



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

Email: DGI-Execution@coe.int

Chişinău, 22 April 2021

COMMUNICATION

in accordance with Rule 9.2 of the Rules for the supervision of the execution of judgments

Olaru and others v. MOLDOVA

(efficiency of the compensatory remedy for the excessive length of proceedings)

The Legal Resources Centre from Moldova (LRCM)¹ makes this submission in the context of execution by the Republic of Moldova of the [Olaru and others](#) judgement, which is currently under standard procedure.

Summary

The non-enforcement of court judgments concerning allocation of social housing is still a very acute issue in the Republic of Moldova. In *Olaru and Others v. Moldova* judgment (28 July 2009), the European Court of Human Rights (ECtHR) requested from the Moldovan Government, *inter alia*, to establish a remedy for the victims of the non-enforcement of judgments requiring allocation of social housing. On 21 April 2011, the Parliament passed the Law no. 87. Under this law, persons who believe that their cases are examined with excessive delays, or judgments in their favour have not been enforced for too long, may apply to the court for compensation of material and moral damages.

In 2012, [the Committee of Ministers](#) encouraged the national authorities to ensure that the remedy introduced by Law no. 87 is implemented in compliance with the Convention requirements. This submission refers to the impact of the Law no.87 and the measures taken by the Moldovan authorities to execute the court judgements concerning social housing.

Two extensive researches conducted by LRCM in [2014](#) and [2020](#) suggest that the level of compensations granted to the applicants by the courts under the Law no. 87 rarely meet the ECtHR practice. The court procedures are also very long. In 2020 - 2021 the ECtHR itself found in a number of Moldovan cases that compensations granted under the Law no. 87 were not sufficient. The insufficient redress offered at the national level often result in new applications to the ECtHR.

The LRCM calls on the Committee of Ministers to invite the Moldovan authorities to intensify their efforts in order to ensure that the practice of application of the Law no. 87 meets all the Convention requirements and that all the judgements providing social housing are executed shortly. We further call the Committee to consider transferring the *Olaru group of cases* under the enhanced procedure.

¹ The [Legal Resources Centre from Moldova](#) (LRCM) is a non-profit organization that contributes through research and advocacy to strengthening democracy and the rule of law in the Republic of Moldova, with focus on justice, fight against corruption, human rights and civil society. We are independent and non-partisan.

Contents

- A. Olaru and others v. Moldova pilot judgment 3
- B. The national remedy established by the Law no. 87..... 3
- C. The efficiency of the national remedy established by the Law No. 87 4
- D. ECtHR jurisprudence after the Balan decision 7
- E. Efforts to enforce judgements on social housing allocation 8
- F. Developments in legislation on allocation of social housing 8
- G. Recommendations..... 9

A. *Olaru and others v. Moldova pilot judgment*

In its judgment [Olaru and others](#), the ECtHR found that, until 2009, the most frequent reason for filing an action against Moldova had been the failure to enforce in time the judgments requiring allocation of social housing. The ECtHR has found as well as that this was a systemic issue. As of 28 July 2009, more than 300 such applications were pending at the ECtHR. Therefore, in the *judgment Olaru and others*, the ECtHR mentioned, inter alia, the following:

„58. [...] The State must introduce a remedy that truly ensures an effective redress for violations of the Convention, which are due to the prolonged failure by the state authorities to enforce the final judgments on the granting of state housing against the State or its entities. Such a remedy [...] must comply with the requirements arising from the Convention [...].”

In the judgment [Scordino no. 1 v. Italy \(2006\)](#), the ECtHR described the requirements that must be met by the compensatory remedy mentioned in the judgment *Olaru and others*. Similar requirements are also set out in the [Recommendation Rec\(2010\)3](#) of the Committee of Ministers of the Council of Europe on effective remedies for excessive length of proceedings:

Requirements that must be met by a compensatory remedy (based on <i>Scordino no. 1</i> and <i>CM Rec(2010)3</i>)
a) the procedure for examining the claim for compensation must be fair (para. 200);
b) the action must be examined within a reasonable time (para. 195 in fine), but faster than the usual compensation procedures;
c) the compensation awarded must not be unreasonable in comparison with the awards made by the ECtHR in similar cases (para. 202-206 and 213);
d) the rules regarding legal costs must not place an excessive burden on litigants (para. 201);
e) the compensation must be paid promptly and generally no later than six months from the date on which the decision awarding compensation becomes enforceable (para. 198).

B. *The national remedy established by the Law no. 87*

On 21 April 2011, the Parliament of Moldova passed the Law no. 87 on the compensation of damages for the violation of the right to examination of the case and execution of the judgment in reasonable time. Under this law, persons who believe that their cases are examined with excessive delays, or judgments in their favour have not been enforced for too long, may apply to the court for compensation of material and moral damages. The courts are called to examine such claims within a short time.

In 2012, the Committee of Ministers encouraged² the national authorities to ensure that the new remedy introduced by Law no. 87 is implemented in compliance with the Convention requirements. The Committee invited the national authorities to keep it informed of the development of the domestic case-law, to further enhance efforts to settle the remaining applications pending before the ECtHR, as well as to ensure that the remaining judicial decisions granting social housing are enforced in order to prevent a new influx of repetitive applications

² Council of Europe Committee of Ministers “Supervision of the Execution of judgements and decisions of the European Court of Human Rights, 6th Annual Report of the CM” (2012), page 105.

to the ECtHR. Finally, the Committee decided then to transfer the *Olaru Group of cases* under the standard procedure.

C. The efficiency of the national remedy established by the Law No. 87

The remedy introduced by the Law no. 87 clearly meets two of the five requirements listed in the *judgment Scordino (no. 1) and the CM Rec(2010)3*, in particular letters a) and e). The procedures are examined in court based on rules that ensure sufficient appearance of fairness, while national authorities have up to three months to comply with the enforcement warrant.³

Requirements met by the Law no. 87 (based on <i>Scordino no. 1</i> and <i>CM Rec(2010)3</i>)
a) the procedure for examining the claim for compensation must be fair (para. 200);
b) the action must be examined within a reasonable time (para. 195 in fine), but faster than the usual compensation procedures;
c) the compensation awarded must not be unreasonable in comparison with the awards made by the ECtHR in similar cases (para. 202-206 and 213);
d) the rules regarding legal costs must not place an excessive burden on litigants (para. 201);
e) the compensation must be paid promptly and generally no later than six months from the date on which the decision awarding compensation becomes enforceable (para. 198).

In [Balan v. Moldova \(dec. 24 January 2012\)](#), the ECtHR admitted, *prima facie*, that the remedy introduced by the Law no. 87 is effective. After the *Balan decision*, more than 300 Moldovan applications were declared inadmissible by the ECtHR due to non-exhaustion of domestic remedies. Applicants were suggested to file actions under the Law no. 87.

[In 2014, the LRCM analyzed more than 260 final judgements](#) (over 90% of all proceedings filed under the Law no. 87) adopted between September 2012 and October 2013. We looked into the duration of these procedures, the quality of judgment motivation and the awarded compensations. The LRCM's analysis found, *inter alia*, that compensations awarded for moral damage were lower than those awarded by ECtHR in comparable cases, while only a small part of legal costs were compensated.

In 2020, the LRCM conducted a follow-up study. More than 170 final cases (~95% of all the proceedings filed under the Law no. 87 that reached the Supreme Court of Justice) adopted between October 2017 and March 2020 were analyzed. We established that the practice of application of the Law no. 87 has not improved at all since 2012-2013. More than 40 cases (24%) of the total analysed, have as primary dispute the non-enforcement of judgements providing social housing.

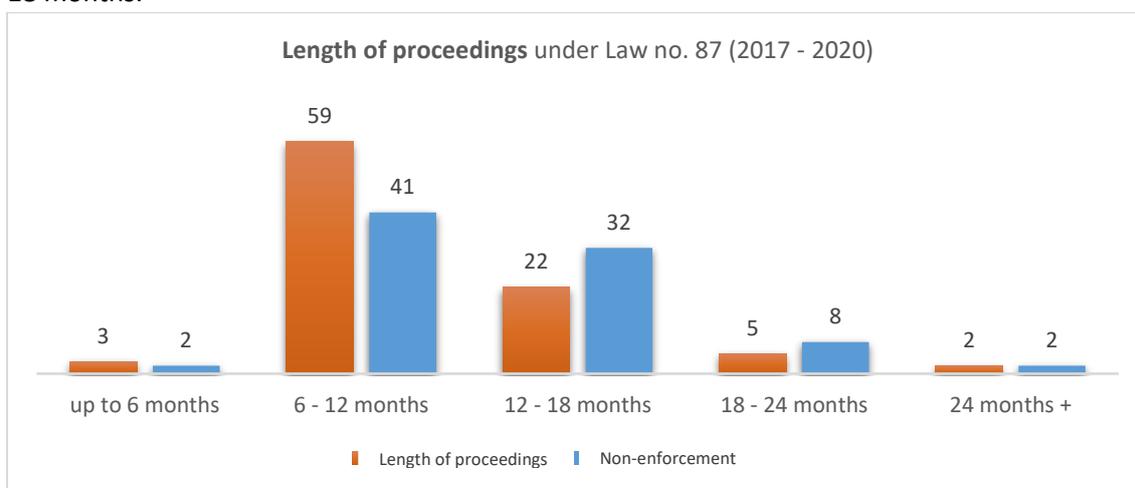
The 2020 analysis results are illustrated below in detail and structured in 3 sections, following the remaining three of the five requirements listed in the *Scordino judgement (no. 1) and the*

³ Initially, the judgements issued under the Law no. 87 of 21 April 2011 on state compensation for damages could be enforced within 6 months from the date on which they remained irrevocable. These provisions were declared unconstitutional in the [judgment of the Constitutional Court no. 32](#) from 17 November 2016. The Constitutional Court established that judgments issued under the Law no. 87 shall be enforced immediately after the final judgment and executed no later than three months from that date, similarly to the time limit for the execution of final judgments of the European Court of Human Rights.

CM Rec(2010)3): (1) length of proceedings; (2) level of compensation - material and moral damages; and (3) level of compensation of legal costs.

Length of proceedings

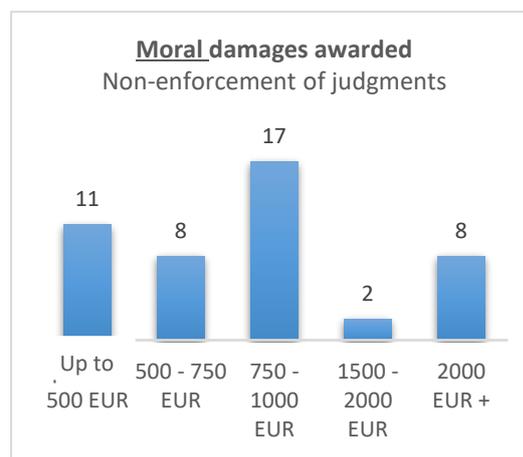
In 2017 – 2020, a case under the Law no. 87 concerning the length of judicial proceedings was examined on average in about a year (11.6 months), of which 3.8 months – in the first instance court, about 4.9 months – in the court of appeal and 2.9 months – at the Supreme Court of Justice (SCJ). In 8% of the cases, the length of proceedings exceeded 18 months. Disputes regarding the non-enforcement of judgements lasted a bit longer. These cases were examined, on average, within 12.8 months, of which 4.5 months – in the first instance court, 5.4 months – in the court of appeal and 2.9 months – in the SCJ. In 12% of cases, the length of these exceeded 18 months.



We believe that examination of a case filed under the Law No. 87 for 12 months, corroborated with the enforcement of the judgement in other several months, raise issues in light of the ECtHR standards. Moreover, the cases filed under the Law No. 87 can be sent for re-trial. Out of the 176 cases analyzed, at least ten (6%) were sent for retrial by the SCJ to the court of appeal. Referral for retrial increases the length of proceedings by 7-9 more months on average.

Compensation of moral damages

In 2017 – 2020, the average amount of moral damages awarded in cases under the Law 87 was MDL 10,733 (EUR 542), for an average violation of the reasonable time requirement of 3.3 years. The average compensation awarded for non-enforcements of judgements was MDL 13,480 (EUR 674), for 4.4 years of non-enforcement.



According to the ECtHR standards, compensation awarded as moral damages at the national level should not be unreasonable when compared to the compensation awarded by the ECtHR in comparable cases, such as cases where a similar violation has been found to be committed by that state or a state with a comparable level of economic development.

The moral damages awarded by the Moldovan courts vary considerably. In 2012, the Supreme Court of Justice from Moldova (SCJ) and the Governmental Agent (AG) acknowledged that the amount of moral damages awarded for ECHR violations is too low and that the case law in this area is not uniform. On 23 July 2012, the SCJ posted on its website [Recommendation no. 6](#) on the just compensation to be awarded for violations of the ECHR. The recommendations mention the following:

„[...]... analyzing the case law of the ECtHR in cases concerning non-enforcement of judgements, we find that the amount [of moral damages awarded by ECtHR in Moldovan cases] is approximately 600 Euro for a 12-month delay and 300 Euro for every 6-month period of delay following”.

Based on the above standards, the compensation for the non-enforcement or delayed enforcement of a judgement lasting 4.4 years had to be at least EUR 2,600, i.e. four times higher the actual amounts granted by the national courts. This clearly shows that the moral damages granted under the Law no. 87 are considerably lower than the compensation granted by the ECtHR in comparable cases. The applicants frequently justify their claims for moral damages in line with the [Recommendation no. 6](#). Only in few cases the moral compensations were awarded in accordance with the SCJ recommendation/ECHR standards. The courts do not usually refer to the criteria used by the ECtHR or to the Recommendation no. 6 to quantify the moral damages.

Compensation of legal costs

Actions filed under the Law no. 87 are not subject to court fee. However, they often involve legal assistance costs. The high costs of legal assistance placed on the applicant's shoulders may reduce to zero the efficiency of the remedy introduced by Law no. 87. Given that the applicant usually hires a lawyer, it can be shown that, if the legal assistance costs are reimbursed only marginally, when a final judgement is awarded, the applicant may end up with an amount just slightly over or even lower than the legal fees paid. In other words, even if s/he wins the lawsuit, the applicant *de facto* gets little or nothing. The Bar Association of the Republic of Moldova

approved the [recommended amount of lawyers' fees](#), the minimum hourly rate being EUR 50 and the maximum EUR 150.

The average compensation for legal costs in the analyzed cases was MDL 3,263 (EUR 165), and the highest amount was MDL 10,000 (EUR 508.3).



Requests for the recovery of costs and expenses related to the judicial proceedings were made only in 23% of the analyzed cases (~40 cases out of the 176). Only in 25 of 40 cases, the legal costs were partially compensated. Judges usually do not explain why they reject in whole or in part claims for compensation of legal costs. This may be due to the poor justification of these claims by the parties. However, only few Moldovan judges examined the extent to which legal assistance costs were necessary and reasonable, although this is required by art. 96 (1) of the Code of Civil Procedure. The amount awarded often appears to be determined entirely by the discretion of the judge, without any reference to the circumstances of the case.

D. ECtHR jurisprudence after the Balan decision

In the [Osadcii and others](#) (7 July 2020), the Court found, *inter alia*, that the judgments in favor of the applicants had not been enforced from 66 to 72 months. The Court was not convinced that the amounts awarded to the applicants at national level were sufficient compared to those awarded by the ECtHR in similar Moldovan cases..

In [Marian and others](#) (15 September 2020) the ECtHR found, *inter alia*, that the judgments on allocation of social housing in favor of the applicants remain unexecuted (from 10 to 22 years). The ECtHR found out that the sums awarded to the applicants at national level were much lower than those generally awarded by the Court in similar Moldovan cases.

In [Ialtexgal Aurica S.A.](#) (16 February 2021) the ECtHR noted that non-pecuniary compensation awarded to the applicant under Law no. 87 was considerably below the amounts awarded by the Court.

All of the above cases were introduced before the ECtHR after the *Olaru* pilot judgments, and after the applicants used the internal mechanism introduced by Law no. 87 to request damages at the national level. We estimate that a considerable number of similar cases is pending at the Court.

E. Efforts to enforce judgements on social housing allocation

In the period of 2012 – 2017, the Mayor of the Chisinau Municipality and the Chisinau Municipal Council (the capital of Moldova/largest municipality) [paid in friendly settlements](#) more than MDL 61.492.300 (EUR 2.8 million) to persons with irrevocable judgements in their favour on the allocation of social housing. According to official budget broadcast, other MDL 124.016.800 (EUR 5.8 million) are necessary to cover the same category of expenses for the years 2021 – 2023.

Despite these efforts, by 1 December 2020, there were still [more than 220 irrevocable judgments](#) obliging the local public administration authorities from Chisinau municipality to provide housing to various categories of population, mostly veterans, police officers, prosecutors and judges. These judgements are pending execution for many years. Details are presented in the following table.

The special law that provides social housing	Final judgements (as of 1 December 2020)
Based on the law on the Police	99
Based on the law on the Prosecutor's Office	10
Based on the law on the status of the judge	6
Based on the law on veterans	15
Granting of living space (damaged accomodation)	4
Housing allocation (evacuation)	14
<i>Unidentified by categories</i>	<i>83</i>

F. Developments in legislation on allocation of social housing

Until 2015, the Housing Code of the Soviet Socialist Republic of Moldova of 3 June 1983 provided that Moldovan citizens had the right to occupy housing belonging to the state on the basis of a rental agreement. Housing was allocated for permanent use (Article 10). Besides the Housing Code, until 2013, there were special laws in place, which allowed for certain categories of public servants (judges, police officers, military, etc.) to be provided with social housing. All the special laws allowing granting of social housing were repealed in 2009-2013. On 29 November 2015, a new [Housing Law](#) came into force. It entitles only people with modest incomes to claim social housing.

In 2016, the Government passed the [Regulation on granting temporary service housing \(locuințe de serviciu\)](#). Based on organic legislation, it grants at least 14 categories of public officials and members of their families temporary housing if they do not own a home in the same administrative-territorial unit in which they exercise their functional duties, under lease conditions. Housing is granted upon availability. If no available spaces exist, the state has the duty to compensate the costs for the lease.

G. Recommendations

Extensive research conducted at the national level by LRCM in [2014](#) and [2020](#) suggests that the level of compensations granted to the applicants by the Law no. 87 rarely meet the ECtHR practice. The issue proves to be systemic. Moreover, in 2020 - 2021 the ECtHR itself found in several cases against Moldova that compensations granted under the Law no. 87 were disproportionate with the ECtHR practice.

In the light of the above, LRCM calls on the Committee of Ministers to recommend to the national authorities of Moldova to:

- take extensive efforts to ensure that the practice of application of the Law no. 87 meets all the requirements of an effective compensatory remedy at the national level (*Scordino no. 1/ Recommendation Rec(2010)3*);
- establish in the courts a system to ensure priority examination of urgent cases, including those concerning the Law no. 87;
- provide in-depth training to all judges who examine cases under the Law no. 87 for a proper application of the ECtHR standards;
- discontinue the practice of sending for retrial of cases concerning the the Law no. 87;
- If the above measures prove unsuccessful, consider changing the procedure for awarding compensation under the Law no. 87 to a extrajudicial procedure with the following main elements:
 1. The Ministry of Justice awards compensations based on a grid similar to that used by the ECtHR;
 2. The decision of the Ministry of Justice can be appealed directly to the SCJ, which will issue a final solution on the case.

In light of the deficiencies highlighted above, we call the Committee of Ministers to return the *Olaru group of cases* to enhanced procedure.