

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

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

LEVINȚA v. MOLDOVA group of cases

INTRODUCTION

This submission is presented by the Legal Resources Centre from Moldova (LRCM)¹ and the Promo-LEX Association² in the context of consideration of execution by the Republic of Moldova of the *Levința* group of cases at the 1411th meeting CDDH meeting (14-16 September 2021).

The *Levința* group concerns various violations of the European Convention on Human Rights (ECHR), mostly related ill-treatment and torture in police custody; ineffective investigations; lack of an effective remedy; conviction based on evidence obtained under torture etc. This group of cases was discussed at the 1331st meeting CDDH meeting (4-6 December 2018). The key recommendations and requests made to the Moldovan authorities at that meeting may be resumed as it follows:

- a) to provide information on the practical effectiveness of sanctions for ill-treatment and encouraged them including by applying adequate sanctions;
- b) to provide information on measures taken to ensure victims' involvement in investigations, as well as on existing practices as regards suspension from office of those under investigation for ill-treatment;
- c) to adopt further measures to ensure in practice confidentiality during medical examinations while in police custody and adequate monetary compensation for breaches of art. 3;

On 16 July 2021, the Moldovan Government submitted an [Action Report](#) for the execution of the *Levința* group of cases. It mostly highlighted the individual measures planned to address particular situation of the applicants. In respect of general measures, it mainly refers on statistics regarding ill-treatment, few normative acts adopted and trainings for legal professionals. The Action Report does not refer to the impact of the reform and does not operate with statistical data about ill-treatment complaints and the result of investigations into ill-treatment.

¹ [Legal Resources Centre 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. We published two comprehensive reports on the execution of ECtHR judgments by the Republic of Moldova, [for the period 1997-2012](#) and [2013-2014](#). In [2016](#) and in [2018](#) LRCM made submissions on *Corsacov* group of cases.

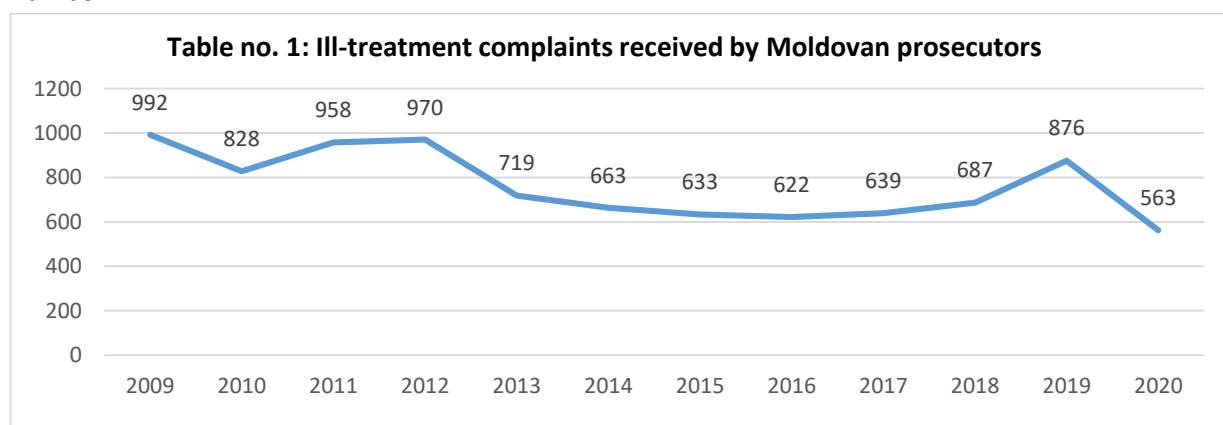
² [Promo-LEX Association](#) is a non-governmental, not-for-profit and politically independent human rights and advocacy organization established in 2002. Promo-LEX's Mission is to advance democracy in the Republic of Moldova through promoting and defending human rights and strengthening civil society. In [2020](#) Promo-LEX made submission on *Levința* group of cases.

The LRCM and Promo-LEX submission is exclusively focused on guaranties against ill-treatment, on efficiency of criminal investigation of ill-treatment and on lack to effective medical assistance in detention facilities. It operates with official statistics provided by the General Prosecutor's Office (GPO) and by the Moldovan Ombudsman.

ILL-TREATMENT IN MOLDOVA

The ill-treatment is generally attributed to police officers and law enforcement personnel during arrest and preliminary investigation period. For instance, 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. There is no publicly available information for 2019-2020 on this head.

In the table below is presented the official data on the number of complaints received by the prosecutors. Although Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) received hardly any allegations during its 2020 visit, it remained concerned about the considerable number of cases of alleged ill-treatment. Considering that since 2014 somewhere between 500 - 700 complaints for a country of less than 3 million is a rather high number.



In 2019, the Prosecutor's Office received 876 ill-treatment complaints, the highest number since 2012. This number is slightly lower than the number of complaints made in 2009, when a high number of young people have been ill-treated by police several days in row. In 2020 - this number decreased to 563 (the lowest number), but slightly lower than in 2014-2018. There is no official explanation for this sudden drop of the number of complaints. Nevertheless, this corroborated with the low rate of opened investigations in 2020 and with pandemic. Therefore, the reduction should be treated with caution.

According [Moldovan Ombudsman office report for 2020](#) (page.190), 1024 cases of bodily injuries among detainees were found (in 2019 - there were 1203). The most frequent cases were registered in penitentiaries No. 6 Soroca (100 cases), No.11- Balti (58 cases), No.13- Chisinau (87 cases) and no.17 - Rezina (73 cases). Usually, the representatives of the penitentiaries motivate the circumstances of the appearance of the bodily injuries: *as a fall from the second level of the bed; accidental blows or as result of playing football, etc.* **The most detainees refuse to declare the real circumstances of acts of violence or ill-treatment, including fear of persecution.** This is the reason for not launching the investigation. It seems that detainees are aware that they will not benefit from any effective protection inside detention institutions if they file complaints of abuse, which is extremely serious. **This reveals problems in terms of the lack of an effective mechanism for referral, reporting, and investigating ill-treatment against detainees and a clear system of protection for those who report ill-treatment.**

INVESTIGATION OF ILL-TREATMENT

Out of 563 complaints received in 2020, the prosecution service initiated 47 criminal investigations, which is 8.3% of the received complaints. This rate is slightly lower than in previous years, with a reduction trend since 2018. The low rate of opened criminal investigations into torture cases was criticized [in 2017 by the UN Committee Against torture](#) (see para. 12). In 2020, prosecutors submitted to trial court 22 (less than 3% of the complaints received in 2019) cases concerning torture and ill-treatment. **In 2016-2020 only 4% to 5% of the ill-treatment complaints led to trial.** The 2020 drop of the rate of ill-treatment cases that lead to a trial by almost 100% can be explained only by pandemic. This rate did not change substantially since 2010, confirming that no substantive change in the attitude of prosecutors took place in the meantime. A low rate of initiated ill-treatment investigations and of cases sent to court confirm the prosecutors' reluctance to act proactively in combating torture. In fact, **we have not noticed a qualitative change in the attitude of prosecutors since 2016.** The number of ill-treatment complaints decreased meanwhile, but it was most likely determined by the harshening of the sanctions for torture, not by the proactive attitude of prosecutors.

Table no. 2: Statistics concerning ill-treatment complaints and investigations

Year	Number of complaints	Initiated criminal investigations	% of complaints in which the investigation was initiated	Submitted to the court	% of cases sent to trial court of the received complaints in the previous year
2009	992	159	16%	36	3.6%
2010	828	126	15%	65	6.6%
2011	958	108	11%	36	4.4%
2012	970	140	14%	46	4.8%
2013	719	157	22%	49	5.1%
2014	663	118	18%	46	6.4%
2015	633	113	18%	38	5.8%
2016	622	107	17%	31	4.9%
2017	639	103	16%	34	5.5%
2018	687	93	14%	26	4.1%
2019	876	86	10%	34	5%
2020	563	47	8%	22	2.6%

Thoroughness of investigations was another aspect criticized by the ECtHR in some cases from *Levinta* group. 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). Unlike in 2001-2005, in the recent years the prosecutors open slightly more ill-treatment investigations. However, usually these cases are not followed further. According to PGO, in 2020 it adopted decisions on 199 opened investigations (including from previous periods), only 22 cases (11%) were sent to court. This confirms that almost 90% of ill-treatment investigations do not reach the trial. On average, the number of criminal cases sent for trial varies from one year to another between 20 and 30%, i.e. at least 2 times more often than in ill-treatment cases. 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.

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. According GPO, **opened ill-treatment investigations last at the average from 1 year to 2 years.** 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.**

Sanctions for ill-treatment

We believe 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 no. 3: 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 ³ (persons)
			Imprisonment	Suspended imprisonment	Fine	Community service		
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
2018	24	33	9	9	2	-	5	8
2019	30	49	3	14	4	1	16	11
2020	25	32	2	7	7	1	6	9

As it follows from the previous table, in 2019, the Moldovan courts delivered 30 judgments in respect of 49 accused persons. 11 of these persons (23%) have been acquitted and 22 convicted (45%). In respect of 16 persons (32%) the case was discontinued for procedural grounds. In 2020 the first instance courts delivered 25 judgments on ill-treatment charges. These cases concerned 32 accused persons. 9 persons (28%) have been acquitted and 17 (53%) convicted. In respect of 6 persons (19%) the cases were discontinued for procedural grounds (amnesty or statutory time-limitation).

The acquittal rate in ill-treatment cases (23% in 2019 and 28% in 2020), is particularly high even in comparison with the previous years (24% in 2018 and 16% in 2017), and 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** (32% of persons in 2019 and 19% in 2020) 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. According [GPO Activity Report for 2019](#), out of 15 persons convicted for torture only 2 (13%) have been effectively incarcerated, while in respect of other 9 persons (60%) the imprisonment was suspended. [According GPO Activity Report for 2020](#), only 2 (20%) out of 10 persons convicted for ill-treatment were incarcerated and imprisonment of other 1 person (10%) was suspended. Other 7 people were fined. In

³ All the acquittal sentences were appealed to a higher level court.

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 GPO activity report](#), in 2019 the incarceration was applied to 2,358 (21.9%) out of 10,783 convicted persons. Suspended imprisonment was applied to 2,531 persons (23.5%). It follows that **the suspended imprisonment in ill-treatment cases is ordered by judges 3 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 2020 the situation may look different, but this is due to small number of convicted persons in ill-treatment cases. 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. **The GPO does not have statistics on the number of persons suspected of ill-treatment, who have been suspended from office⁴.**

In conclusion, we can state that although some changes have been made, no substantive progress has been made in practice in combating and investigating torture, as evidenced by the small number of cases investigated efficiently and by the low rate of convictions and lenient sanctions. **This also reveals problems in terms of the quality of investigations carried out, as well as the lack of thorough training of prosecutors and judges involved in the investigation and examination of torture cases.**

Involvement of victims of torture in the criminal proceedings

By the [Constitutional Court Decision no. 31 of 29 November 2018](#) on the exception of unconstitutionality of certain provisions of the Criminal Code and of the Code of Criminal Procedure, in the part related to the access of the injured party and its representative to the materials of the criminal investigation, the Constitutional Court ruled, as a general rule, that the victims of torture and their representatives shall be awarded access to all the materials of the case file during the entire criminal investigation. As an exception, such access can be restricted by the prosecutor, based on a reasoned order, when that restriction is applied for a reasonable period of time, when it refers to certain procedural acts only and when the full access to the materials of the case-file risks to hinder the unfolding of that investigation. As a result of that decision, all the victims of ill-treatment must be offered full access to the materials of the investigation, being allowed to challenge or request the conduct of certain investigative measures. **We have no data if this in practice takes place, and are wondering if the Government can present this data. It can be a good indicator of the impact of that reform.** On the other hand, the Constitutional court suggested the Parliament to amend the legislation (para. 66) in order to clarify the procedure of access of the victim of torture to the investigation file. **The legislation was not changed although the decision of the Constitutional Court was issued 2.5 years ago.**

CONFIDENTIALITY OF MEDICAL EXAMINATIONS AND ACCESS TO MEDICAL ASSISTANCE IN DETENTION FACILITIES

Access to medical service for all detained persons continues to be limited and deficient, despite improved legislation. All detained persons should undergo a medical examination immediately upon

⁴ To see: the response of the General Prosecutor's Office from 1 July 2021 to the LRCM request [raspuns-la-solicitarea-nr.36.21-din-22.06.2021.pdf \(crim.org\)](#)

entry to and exit from the place of detention, as well as upon their request during the stay there. However, there is insufficient medical care to support potential or alleged victims under arrest in the aftermath of trauma, both physical and psychological.

The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) [in its last visit found](#) that medical examinations of detained persons were often performed *in the presence of a police officer; the copies of medical examination results were sometimes attached to the administrative files of detained persons, thus being accessible to non-medical staff, and that medical files were accessible to police officers, which is not matter of respecting the confidentiality of medical examinations* (to see page.18 from CPT Report).

Regarding the right of access to medical assistance, the detained people are examined by an institutional medical worker (feldsher) or within civilian hospital before being placed into detention facility. However, there are doubts about the completeness of medical examinations, as the properly documentations of injuries. This already 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.

In this regard, the CPT [found that the independence of medical workers](#) is directly affected, due to any relationship of subordination with the management factors of the detention isolators. The CPT reiterated that this dual loyalty is likely to give rise to an obvious conflict of interest and that it is therefore preferable for health-care staff working in all police facilities to be independent of the police. In short term, **CPT recommends to transferring the medical workers from the police staff to the Ministry of Health, Labour and Social Protection** and to develop public-private partnerships to complete the units of medical staff within detention isolators via concluded contracts with the medical institutions at the territorial level. 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. This transfer was publicly committed by the Moldovan Government since 2007, by to no avail.

Also in the preventive visits carried out by Ombudsman office [in 14 police facilities between June and December 2020](#), was noticed beyond that that some of them faced the problem of overcrowding; the existence of equipment and anti-pandemic means was minimal. For example: lack of masks for detainees, whenever they leave and enter the cell, including the lack of quarantine space in case of COVID-19 virus etc.

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) prosecutors shall improve the quality of investigations into the allegations of ill-treatment and treat these cases with priority;
- c) ensure that persons suspected of ill-treatment are immediately suspended from their duties and remain so throughout the investigation;
- d) medical staff in detention facilities shall have full independence, through their transfer under the subordination of the Ministry of Health;
- e) 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) generate accurate and full 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, we urge the Committee of Ministers to keep the *Levința* group of cases under enhanced supervision.