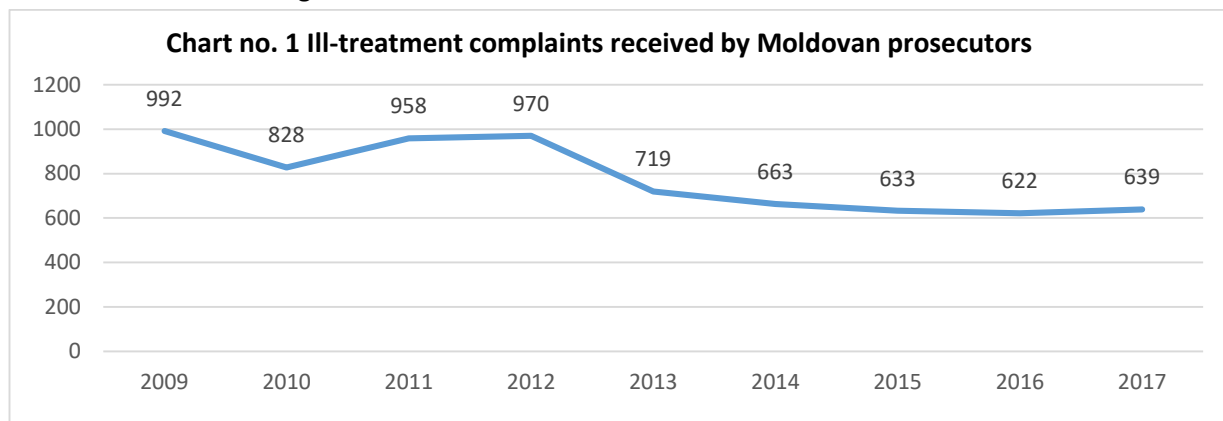
On 3 July 2017, the Government of the Republic of Moldova submitted an [Action Report](#) for the execution of the *Corsacov* group of cases. In respect of general measures, it mainly refers on creation within Prosecutor General's Office (PGO) of a new subdivision in charge of monitoring and assistance of prosecutors on ill-treatment cases and to the training of prosecutors. The Report does not mention the impact of this reform.

The submission is exclusively focused on guaranties against ill-treatment (preventive measures) and efficiency of criminal investigation of ill-treatment carried out by Moldovan authorities. It operates with **official statistics** of the PGO.

¹ Legal Resources Center from Moldova (LRCM) is a non-profit organization that contributes to strengthening democracy and the rule of law in the Republic of Moldova with emphasis on justice and human rights. We are independent and politically non-affiliated. LRCM has extensive expertise in representation before the European Court of Human Rights (ECtHR) and monitoring of execution by Moldova of ECtHR judgments. We published two comprehensive reports on the execution of ECtHR judgments by the Republic of Moldova, [for the period 1997-2012](#) and [2013-2014](#).

ILL-TREATMENT IN MOLDOVA

Until 2012, the Moldovan prosecutors received annually 800 - 1,000 complaints of ill-treatment. The number of received ill-treatment complaints dropped by 2014 to 663. Since 2014, the number of ill-treatment complains received by prosecutors did not change substantially. It is unlikely that in 2018 this number will decrease. In the first half of 2018 the Moldovan prosecutors received 328 ill-treatment complaints. More than 600 complaints for a country of less than 3 million is a rather high number. This number is not decreasing since 2014.



The ill-treatment is generally attributed to police officers and law enforcement personnel during arrest and preliminary investigation period. According to official statistics, in 2017, out of 639 complaints received, 428 complaints (67%) were directed against police officers. 187 complaints (29%) concerned the ill-treatment in the premises of the police. The statistics for previous years shows a similar picture.

According to Moldovan PGO, 202 complaints received in 2017 (32%) pursued the scope of intimidation or obtaining confession. This ill-treatment is directed towards increasing the police discovery rate. It is implicit that, at least in these cases, the ill-treatment is encouraged or tolerated by superiors. There were no reported cases of ill-treatment revealed by the chief police officers. On the contrary, the April 2009 events proved that superiors were covering the acts of torture.

Documentation of the injuries it is of a paramount importance for proving the ill-treatment. As shown above, 67% of ill-treatment cases reported in 2017 were directed against police officers, generally during arrests or shortly after arrest. In most of the cases, the victims of ill-treatment are brought to the police facility, where they should be detained up to 72 hours. Upon admission to police facility and transfer from this facility, they should be investigated by a doctor. These doctors are under the subordination of the chief police officer. This subordination frequently leads to the “failure” of the doctors to document the injuries. In the *Ciorap* group of cases, on numerous occasions, the ECtHR also found that the injuries resulting from ill-treatment were not properly documented by the doctors from the police commissariats. This also happened in 2017 to Andrei BRAGUTA. He was savagely beaten by the inmates in a police facility (with the tolerance or encouragement of police) and the doctors from police did not document his injuries. Several days later he was brought to a prison, but the prison administration refused to admit him, for the reason that the injuries, that were visible, were not documented. Several days later Mr. Braguta died in detention.

The improper documentation of injuries in police detention is due to the subordination of the doctors to the leadership of the police. **We call the Committee of Ministers to direct the Moldovan authorities to transfer the personnel of the temporary detentions facilities (IDPs) from the Ministry of Interior to the Ministry of Justice (MoJ)** (currently, the MoJ is in charge of the penitentiary system, but the police temporary detention facilities are not part of it). These transfers will considerably improve the quality of documentation of ill-treatments applied by police and, ultimately, reduce the police abuse. The transfer does not imply considerable public expenditures or other constraints that are difficult to

overcome. The transfer of the IDP personnel to the Ministry of Justice was already [recommended in 2017 within the UN CAT mechanism](#) (see para. 14 e)). This transfer was publicly committed by the Moldovan Government since 2007, but to no avail.

We also call for installing video cameras in all temporary detention facilities from police. This is already the case of the IDP from Chisinau, which is the biggest in the country. The Government also committed in 2017 to implement this action by the end of 2019 (Decision 748/2017, action 4.4.5), but it appears to be delayed.

INVESTIGATION OF ILL-TREATMENT

In the *Ciorap* group of cases, on numerous occasions, the ECtHR found that the prosecutors hesitated opening criminal cases to investigate ill-treatments, the opened investigations were not thorough or quick, while many opened investigations were discontinued by the prosecutors despite the clear evidence of ill-treatment.

a. Institutional setup

Prior to 1 August 2016, all the ill-treatment cases were investigated by local prosecutors. A reduced number of prosecutors (up to 4) from the PGO coordinated their activities and assisted them methodologically. Exceptionally, the PGO prosecutors could investigate cases assigned to them by the leadership of the PGO.

On 1 August 2016, a new Law of prosecutors' office entered into force. It introduced minor changes in the system of investigation of ill-treatment. The Organized Crime Prosecution Office was assigned to examine all torture cases (inhuman and degrading treatment cases (representing 85-90% of all opened investigations) remained in the competence of the local prosecutors). There are currently **2 prosecutors** at the Organized Crime Prosecution Office dealing with torture cases. The former unit from the PGO in charge of coordination of anti-torture measures was not affected by the new law. It exists at the PGO and continues to monitor and coordinate the anti-torture efforts. **The statistical data does not show any substantive change in the quality of investigation of torture cases since 2016** (see the below table).

b. Progress of investigations

Empirical data is one of the best indicator of a change. In 2017 the prosecutors received 639 ill-treatment complaints, which is lower than in 2009-2011 and comparable to 2013-2016. The data for first half of 2018 suggest that in 2018 the number of ill-treatment complaints will not decrease. These numbers confirm that no substantive changes in the prevention and combatting of torture occurred since 2013.

Out of 639 complaints received in 2017, the prosecution service initiated 103 criminal investigations, which is 16% of the received complaints. This rate is slightly lower than in previous years, with a reduction trend for 2018. In 2017, prosecutors submitted to trial court 34 cases concerning torture and ill-treatment. **In 2011-2017 only 5% to 7% of the ill-treatment complaints led to a trial court case.** This rate did not increase substantially since 2010, confirming that no substantive change in the attitude of prosecutors took place in the recent years. **The low rate of opened criminal investigations into torture cases was also criticized in 2017 by the UN Committee Against torture** (see para. 12). A low rate of initiated ill-treatment criminal investigations and of cases sent to court confirm the prosecutor's reluctance to act proactively in combatting torture. It is true that the prosecutors initiate numerous **procedures on their own motion**, but the statistical data confirm that these procedures are not followed to the trial court (since the rate of the trial court cases did not increase). In fact, we have not noticed a qualitative change in the attitude of prosecutors since 2009. The number of ill-treatment

complaints decreased meanwhile, but it was determined by the harshening of the sanctions for torture, not by the proactive attitude of prosecutors.

Table 1: Statistics concerning ill-treatment complaints and investigations

Year	Number of complaints	Initiated criminal investigations	% of the received complaints	Submitted to the court	% of cases sent to trial court of the received complaints
2009	992	159	16%	36	3.6%
2010	828	126	15%	65	7.8%
2011	958	108	11%	36	3.8%
2012	970	140	14%	46	4.7%
2013	719	157	22%	49	6.8%
2014	663	118	18%	46	6.9%
2015	633	113	18%	38	6%
2016	622	107	17%	31	4.9%
2017	639	103	16%	34	5.3%
30.06.2018	328	49	15%	15	4.6%

Thoroughness of investigations was another aspect criticized by the ECtHR in the majority of the *Corsacov group* judgements. Without opening an investigation, it was impossible to gather all the evidence needed for a full investigation (ex. an expert conclusion, which is mandatory in the ill-treatment case, could be requested only after opening a criminal investigation). It is true that, unlike in 2001-2005, in the recent years the prosecutors open more ill-treatment investigations. However, usually these cases are not followed further. According to PGO, in 2017 it adopted decisions on 117 opened investigations. 34 cases (29%) were sent to court, 10 (9%) were suspended (generally because the torturer cannot be established) and 73 investigations (62%) were discontinued (generally for insufficiency of evidence). It follows that **only 29% of the ill-treatment investigations decided in 2017 led to a trial**. The picture for previous years is similar. This figure, corroborated with the low rate of opened investigations, confirms once again the reluctance of the prosecutors to bring ill-treatment charges and to investigate efficiently these cases.

The ECtHR found in at least 13 judgments that investigation of ill-treatment by Moldovan prosecutors was delayed for years. Regretfully, **there are no official data about the length of the initiated criminal investigations concerning ill-treatment. The authorities should generate it.** Some may suspect that it is not generated not to reveal the delay in investigation of ill-treatment. We admit that the ill-treatment cases are hard to investigate, but, bearing in mind the absolute nature of prohibition of ill-treatment, the need to firmly combat torture and the impact of the length of proceedings on the victims, the ill-treatment cases should be treated with priority. It appears not to be the case of Moldova. It is known that, generally, **opened ill-treatment investigations last more than one year**. In exceptional situation this period might be justified, but not in the majority of cases. **The prosecutors should speed up the investigation of ill-treatment cases to ensure an adequate preventive effect of prohibition of torture.**

In several Moldovan judgments (ex. *Pădureț; Mătăsaru and Savițchi*), ECtHR found that victims were not sufficiently involved in the investigation. The victims were not informed about the developments in the criminal investigation or refused access to materials of the criminal investigation. The Criminal Procedure Code does not provide for the right of the victim to request information about the developments in the criminal investigation. Art. 212 of the Criminal Procedure Code is interpreted by Moldovan authorities as prohibiting any access of the victim to the materials of the criminal investigation. Disclosure of this information by the criminal investigation body is a crime (Art. 315 of the Criminal Code). We believe that **Criminal Procedure Code shall be amended to comply with the ECtHR standards and prosecutors should be trained regarding the involvement of victims of ill-treatment in the investigation.**

In 2016, the **Criminal Procedure Code was amended, introducing the appeal against the decisions of the investigative judge**. Although this novation can remedy some abuses of the prosecutors and investigative judges (who examine appeals against the actions of the prosecutors), it does not tackle the core problem from Moldova in the investigation of ill-treatment – lack of proactivity of prosecutors and passivity of investigative judges. On one hand, the new appeal cannot oblige the prosecutor to perform specific investigation measures (the court of appeal can only annul the illegal decisions of the prosecutors). On the other hand, it delays the investigation, as the new appeal can be also lodged by the suspect and, pending the examination of appeal (at least 4 weeks in practice), the investigation is suspended de facto. We have not seen any analysis on the impact of this novation on the cases of ill-treatment and are wondering if the Government can present this data. It can be a good indicator of the impact of that reform.

c. Sanctions for ill-treatment

Since November 2012, the torture (para. 3 art. 166¹ of the Criminal Code) is punished with imprisonment of 6 to 10 years, while aggravated torture (para. 4 art. 166¹ of the Criminal Code) - with imprisonment of 8 to 15 years. The inhuman and degrading treatment (para. 1 art. 166¹ of the Criminal Code) is punished with imprisonment of 2 to 6 years, while aggravating inhuman and degrading treatment (para. 2 art. 166¹ of the Criminal Code) - with for 3 to 8 years of imprisonment. In case of simple and aggravating inhuman and degrading treatment, the judges had the discretion to substitute the imprisonment with a fine. From 14 October 2018, this discretion was excluded from the Criminal Code (the Law no. 157/2018). The inhuman and degrading treatment cannot be sanctioned with fine anymore. This is a positive step. We are convinced that **the sanctions for ill-treatment provided by the Moldovan Criminal Code are sufficient to ensure the deterrent effect**. The application of these provisions in practice is, however, much more important.

The Moldovan authorities do not have full statistics about the sanctions applied in ill-treatment cases. This is itself problematic. They operate with statistics on sanctions applied by the first instance court. This information is not accurate, as most of the first instance court judgements in ill-treatment cases are appealed and often overturned in appeal or cassation. Bearing in mind that no other statistics is available, we will rely on the only official statistics available.

Table 2: Statistics concerning the verdicts on the first instance court in ill-treatment cases

Year	Delivered judgements	TOTAL (persons accused)	Convictions (persons)			Discontinued investigations (persons)	Acquittals ² (persons)
			Imprisonment	Suspended imprisonment	Fine		
2013	49	86	2	28	11	22	23
2014	43	62	14	27	5	6	10
2015	43	63	9	29	11	1	13
2016	35	51	3	15	7	11	15
2017	20	25	3	12	1	5	4
30.06. 2018	11	20	8	1	3	5	3

As it follows from the previous table, in 2017 the first instance courts delivered 20 judgments on ill-treatment charges. These cases concerned 25 accused persons. 4 persons (16%) have been acquitted and 16 (64%) convicted. In respect of 5 persons (20%) the cases were discontinued for procedural grounds (amnesty of time-limitation). In 2016, the Moldovan courts delivered 35 judgments in respect of 51 accused persons. 15 of these persons (29%) have been acquitted and 25 convicted (49%). In respect of 11 persons (22%) the case was discontinued for procedural grounds. **The acquittal rate in ill-**

² All the acquittal sentences were appealed to a higher level court.

treatment cases (16% in 2017 and 29% in 2016) is particularly high, bearing in mind the average acquittal rate in Moldova is of 1.75-2%. This indirectly confirms that the quality of the ill-treatment investigation is poor.

On the other hand, the **high rate of cases discontinued by judges for procedural grounds** (20% of persons in 2017 and 22% in 2016) speaks of delayed investigations (in case of expiration of time limitation (from 2012, the statutory time limitation is not applicable to ill-treatments, but it is applicable for ill-treatment occurred until 2012)) or exoneration of responsibility of torturers by amnesty laws. **The Moldovan authorities should exclude such situations in future, as they generate impunity for torturers.**

The Moldovan legislation guides judges to sanction the torturers with imprisonment. The imprisonments for ill-treatment applied by Moldovan judges are usually suspended. In 2016, out of 25 persons convicted for torture only 3 (12%) have been effectively incarcerated, while in respect of other 15 persons (60%) the imprisonment was suspended. In 2017 only 3 (19%) out of 16 persons convicted for ill-treatment were incarcerated. The imprisonment of other 12 persons (75%) was suspended. In case of suspended imprisonment, the only effective consequence suffered by the torturer is the dismissal and the ban to work in the public service. In *Valeriu and Nicolae Rosca v. Moldova* judgement the ECtHR found that, in the context of Moldova, suspended imprisonment for torture may not be sufficient. According to the [activity report of the Moldovan Prosecution Office for 2017](#), in 2017 the incarceration was applied to 2,234 (22.4%) out of 9,957 convicted persons. Suspended imprisonment was applied to 2,706 persons (27.2%). It follows that **the suspended imprisonment in ill-treatment cases is ordered by judges 2 time more often than average and incarceration – less frequent than average. This data is hard to reconcile with the commitment of Moldovan authorities to ensure the absolute prohibition of torture.** It appears from statistical data that in 2018 the situation may look different. It is demanding for Moldovan authorities to come with clarifications on the leniency of sanctions applied by Moldovan judges for ill-treatment.

It is a general standard to have the persons suspected of ill-treatment immediately suspended from their duties and remain so throughout the investigation. **Suspects are rarely suspended from their office in ill-treatment cases.** The Moldovan authorities should comply with this standard. There is no public official statistics about that.

HUMILIATION OF VICTIMS OF ILL-TREATMENT

According to Criminal Procedure Code (p. 3¹ para. (1) of the art. 143), an expert examination must be ordered and performed in order to determine the „physical and mental condition of person against whom there are allegations of committing acts of torture, inhuman or degrading treatment”. This norm obliges prosecutors to determine the mental condition of the victim in any case concerning ill-treatment, irrespective whether the evidence of ill-treatment is sufficient or not. Bearing in mind that the expert examination is mandatory under law, the ill-treatment cases cannot be sent to court without the expert conclusion. **The determination of the mental condition of the victim is carried out in psychiatric institutions.** The reputation of these institutions in Moldova is a very bad one. Many victims refuse to go to psychiatric institutions for examination and their cases never reach the trial court. The others go, and suffer humiliation being examined by a psychiatrist when his conclusion is of no practical relevance for the case, as in the case is sufficient evidence of ill-treatment. The psychiatric examination of the victim might be relevant when there is insufficient evidence of ill-treatment. However, **psychiatric examination of the victim in all the cases and the ban on presentation of the case to the trial court without such a conclusion is bizarre and only humiliates the victims of ill-treatment. It also delays the investigation.** We call for amendment of the Criminal Procedure Code accordingly. Several years ago, the Ministry of Justice started the procedure of amendment of the Criminal Procedure Code, but this initiative was not pursued to an end.

EDUCATION AND TRAINING

The Moldovan judges and prosecutors traditionally benefitted of numerous trainings in the field of ECHR. We admit that their level of proficiency in the field of combatting torture is generally adequate. In this context, it is hard for us to understand why this level of knowledge does not have high impact on the quality of ill-treatment investigations and adequate sentencing?

RECOMMENDATIONS

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

- a) transfer of the personnel of the temporary detentions facilities from the Ministry of Interior to the Ministry of Justice;
- b) install video cameras in all police temporary detention facilities;
- c) prosecutors shall improve the quality of investigations into the allegations of ill-treatment and treat these cases with priority;
- d) ensure that persons suspected of ill-treatment are immediately suspended from their duties and remain so throughout the investigation;
- e) amendment of the Criminal Procedure Code to provide the right to the victim of ill-treatment to have access to material of the criminal investigation. The prosecutors shall be trained how to ensure adequate involvement of the victim of ill-treatment in the investigation;
- f) judges shall review their sentencing practice on ill-treatment cases and apply adequate sanctions to effectively prevent ill-treatment;
- g) amendment of the Criminal Procedure Code to exclude the mandatory psychiatric examination of all victims of ill-treatment;
- h) generate accurate statistical data about the ill-treatment cases, including the length of investigation and judicial proceedings, suspension from office of suspects and sanctions applied up to the highest level of jurisdiction.

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