IMPLEMENTING THE GENERAL MEASURES OF THE EUROPEAN COURT OF HUMAN RIGHTS JUDGMENTS: A CASE STUDY OF MOLDOVA

by

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ABSTRACT

The Republic of Moldova ratified the European Convention on Human Rights (ECHR) on September 12, 1997. Since then, Moldova has had to ensure that domestic legislation is compatible with the ECHR requirements and that there are legal provisions to enforce the substance of the rights and freedoms set out in the Convention. The present study aims to build on the current scholarly literature that analyzes the implementation of the *general measures* of human rights judgements within the European Human Rights System. The research asks to what extent Moldova has been responsive to the *general measures* required by the judgments of the European Court of Human Rights (ECtHR) to prevent repetition of human rights violations based on an analysis of 63 closed cases by the Committee of Ministers and 76 leading pending judgments of the ECtHR against Moldova before the Committee of Ministers between 1998 and 2015. The thesis argues that the Republic of Moldova is responsive to ECHR judgments. However, the *general measures* taken or planned to be taken by the Moldovan Government can only describe Moldova as a *selective partial complier*. Moldova has the political willingness to comply with ECtHR ruling, but lacks the economic capacity and practical knowledge to fully comply with ECtHR jurisprudence. This makes the institutional authorities in Moldova to be more responsive to certain problematic areas, and less responsive to other human rights issues.

Keywords: Republic of Moldova, European Court of Human Rights (ECtHR), Implementation of European Court of Human Rights Judgments, General Measures

ÖZ

Moldova Cumhuriyeti, Avrupa İnsan Hakları Sözleşmesi (AİHS)'ni 12 Eylül 1997 tarihinde onayladı. Bu tarihten itibaren Moldova, ulusal mevzuatının AİHS gerekliliklerine uyumlu olduğunu ve Sözleşme'de belirlenen hak ve özgürlüklerin içeriğini hayata geçirecek yasal hükümlerinin bulunduğunu garanti etmelidir. Bu çalışma, Avrupa İnsan Hakları sistemindeki insan hakları yargı kararlarının *genel önlemler*inin infazını analiz eden mevcut akademik literatüre katkı sunmayı amaçlamaktadır. Bu çalışma, Moldova'ya karşı görülmüş öncü nitelikte 76 Avrupa İnsan Hakları Mahkemesi (AİHM) kararının analizine dayanarak, Moldova'nın insan hakları ihlallerinin tekrarını önlemek amacıyla AİHM kararlarının gerekli kıldığı *genel önlemler*i ne ölçüde uyguladığını sorgulamaktadır. Tez, Moldova'nın AİHM kararlarına yanıt vermekte istekli olduğunu savunmaktadır. Fakat, Moldova hükümeti tarafından alınan ya da alınması planlanan genel önlemler Moldova'yı ancak *seçici kısmi uygulayıcı* olarak niteleyebilir. Moldova, AİHM kararlarına uyum konusunda siyasi isteğe sahiptir, ancak AİHM içtihadına tamamen uyum sağlamak için gerekli ekonomik kapasite ve pratik bilgiden yoksundur. Bu durum Moldova'daki kurumsal otoritelerin bazı sorunlu alanlara daha istekli yanıt verirken, diğer insan hakları meselelerine daha az istekli yanıt vermelerine sebep olmuştur.

Anahtar kelimeler: Moldova Cumhuriyeti, Avrupa İnsan Hakları Mahkemesi (AİHM), Avrupa İnsan Hakları Mahkemesi Kararlarının İnfazı, Genel Önlemler

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Contents

Introduction

Scholarly interest in the compliance of Member States with the European Court of Human Rights (hereinafter ECtHR or the Court) decisions has increased in the past decade. A growing body of literature now exists that examines the execution of the judgments of the ECtHR.[1] Existing research shows that the ECtHR's jurisprudence has had varying degrees of influence on substantial legal, judicial and institutional changes, as well as human rights practices at the national level.[2] Building on this literature, the aim of this study is to inquire into the implementation of human rights judgments in Moldova. The research asks to what extent Moldova has been responsive to the judgements of the ECtHR. In doing so, the study examines the interaction between the Committee of Ministers (CoM or the Committee) and Moldova and the implementation of the general measures of the ECtHR judgments.

Moldova signed the European Convention on Human Rights (ECHR) on 13 July 1995 and ratified it on 12 September 1997.[3] By ratifying the ECHR, Moldova has undertaken to ensure that domestic legislation is compatible with the Convention and that there are national legal remedies to enforce the substance of the Conventions rights and freedoms.[4] However, there is scant research concerning Moldova's compliance with the general measures emanating from ECtHR judgments and there are no studies that aim to identify patterns of compliance with ECtHR judgments with respect to Moldova. Unlike other post-soviet countries, Moldova holds a unique position in the Council of Europe (CoE) community due to its close relation with Russia.[5] It has recently signed an association agreement with the European Union, showing political will to reform its legal and political system in accordance with European standards.[6] Moldova expresses the political will to initiate legislative, judicial

[1] For the purpose of this research, the terms 'implementation' with 'execution' or 'compliance' will be used interchangeably.

[2] Dia Anagnostou, *Introduction: Untangling the Domestic Implementation of the European Court of Human Rights' Judgements, in* THE EUROPEAN COURT OF HUMAN RIGHTS: IMPLEMENTING STRASBOURG'S JUDGEMENTS ON DOMESTIC POLICY 8 (Dia Anagnostou ed., Edinburgh University Press 2013) [hereinafter Dia Anagnostou *Domestic Implementation of the European Court of Human Rights Judgments*].

[3] *Council of Europe*, MINISTRY OF FOREIGN AFFAIRS AND EUROPEAN INTEGRATION OF THE RM, http://www.mfa.gov.md/council-europe .

[4] The subsidiarity character of the ECHR relies upon Article 13 and Article 35 (1).

[5] Due to economic ties with Russia, and due to the political support offered to Moldovan politicians, it is obvious that the actions taken at the international level will reflect upon this. In the international arena Moldova had to question whether the future actions of the state will "offend" Russia or Western Countries, respectively European Union, the Council of Europe.

[6] The Republic of Moldova, along Ukraine and Georgia, signed the Association Agreements with the European Union (EU) on 26 June 2014, which has been a widely debated step by the left Moldovan political parties.

and administrative changes to implement ECtHR's judgments.[7] Even though Moldova is a small country which some may believe is easy to control and supervise by the Moldovan authorities, the country faces ongoing political crises and human rights challenges.[8] Therefore, is valuable to assess to what extent ECtHR judgements have contributed to human rights in Moldova and to what extent.

The overall argument of this paper is that Moldova is a willing complier with the ECtHR judgments. Compared to other countries that generate a heavy case-load and a high number of implementation problems, such as Turkey and Russia, Moldova seeks to implement and comply with ECtHR judgments. However, this thesis is comprised of two sub arguments.

Firstly, I argue that Moldova is responsive to general measures of ECtHR judgements concerning violations of the right to be free from torture, inhumane and degrading treatment, cases concerning domestic violence, violations of property rights, access to justice, and cases concerning protection of rights in detention. However, the Moldovan authorities do not quickly respond to general measures of the judgments concerning the violations of the right to life, the right to private and family life, the right to freedom of expression and access to information, freedom of assembly and association, and lastly, freedom of religion.

Secondly, I argue that Moldova demonstrates patterns of selective partial compliance. There is political willingness to comply with ECtHR ruling, but Moldova lacks economic capacity and practical knowledge of the application ECtHR jurisprudence. Nevertheless, Moldova is compliant with the CoM supervision and open towards reforming domestic legislation and improving the judicial practice.

A. The research methodology

The aim of this study is to assess the progress of Moldova with respect to the implementation of general measures of the ECtHR judgements. The general measures are understood as measures that are designed to prevent repetition of human rights violations. The thesis carries out this assessment based on the institutional interaction between the CoM, the CoE body responsible for the execution of ECtHR judgements and the State of Moldova. Based on the CoM data, the thesis examines the Moldovan closed and pending cases before the CoM between 1998 and 2015. I studied the closed cases because they provide a general

[7] This study is built on the premises that Moldovan right wing political parties that are leading from 2009 onwards are willing to comply with ECtHR ruling. *See* Stanislav Secrieru, *Integration Reloaded Streamling Moldova's European Course,* The Finish Institute of International Affairs, Brief Paper 56 (2010).
[8] National Bureau of Statistics, *National Bureau of Statistics of the Republic of Moldova*, STATISTICA.MD (Feb. 6, 2016), http://www.statistica.md/index.php?l=en (Moldova has a population of approximatively 3, 5 mln.).

idea about the general measures Moldova implemented to fulfill the CoM requirements and I examined the pending cases to observe which of the issue areas are attracting general measures that are more difficult to implement and which do not.

For this reasons, I first reviewed 63 Moldovan cases closed by a final resolutions between 2007 and 2014.[9] Further, I examined the nature of general measures that these 63 cases required to be implemented, by classifying the general measures in legislative measures, judicial measure and executive measures. I then examined the pending cases before the CoM. While 242 cases were pending on the CoM database on the Execution of ECtHR judgments on May 2015[10], 76 of the cases are classified by the CoM as leading cases of those 242 ones. Hence, I examined the pending cases against Moldova on the CoM's website[11] selecting the 76 lead cases under enhanced and standard supervision. Lead cases help to understand problematic areas of implementation and clearly indicate systematic and repetitive violations. The lead cases are generally attracting general measures which make them valuable for the study.

I then examined the extensive set of reports available on the CoM execution of judgments database and the assessments in its Annual Reports[12] on trends in high profile leading cases. My final research process was to examine the Reports and Action Plans submitted by the Moldovan Government together with Moldovan NGOs communications. This study assesses 25 Action Plans from the Moldovan Government in response to these cases and three NGOs communications. Out of the 76 cases, 31 of them contain a submitted Action Plan. 45 cases still contain no Action Plan and therefore require information from the Moldovan authorities in the future. 13 of these cases have some general measures taken within the Action Plan of other judgments. In addition, I analyzed the general measures taken by the Moldovan authorities concerning the lead cases from three perspectives: judicial, legislative and executive, based on the cases and on the ECtHR observations.

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[9] For the purpose of this study, the CoM website was used to examine how many cases were closed by a Final Resolution http://www.coe.int/hy/web/execution/closed-cases while comparing the results with HUDOC database http://hudoc.echr.coe.int/eng#{"respondent":["MDA"],"documentcollectionid2":["RESOLUTIONS"]}. Information about the closed cases is also available in the Annual Reports of the CoM. However, only from 2007 the CoM started to report on the implementation of the ECtHR judgments. For this reasons, the most accurate data regarding the Moldovan closed cases comes from the CoM Annual Reports starting with 2007, the HUDOC database and Final Resolutions of the CoM.

[10] Since the thesis was written during a longer period of time, some information might not be the most updated.

[11] Council of Europe, *Pending cases: State of execution*, COMMITTEE OF MINISTERS, http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp.

[12] *Council of Europe*, Supervision of Execution: Implementing of Judgments of the European Court of Human Rights, All Annual Reports, http://www.coe.int/t/dghl/monitoring/execution/Documents/Publications_en.asp (last visited February 3, 2016).

In order to provide a holistic account and to observe which areas are more likely to find a response from Moldovan authorities and which not, analysis has been conducted according to the following pattern: 1) access to and efficient functioning of justice, 2) protection of private and family life, 3) protection of rights in detention, 4) protection of the right to life and protection against torture, 5) property rights, 6) freedom of assembly and association, 7) freedom of expression and information, and 8) freedom of religion.

By substantiating the details of Strasbourg judgments ruled against the Republic of Moldova, I outline some general characteristics and trends with regards to the execution of the Strasbourg judgments. The research process was desk-based and the primary sources of evidence were the case-law database of ECtHR (HUDOC), the Annual Reports of CoM, the official documents and reports released by the Moldovan Government, domestic legislation, Moldovan NGOs reports[13], public documents available and CoE reports. Also, scholarly work on implementation issue and compliance with ECtHR judgments assisted me to develop a framework of assessing compliance with international human rights law.

For the purpose of this thesis, I consider selective partial compliance means that the ECtHR judgements are not completely implemented. While selective partial compliance means that Moldova is willing to comply with the ECtHR judgement and does not meet the ECtHR judgment with obdurate resistance. I assess the willingness to comply with the Strasbourg Court ruling based on the Action Plans or Report Plans submitted by the State to the CoM. I also observe whether any general measures required by the judgments were implemented by the State and, finally, I examine whether the CoM is still waiting for an Action Plan or Report from the Moldova or for any information with regards to efficient application of new enacted laws, or newly developed judicial practice in accordance with ECHR jurisprudence.

For the analytical purposes of this thesis, selective partial compliance also occurs when the Moldova lacks capacity to implement the decision, or meets financial impediments to execute the judgement or even has no solid knowledge with regards to Court's jurisprudence. As a result, the Moldova chooses to implement only some of the general measures necessary for the judgment to be executed.

This research does not purport to address every aspect of the judgment implementation process in Moldova, especially does not aim to look at deep compliance with ECtHR judgements. This is because this study aims to cover all the issue areas and to observe the

[13] NGOs working on litigation of cases before ECtHR, such as the Legal Resource Center, the Human Rights Embassy, Lawyers for Human Rights, and Promo-Lex.

responsiveness of Moldovan authorities by examining the Action Plans or Reports sent to the CoM and the Moldova's attitude to the general measures required by the ECtHR. From this interactional approach, this study offers a general understanding of the responsiveness of Moldova across the types of demands. By observing the institutional interaction between Moldova and CoM across all issue areas offers an important indication on ongoing interaction between them. I did not choose to inquire into domestic developments because I the purpose of the thesis intend to offer an inclusive view about the reaction of Moldova to general measures of the ECtHR judgements by examining the relationship between the Moldovan authorities and the CoM.

This study is a first step in clarifying the patterns of compliance with ECtHR judgments of Moldova. It contributes to the literature on human rights compliance that focuses on domestic implementation or reception of the ECtHR judgments with extensive research on the lead pending cases in Moldova. Admittedly, this study research lays the basis of further, more detailed research that can study compliance and non-compliance on issues areas, institutionally or timely for the case of Moldova.

B. Thesis organization

Chapter I examines the remedial framework of the European Convention of Human Rights. The aim of this chapter is to clarify the Respondent State obligations in the ECHR human rights system, and distinguish *individual measures* from *general measures* of the ECtHR judgments.

Chapter II reviews the understanding of compliance with human rights judgments within the ECHR system. It begins with investigating how scholars refer to "compliance" and types of compliance encountered in the European Human Rights system. This literature review will underline the extent to which scholars in the field have examined the issue of implementation by defining the degree of compliance with ECtHR judgments: full compliance, partial compliance, and no compliance. Finally, the chapter examines the role of the Committee of Ministers, the Strasbourg Court, and the national authorities in the process of execution of judgments.

Chapter III presents the Moldovan case study and the attitude of national authorities towards human rights. It explores the status of ECHR in the Moldovan legal system and describes the national mechanism of execution of ECtHR judgments by observing the role of the Governmental Agent, Parliamentary Control, the Supreme Court of Justice and General Prosecutor Office on supervising the effective implementation of ECtHR judgments.

Chapter IV examines the status of execution of the general measures of ECtHR judgments in Moldova. It focuses on eight problematic areas pertaining to the general measures taken or proposed to be taken by the Moldovan government from three different perspectives: legislative, executive and judicial measures by looking both at closed cases and pending judgments before the CoM.

Chapter V provides an interpretation of the outcomes of the study in Chapter IV. The aim of this chapter is to observe the extent to which the general measures of the ECtHR ruling have been implemented by Moldova between 1998 and 2015 and how responsive Moldova has been across different problematic areas.

Finally, the conclusion will summarize the purpose of the thesis and present the main findings of the study by explaining to what extend had been Moldova committed to implement the ECtHR ruling.

CHAPTER I The Remedial Framework of the European Convention of Human Rights

Introduction

The first research process is to examine the remedial framework of the European Convention of Human Rights. The aim of this chapter is to show the remedies available in the ECHR system. I first present the ECHR and the execution mechanism of the Strasbourg judgments from a general perspective. Then I distinguish between two possible obligations that a State faces after the ECtHR's ruling, namely individual measures and general measures. Lastly, it is crucial for this study to present the significance of the general measures to the Convention system by examining pilot judgment procedure and Article 46 cases.

A. The European Convention on Human Rights

Member States of the Council of Europe signed the ECHR[14] in 1950 and agreed on a comprehensive bill of civil and political rights marking a common understanding of the people of Europe. The main purpose of the ECtHR was to bring effective and concrete remedies for specific violations to individuals whose rights were violated by Member States. Once the Cold War ended and the Soviet Union collapsed, many former Socialist European States became parties to the ECHR system.[15] In order to meet the obligations of the ECHR, the newly-joined countries had to incorporate the ECHR into their national law. There is no doubt that the Convention has had a significant impact on national domestic laws and jurisprudence, especially in relation to the law of human rights.[16]

Legal scholars regard the European Court of Human Rights as the most influential regional court, which has been cited and followed by other regional courts.[17] The Strasbourg Court is responsible for emitting legal binding judgments.[18] In practice, many scholars claim that the power of compliance with ECtHR judgments depends on the responsiveness of

[14] European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222, 224.
[15] DENIS HUBER AND VINCENT NASH, A DECADE WHICH MADE HISTORY: THE COUNCIL OF EUROPE, 1989-1999 (Council of Europe Pub., 1st ed. 1999).
[16] HELLEN KELLER & ALEC STONE-SWEET, A EUROPE OF RIGHTS: THE IMPACT OF THE ECHR ON NATIONAL LEGAL SYSTEMS (Helen Keller and Alec Stone Sweet eds., Oxford University Press, 1st ed. 2008) [hereinafter Hellen Keller & Alec Stone Sweet, *A Europe of Rights]*.
[17] Dihan Shelton, *The Jurisprudence of the Inter-American Court of Human Rights*, 10 Am. U. Int'l L. Rev. 333, 357 (1996).
[18] Article 46, ¶1 of the Convention says: "The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties."

domestic institutions[19] and there is a monitoring system[20] that helps ensure that Contracting Parties implement such judgments. Others scholars argue that the European system of human rights relies on shared responsibility between different actors: the Convention system, the Court, the Committee of Ministers, the Governments and the national courts and that the international institutions play an important facilitative role for the implementation of judgements domestically.[21]

However, during the past two decades, the implementation of judgments has become a growing concern for the ECtHR and CoM due to a lack of prompt and effective execution of judgments. Bates has noted, "It is only really since the mid-1990s, and the entry into force of Protocol no. 11 to the Convention, that the monitoring execution of Court judgments by the Committee of Ministers has become a cause for greater concern."[22] One significant reason for this is that as the caseload of the ECtHR has increased, the capacity of CoM to monitor large volume of cases has decreased and many of the applications are repetitive cases that are identical cases deriving from the same domestic irregularities.

The repetitive nature of these cases questions the effectiveness of the application of the Convention and implementation of the ECtHR decisions. The lack of implementation and limited application of the ECHR has been identified for action since Protocol No. 14 entered into force on June 2010.[23] The Member States have been failing to promptly execute judgments, address systemic Convention violations and consider the Convention and the

[19] Courtney Hillebrecht, *The Power of Human Rights Tribunals: Compliance with the European Court of Human Rights and Domestic Policy Change*, 20 EUR. J. INT'L L. 1-24 (2014) [hereinafter Courtney Hillebrecht, *The Power of Human Rights Tribunals*]. *See* also Dia Anagnostou *Domestic Implementation of the European Court of Human Rights Judgments, supra* note 2.

[20] Article 46, ¶2 says: "The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

[21] Eur. Ct. H. R., Seminar background paper, Implementation of the judgments of the European Court of Human Rights: a shared judicial responsibility?, Council of Eur. , 1 http://www.echr.coe.int/Documents/Seminar_background_paper_2014_ENG.pdf (last visited February 3, 2016). *See* Birgit Peters, *The Rules of Law Effects of Dialogues between National Courts and Strasbourg: An Outline*, *in* THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS: CONTESTATIONS AND DEFERENCE (Andre Nollkaemper and Machiko Kanetake eds., Hart Publishing, Forthcoming ed. 2013) [hereinafter Birgit Peters, *The Rules of Law Effects of Dialogues between National Courts and Strasbourg] and* Maarten den Heijer, *Shared Responsibility before the European Court of Human Rights*, 60 60 NETH. INTL. L. REV 411, 411-40 (2013).

[22] E. Bates, *Supervising the Execution of Judgments Delivered by the European Court of Human Rights: The Challenges Facing the Committee of Ministers, in European Court Of Human Rights: Remedies And Execution Of Judgments*, *in* SUPERVISING THE EXECUTION OF JUDGMENTS DELIVERED BY THE EUROPEAN COURT OF HUMAN RIGHTS: THE CHALLENGES FACING THE COMMITTEE OF MINISTERS 49-51 (Theodora Christou and Juan-Pablo Raymond eds., British Institute of International and Comparative Law 2005). [hereinafter E. Bates].

[23] The Protocol No. 14 reforms the supervision mechanism of the ECHR by improving the judicial-decision making. The Protocol No. 14 introduced new admissibility criteria for a better management of the large number of the pending cases to ECtHR.

Strasbourg Court's case law while deciding on domestic cases.[24] Moreover, the States lack domestic remedies and are missing structures and coordination with the civil society.[25] The reasons discussed above have led to the drafting of the Interlaken Declaration.[26] The priorities of this declaration were established by the Izmir Declaration of 2011. Among the right to submit individual petition concerns and national implementation reports to the Committee of Ministers, the declaration emphases the need to implement the Human Rights Court decisions at the national level.[27]

The next high-level conference on the Future of the European Court of Human Rights was held in Brighton in April 2012. The Brighton Declaration aimed to motivate the State Parties to establish independent National Human Rights Institutions, to develop policies and legislation to fully comply with the ECHR, introduce new domestic legal remedies, take into account ECtHR case law and inform public officials and train lawyers, judges and prosecutors about the Convention.[28] More recently, the Brussels 2015 Declaration articulated the need for a better cooperation between the Strasbourg Court and national authorities on one hand, and the Strasbourg Court and the Committee on another, especially with regards to repetitive and pending applications.[29] As to repetitive cases, the Brussels Conference stresses that the ECtHR should be the focus for prioritization of cases, based on the importance, urgency, and pilot judgments.[30] In addition, the Brussels Declaration emphasizes the need for better consultation between the Court, Committee, and the State Parties for appropriate handling of repetitive cases through the Governmental Agent and legal experts.[31] The Brussels

[24] *See* Open Society Justice Initiative, Steering Committee for Human Rights (CDDH), Committee of Experts on the Reform of the Court (DH-GDR), National Implementation of the Interlaken Declaration, Perspectives of European Civil Society on National Implementation of the Interlaken Declaration and Action Plan: Czech Republic, Hungary, Italy, Poland, Republic of Moldova, Russian Federation and Ukraine 2 (2012) https://www.opensocietyfoundations.org/sites/default/files/echr-reform-implementation-10232012.pdf [hereinafter Open Society Justice Initiative, *Perspectives of European Civil Society on National Implementation of the Interlaken Declaration and Action Plan*] and A. Mowbray, *The Interlaken Declaration--the Beginning of a New Era for the European Court of Human Rights?*, 10 HUM. RIGHTS LAW REV. 519, 519-28 (Oxford University Press (OUP) 2010).

[25] *Id*.

[26] High Level Conference on the Future of the European Court of Human Rights, Interlaken Declaration, February 19, 2009, Council of Eur. https://wcd.coe.int/ViewDoc.jsp?id=1591969 (last accessed February 3, 2016).

[27] Open Society Justice Initiative, *Perspectives of European Civil Society on National Implementation of the Interlaken Declaration and Action Plan*, *supra* note 24.

[28] *Id.*, at 2.

[29] High Level Conference on the 'Implementation of the European Convention on Human Rights, our shared responsibility', Brussels Declaration March 27, 2015, Council of Eur., http://justice.belgium.be/fr/binaries/Declaration_EN_tcm421-265137.pdf (last accessed February 3, 2016).

[30] *Id.*

[31] *Id.*

Conference concluded by requiring the State Parties to come up with new measures to improve execution process in order to absorb the backlog of pending cases.[32] In response, there has been an increase in structural attention to the execution of the judgments of Strasbourg Court in the past years.

B. Execution of the European Court of Human Rights judgments

There are two levels of execution of ECtHR judgments. The first level is the execution of judgments in individual cases.[33] This refers to the remedies that individual victims of human rights violations must receive after the delivery of a violation judgment. The second level relates to State compliance in a more general sense.[34] This level refers to what the State has done and must do in order to prevent future violations in similar cases. The latter level has proven to be a real challenge for certain Member States. Most of the time, these cases require significantly greater expenses of public resources and can raise political debates, making them more difficult for the States to implement and for the Committee to monitor.

According to the 7th Annual Report of the Committee of Ministers in 2013, the overall execution of the Strasbourg Court's judgments have recorded notable progress with 1216 repetitive cases closed by a final resolution.[35] A clear openness to dialogue and cooperation was noticeable between the State governments and the Committee of Ministers in these cases. Similarly, the Committee of Ministers delivered a higher number of supervised judgments compared to the previous years.[36] However, despite these improvements, the Committee of Ministers has also expressed concern regarding the length and effectiveness of the execution process. [37] Repetitive cases concerning unreasonable lengthy proceedings, non-judicial decisions, detention conditions and different issues linked to the right to property are still pending under the supervision of the Committee. Countries as Ukraine, Bulgaria, Greece, Italy, Poland, Romania, Russia and Turkey are characterized by institutional problems related to the executions of the decisions taken by the Court.

According to the 8th Annual Report of the Committee in 2015, the number of pending judgments continued to decrease as a result of the record number of cases closed in 2014,

[32] Open Society Justice Initiative, *Perspectives of European Civil Society on National Implementation of the Interlaken Declaration and Action Plan*, *supra* note 24, at 5-9.
[33] Tom Barkhuysen & Michiel van Emmerik, *A Comparative View on the Execution of Judgments of the European Court of Human Rights*, *in* EUROPEAN COURT OF HUMAN RIGHTS, REMEDIES AND EXECUTION OF JUDGMENTS 1 (T. Christou and J.P. Raymond eds., BIICL 2003) [hereinafter Tom Barkhuysen & Michiel van Emmerik].
[34] *Id.*
[35] *See* 7th Annual Report of the Committee of Ministers 2013, Council of Eur., 38 (March 2014).
[36] *Id.* at 7-13.
[37] *Id.*

including many cases involving important structural problems. Importantly, the implementation of pilot judgments has been particularly successful. Additionally, the Committee notes that "the participation of Ministers and other high-level government officials in the Committee's debates is a further positive development (...)".[38] Despite this, there are also crucial problems that need immediate attention. For example, a high number of crucial cases concerning structural or systemic [39] violations suffer from slow domestic implementation because of the nature of the complaints. These complaints are primary of economic or political sensitivity. As a consequence, the problem of repetitive cases appears to continue despite the ECtHR's efforts to develop speedy and efficient procedures for such cases. Therefore, the Committee suggests improving the dialogue and coordination "between the domestic and the Council of Europe's cooperation activities."[40]

The Convention generally leaves the Member States to decide how to comply with the provisions of the Convention.[41] Yet, in some conditions the State is advised to follow the recommendations of the Strasbourg Court.[42] Hillebrecht reasons that "ECtHR's jurisdiction does not include advocating for policy change, overturning domestic case law or even determining the appropriate measures necessary for providing individual victim recourse."[43] However, in *Scozzari v. Italy*[44] the ECtHR stipulated that a violation judgment "imposes on the respondent state a legal obligation not just to pay those concerned the sum awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their

[38] *See* 8th Annual Report of the Committee of Ministers 2014, Council of Eur., 7 (March 2015).
[39] In the cases of Broniowski v. Poland [GC], App. No. 31443/96, 2004-V Eur. Ct. H.R. (2004), ¶189 (systemic violation was defined as: "where the facts of the case disclose the existence, within the [relevant] legal order, of a shortcoming as a consequence of which a whole class of individuals have been or are still denied [their Convention rights]" and "where the deficiencies in national law and practice identified […] may give rise to numerous subsequent well-founded applications.").
[40] 8th Annual Report of the Committee of Ministers 2014, Council of Eur., 7 (March 2015), at 8.
[41] *See for e.g*., Marckx v Belgium, App. No. 6833/74, Eur. Ct. H. R. (Ser. A no. 31), (1979) ¶38; *Council of Europe*, European Court of Human Rights: The ECHR in 50 Questions 10 (2014) http://www.echr.coe.int/Documents/50Questions_ENG.pdf (last accessed February 3, 2016).
[42] *See* 2nd Annual Report of the Committee of Ministers 2008, Council of Eur. ¶ 9-10 (2009); *see* also, Belilos v. Switzerland, App. No. 10328/83, 132 Eur. Ct. H.R. (ser. A) (1988) ¶78; Scordino v. Italy (GC), App. No. 36813/97, 45 Eur. H. R. Rep. (2005) ¶233; Abbasov v. Azerbaidjan, App. No. 24271/05 (2008) ¶36 ("The Court reiterates that its judgments are essentially declaratory in nature (...).") *and* Elisabeth Lambert Abdelgawad, *The Execution of the Judgments of the European Court of Human Rights: Towards a Non-coercive and Participatory Model of Accountability*, 69 ZaöRV, 471, 474 (2009).
[43] Courtney Hillebrecht, *Implementing International Human Rights Law at Home: Domestic Politics and the European Court of Human Rights*, 13HUM RIGHTS REV 279, 279-301 (2012) [hereinafter Courtney Hillebrecht, *Domestic Politics and the European Court of Human Rights*].
[44] Scozzari and Giunta v. Italy, App. Nos. 39221/98 and 41963/98, Eur. Ct. H. R. 2000-VIII; 355 EHHR.

domestic legal order to put an end to the violation found by the court and to redress so far as possible the effects."[45]

After the Strasbourg Court's ruling, the State faces two possible obligations: *individual measures (*including *just satisfaction)* and *general measures.*

C. The execution of individual measures of the European Court of Human Rights judgments

The concept of *just satisfaction* refers to pecuniary and non-pecuniary financial reparations. It is the only measure established by the ECtHR under the terms of the Convention itself (Article 41 ECHR). As noted, the ECtHR may impose financial reparations, or it can facilitate friendly settlements between the parties.[46] The payment is expected within three months after the judgment becomes final. If a State delays the payment, it has to pay simple interest, calculated on a daily basis, from the expiry of the three months until the day of payment. If the State in question is unable to prove the payment, the case returns to the Committee of Ministers' agenda until it is otherwise proved.[47] *Just satisfaction* "(…) only applies if the domestic legal system does not allow for full *restitution in integrum."*[48] The Strasbourg Court gives priority to *restitution in integrum* as a remedy measure, but often, in practice, it is impossible to apply "either because is irreversible or because the ECtHR lacks the power to quash national decisions or to issue certain orders."[49] Nifosi-Sutton affirms that in reality, *just satisfaction* merely means monetary damages which have often been a limited amount.[50] Although State compliance with payments of *just satisfaction* is high, problems of late payment arise in countries such as Bulgaria, Greece, Italy, Romania, Russia, and Turkey. Sometimes the Committee has to adopt interim resolutions to put pressure on the State Party to make the payment.[51]

When the Committee of Ministers considers that the consequences of the violation are not adequately remedied by the payment of just satisfaction, it will also examine whether it is necessary to impose *individual measures*. The *individual measures* are established by the

[45] DAVID C. BAULARTE AND CHRISTIAN M. DE VOS, FROM JUDGEMENT TO JUSTICE: IMPLEMENTING INTERNATIONAL AND REGIONAL HUMAN RIGHTS DECISIONS 39 (Open Society Foundations 2010) [hereinafter DAVID C. BAULARTE AND CHRISTIAN M. DE VOS].
[46] *Id.*
[47] *Id.*
[48] Tom Barkhuysen & Michiel L. van Emmerik, *supra* note 33, at 4.
[49] *Id.*
[50] Ingrid Nifosi-Sutton, *The Power of the European Court of Human Rights to Order Specific Non-Monetary Relief: A Critical Appraisal from a Right to Health Perspective*, 23 HARVARD HUM RTS J 51, 54-9 (2010).
[51] The Committee also adopts declarations and resolutions on current political issues. *See Texts adopted by the Committee of Ministers of the Council of Europe*, COUNCIL OF EUROPE, http://www.coe.int/T/CM/adoptedTexts_en.asp (last accessed February 3, 2016).

Strasbourg Court with the aim of restoring the individual's condition to what it was before his/her conviction in accordance with the principle of *restitution in integrum*, even if this may not always be possible in practice.[52] The *individual measure* that states should take following the finding of a violation of the Convention by the ECtHR has three aspects: to put an end to the continuing violation, to provide restitution *in integrum*, and to pay *just satisfaction* when awarded by the Strasbourg Court.[53] "Individual measures depend on the nature of the violation and the applicant's situation."[54] Also, there is a wide range of other possibilities, the most important of which is reopening the case on the domestic level.

D. The implementation of general measures of the European Court of Human Rights judgments

The Strasbourg Court deals with an important number of repetitive cases annually. There are more than 34, 000 repetitive cases currently before the ECtHR.[55] The high number of repetitive cases indicates that the Member States are not fully complying with previous judgments. In this particular situation, the *general measures* are of great significance to the Convention system. The *general measures* aim to prevent the same type of abuses happening again.[56]

The Council of Europe notes that "the *general measures* relate to the obligation to prevent similar violations found or to putting an end to continuing violations."[57] Anagnostou argues that *general measures* may involve legislative amendments, the adoption of administrative or executive measures, or a shift in domestic judicial approach and interpretation in conformity with the ECtHR's jurisprudence, and also educational activities and other practical measures.[58] She adds that the *general measures* "are broader measures that extend beyond the specific individual case and are aimed at preventing the recurrence of similar infringements in the future."[59] Additionally, some cases may require different measures such as the closing of a prison; increasing the number of medical care services in prison, or improvements in administrative arrangements. The competent national authorities are encouraged by the Committee to take interim measures to limit the consequences of

[52] Dia Anagnostou, *Domestic Implementation of the European Court of Human Rights, supra* note 2, at 6.
[53] Déborah Forst, *The Execution of the Judgments of the European Human Rights, Limits and Ways Ahead*, 7 ICL JOURNAL (2013).
[54] DAVID C. BAULARTE AND CHRISTIAN M. DE VOS, *supra* note 45, at 40.
[55] *See* 8th Annual Report of the Committee of Ministers, Council of Eur., at 5.
[56] *Council of Europe*, An Unique and Effective Mechanism, http://www.coe.int/t/dghl/monitoring/execution/Presentation/About_en.asp (last accessed February 3, 2016).
[57] Eur. Ct. H. R., *The Execution of Judgments* (Council of Europe 2012) http://www.echr.coe.int/Documents/Anni_Book_Chapter05_ENG.pdf (last accessed February 3, 2016).
[58] Dia Anagnostou, *Domestic Implementation of the European Court of Human Rights, supra* note 2, at 6.
[59] *Id.*

violations as regards to individual applicants. These days, the Committee of Ministers pays particular attention to the efficiency of domestic remedies, especially where the judgments reveal systemic or structural problems.[60] More than 50 percent of the legislative measures adopted by States correspond to the *general measures*.[61] The scope of the *general measures* is defined in each case primarily on the basis of the conclusions of the ECtHR in its judgment as considered in the light of the ECtHR's case-law and CoM' practice.[62]

The general measures take a long time to be revised and to be implemented. Changing the legislation or impacting on the practice of the judiciary necessitates a reasonable amount of time for implementation. Yet, Anagnostou affirm, "the long-term effectiveness, legitimacy and the credibility" of the ECHR system depends on the implementation of these general measures.[63]

i. Pilot judgment procedure (PJP)

Wildhaber identified that increased numbers of applications was predictable for countries that recently joined the Council of Europe, but had been under the oppression of totalitarian governments for years and that their legal systems had not had enough time to comply with the requests of the Convention.[64] This quantitative factor wasn't the only change brought by the falling of the Iron Curtain; the practice of the Strasbourg Court also diversified in accordance with the nature of the cases brought by these new members. The nature of cases changed after the accession of these countries[65] with systemic and structural problems coming more frequently before the ECtHR. Nevertheless, the newly-joined countries now had the opportunity to develop fundamental rights and democracy concepts in their domestic legal system.[66] As a result, the Strasbourg Court together with the Committee of Ministers and

[60] Centrul de Resurse Juridice din Moldova [Legal Resources Centre from Moldova], [Executarea Hotărârilor Curţii Europene a Drepturilor Omului de Către Republica Moldova] Execution of judgments of the European Court of Human Rights by the Republic of Moldova, 1997-2012 (2012) 90 [hereinafter *CRJM Report 1997-2012]*.
[61] G.E.F. Sundberg, *Control of Execution of Decisions under the European Convention of Human Rights: A Perspective on Democratic Security, Inter-Governmental Cooperation, Unification and Individual Justice in Europe, in* INTERNATIONAL HUMAN RIGHTS MONITORING MECHANISMS: ESSAYS IN HONOR OF JAKOB TH. MÖLLER 573-74 (G. Alfredsson et. al. eds., 2001).
[62] PROTOCOL NO. 14 AND THE REFORM OF THE EUROPEAN COURT OF HUMAN RIGHTS 90 (Paul Lemmens and Wouter Vandenhole eds., Intersentia Publishers 2005) [hereinafter Paul Lemmens & Wouter Vandenhole].
[63] Dia Anagnostou, *Domestic Implementation of the European Court of Human Rights, supra* note 2, at 6.
[64] Luzius Wildhaber, *Consequences for the ECTHR of Protocol No. 14 and the Resolution on Judgments Revealing an Underlying Systematic Problem : Practical Steps of Implementation and Challenges, in* REFORMING THE EUROPEAN CONVENTION ON HUMAN RIGHTS: A WORK IN PROGRESS: A COMPILATION OF PUBLICATIONS AND DOCUMENTS RELEVANT TO THE ONGOING REFORM OF THE ECHR (Council of Europe Pub. 2009). [hereinafter Luzius Wildhaber].
[65] Costas Paraskeva, *Human Rights Protection Begins and Ends at Home: The Pilot Judgment Procedure Developed by the European Court of Human Rights*, 3 HUMAN RIGHTS LAW COMMENTARY (2007).
[66] Council of Eur. Eur. Parl. Ass., Recommendation 1194 (Oct. 6, 1992).

Governments of Member States developed a mechanism to cope with the increasing amount of repetitive cases coming from these countries.[67]

The *pilot judgment* (PJP) mechanism originated in mid-2000 following discussions on the drafting of Protocol No. 14.[68] The concept of PJP was first described by the Strasbourg Court in 2003, in a document approved by the Plenary Court and presented to the Managing Committee for Human Rights in the context of drafting Protocol No. 14.[69] However, Protocol No. 14 does not provide a special PJP for repetitive cases, and the drafters left this decision in the hands of the ECtHR. Thereby, the ECtHR developed the PJP.[70] The Committee of Ministers adopted in 2004 the Resolution on judgments revealing an underlying systemic problem.[71] This resolution proposed that the ECtHR should be the organ which identifies the systemic nature of violations. The ECtHR would then advise the Member States on proper measures that should be taken to eradicate the fundamental reasons causing clone cases or repetitive cases. Finally, the Committee of Ministers would be responsible for supervising the implementations of the ECtHR judgments.[72]

The binding force of the ECtHR judgments was reflected by the concept of pilot judgments. In the first pilot judgment given by the ECtHR in *Broniowski v. Poland*[73] it was stated that the Polish State breached Protocol 1 Article 1 of the Convention and that the violation "originated in a widespread problem which resulted from the malfunctioning of Polish legislation and administrative practice"[74] and that "the respondent State must, through appropriate legal measures and administrative practices, secure the implementation of the property rights in question."[75] In this respect, the ECHR imposes obligations on the States and these obligations request them to revise legislation that violates human rights principles.[76] Even though international law lacks a supranational coercive mechanism, the ECHR requires

[67] Paul Lemmens & Wouter Vandenhole, *supra* note 62, at 18-9.
[68] Open Society Justice Initiative, *Pilot Judgments* Feb. 2012.
[69] Oana Nedelcu-Surdescu, *Brief Analysis of the Operation of the Pilot Judgment Procedure before the European Court of Human Rights (ECHR),* 1 JOURNAL OF EUROPEAN STUDIES AND INTERNATIONAL RELATIONS 25 (2010) [hereinafter Oana Nedelcu-Surdescu].
[70] Paul Lemmens & Wouter Vandenhole, *supra* note 62, at 43.
[71] Council of Eur. Comm. of Ministers, Resolution on judgments revealing an underlying systemic problem, 114th Sess. Res.3 (May 12, 2004).
[72] Paul Lemmens & Wouter Vandenhole, *supra* note 63, at 119.
[73] Broniowski, *supra* note 39.
[74] *Id.*, ¶189.
[75] *Id*., ¶194.
[76] GEORGE LETSAS, A THEORY OF INTERPRETATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 33 (Oxford University Press, 2008).

Contracting States that breached the Convention to stand by the final judgments of the Court and to award just compensation to the victim.[77]

In order to deliver a *pilot judgment*, the ECtHR first should identify an individual violation of the Convention rights. Further, the ECtHR should identify a systemic or structural malfunctioning of domestic legislation or judicial practice. It is important that the violations occur are a result of the malfunctioning of domestic legislation. Lastly, *general measures* should be stipulated in the operative part of the judgment in order for the respondent State to determine the systemic problem and correct it. In certain cases, the measures may involve a specific time limit given for the respondent State to comply with Court request.[78]

The purpose of the PJP is a technical one, namely to deal with the excess of cases before the Court. The main objectives of pilot decisions are to serve a number of important interests. Firstly, the Court wants to ensure that their judgments are effectively enforced by the respondent State in question. Secondly, the interest of the respondent State to solve the malfunction of their national legal system is another essential concern. And finally, the interest of the applicants to be quickly financially compensated is also important.[79]

The PJP starts when the Court identifies a case with repetitive features. The chosen case will be determined with priority so that the judgment may help other pending cases that are similar. The Court will also determine what is wrong with the national law and recommend to the defendant State the *general measures* are to be taken to solve the systemic problem. Moreover, a PJP must be approved by the Committee of Ministers and should reflect the subsidiarity principle.

In their latest report, the Committee declared that the PJP procedure has been successful.[80] This has been confirmed by the Ministers' Deputies on the basis that since 2011, there has been a decrease in the number of repetitive cases. In addition, Laurence Helfer affirms that "the *pilot judgment procedure* represents a significant shift in the ECHR's own powers, in that the court has claimed authority to scrutinize the legislative and administrative regulations that national governments adopt to comply with its remedial orders and recommendations."[81]

There are some countries that view the PJP as being politically motivated, such as Russia and Poland. Legal scholars argue that the *pilot judgment procedure* is unsuitable for

[77] *Id.*, at 123.
[78] Markus Fyrnys, *Expanding Competences by Judicial Lawmaking: The Pilot Judgment Procedure of the European Court of Human Rights*, 12 GERMAN L. J. 1231-1260 (2011).
[79] Oana Nedelcu-Surdescu, *supra* note 69, at 27.
[80] 7th Annual Report of the Committee of Ministers, Council of Eur., *supra* note 35.
[81] DAVID C. BAULARTE AND CHRISTIAN M. DE VOS, *supra* note 45, at 43.

cases which concern the length of proceedings or length of preliminary detention cases.[82] As for these cases, the Court influence should be significant in bringing about radical changes in domestic law. However, Leach, Stephenson, Blitz and Hardman recognize that systematic violation of key human rights as Article 2, Article 3, and Article 5(1) and (3) cannot be solved through *pilot judgment* decisions.[83] Also, the Court cannot proceed with a *pilot judgment* decision if there is an inter-State political conflict.[84] The PJP was mainly used for cases concerning judicial process and judicial reform, and judicial delay.[85]

ii. Article 46 judgments

Another method of engagement with the Strasbourg Court structural reform is the so-called *quasi-pilot judgments* or Article 46 judgments. When the ECtHR finds a systemic problem that causes violations of human rights protected under the Convention, it may suggest which measures the State should take in order to eliminate the problem. Contrary to pilot judgments, the Strasbourg Court does not prioritize one case and postpones others of the same nature.[86] In *Broniowski v. Poland*, the Court clarified its interpretation of Article 46 by holding that "a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention,

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[82] Philip Leach et al., *Responding to Systemic Human Rights Violations an Analysis of Pilot Judgments of the European Court of Human Rights and Their Impact at National Level European Court of Human Rights, Strasbourg* (2010) 23 https://metranet.londonmet.ac.uk/fms/MRSite/Research/HRSJ/Events/HRSJ%20Presentations%20Pilot%20Strasbourgh.pdf [Philip Leach et al., *Responding to Systemic Human Rights Violations*].

[83] *Id.*

[84] *Id.*, at 20.

[85] *E.g*., pilot judgments of the former Soviet countries concern non-enforcement of judicial decisions: Olaru v. Moldova, App. Nos. 476/07, 22539/05, 17911/08, 13136/07, 2009, Eur. Ct. H. R. (2009) http://hudoc.echr.coe.int/eng?i=001-93687 and Burdov v. Russia, App. No. 59498/00, 2002-III Eur. Ct. H. R. 317. Additionally, examples for pilot judgments concerning judicial delay are: Ummuhan Kaplan v. Turkey, App. No. 24240/07, Eur. Ct. H. R. (2012) http://hudoc.echr.coe.int/eng?i=001-109779 and Dimitrov v. Bulgaria, App. No.48059/06 2708/09, Eur. Ct. H. R. (2011) http://hudoc.echr.coe.int/eng?i=001-104700 . Another problem judgment was the cases concerning compensation and individual property rights: Maria Atanasiu v. Romania, App. No. 30767/05 and 33800/06, Eur. Ct. H. R. (2010) http://hudoc.echr.coe.int/eng?i=001-100989 , Suljagic v. Bosnia and Herzegovina, App. No. 27912/02, Eur. Ct. H. R. http://hudoc.echr.coe.int/eng?i=001-95564 and Broniowski v. Poland [GC], App. No. 31443/96, 2004-V Eur. Ct. H.R. (2004)

[86] Alexandra Huneeus, *Reforming the State from Afar: Structural Reform Litigation at the Human Rights Courts*, 40 YALE J. INT'L L., 6 (2015) [hereinafter Alexandra Huneeus].

provided that such means are compatible with the conclusions set out in the Court's judgment."[87] Therefore, the Court may give indications to the State concerned.[88] Also, the Committee has made a number of recommendations including a special recommendation on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights Recommendation CM/Rec(2008)2.[89] The Committee has stressed that it is essential to ensure the full, effective and rapid execution of judgments.

Conclusion

The execution of the Strasbourg Court's judgments is an integral part of the Convention system. The Court's authority and system's credibility depend on the effectiveness of the execution of the judgments.[90] This chapter is designed to provide the reader with a clear understanding of the ECHR remedial framework and the execution process of the ECtHR judgements.

[87] In the cases of Broniowski v. Poland [GC], App. No. 31443/96, 2004-V Eur. Ct. H.R. (2004), ¶192.
[88] *Supra* note 71, ¶192. This in itself was a quotation from an earlier case: *Supra* note 44, at 249.
[89] Paul Lemmens & Wouter Vandenhole, *supra* note 62, at 93. *See also Recommendation CM R(2008)2*, COUNCIL OF EUROPE, https://wcd.coe.int/ViewDoc.jsp?id=1246081.
[90] Paul Lemmens & Wouter Vandenhole, *supra* note 62, at 92.

CHAPTER II Compliance with the European Court of Human Rights' ruling

Introduction

In the last chapter I explained the remedial framework of the ECHR and how this integrated system works in identifying human rights violations, and more importantly, the obligations of the State Parties in bringing remedies to victims of human rights violations. In this chapter I will examine what compliance with human rights judgments means within the European Convention system. I will begin by examining the factors contributing to compliance, then move to defining the degree of compliance with ECtHR judgments. I then explain the role of different actors in the compliance process: (i) domestic courts, (ii) the Strasbourg Court, and (iii) the Committee of Ministers.

A. Compliance with the Strasbourg Court' judgments

In past years, scholars have focused on why and how States comply with international human rights law. They have acknowledged a variety of factors that determine whether States must comply with international tribunals' rulings or not. The literature on compliance with international tribunals' ruling is multilayered. The complexity of measuring compliance in ECtHR system varies between the different measures that the States have to undertake as remedies, namely individual or general measures.

Compliance occurs as a result of different factors. As Anagnostou states "The processes of litigation in the Strasbourg Court and the domestic implementation of its rulings involve sustained interaction among individuals, civil society actors, governments and legal-judicial actors, as well as between European officials and national diplomats."[91] That is to say that compliance is influenced by a variety of factors. For example, Hawkins and Jacoby argue that international enforcement, management and domestic politics are factors that influence compliance.[92] Considering international enforcement, Simmons claims that States are likely to comply with international obligations in order to maintain a good international reputation. States that do so are likely to be rewarded through different mechanisms.[93] Chayes and Chayes affirm that management problems affect compliance. They claim that governments are willing to comply with international legal obligation but their capacity may be limited due

[91] Dia Anagnostou, *Domestic Implementation of the European Court of Human Rights, supra* note 2, at 3.
[92] Darren Greg Hawkins & Wade Anthony Jacoby, *Partial Compliance: A Comparison of the European and Inter-American Courts of Human Rights*, 6 J. INT'L L. & INT'L REL. 35, 41 (2010) [hereinafter Darren G. Hawkins & Wade A. Jacoby]
[93] *Id.*

to inefficient bureaucracies and judiciaries.[94] Chayes and Chayes identify that low-capacity states are struggling to comply with international rules but are under-resourced.[95] In addition, Hawkins and Jacoby are that "Management problems are related to the nature of the international rules and the capabilities of states, rather than state motives and the rewards or punishments linked to rule-following."[96] These problems may occur because of the lack of technical expertise or economic capacity or because the international rules are ambiguous to interpret and, eventually, the State faces difficulties in compliance. Alternatively, non-compliance may happen due to the fact that international rules are difficult to implement and need a certain amount of time.

Domestic politics also play an important role in compliance. Some scholars consider that the key to compliance are domestic institutions with authority to bring significant changes in a State's human rights policies and practices.[97] Policy changes present as a challenge for political actors because the states may have different reasons why they do not want to comply with international rules. As Hillebrecht argues, implementing human rights judgments is entirely a political process.[98] She adds that "compliance with the tribunals' ruling hinges in two main, domestic factors: robust domestic institutions and political incentives."[99]

The political aspect is also an important driver of the execution process, as it involves domestic and international actors. From a political perspective, Grewal and Voeten write that the implementation of Court's judgments "(…) implies that countries with effective bureaucracies and judiciaries will resolve cases that do no elicit high-level political opposition very quickly (…)".[100] They also identify that politically sensitive cases take longer to be implemented[101] with ones requiring legislative changes taking the longest. Other the other hand, cases requiring no general measures or only publication and dissemination of the judgment take the least.[102] Notably, the two scholars found that "the countries with low levels of bureaucratic capacity implement judgments much more slowly than countries with high

[94] Abram Chayes & Antonia Handler Chayes, *On Compliance*, 47 INTERNATIONAL ORGANIZATION 175, 178 (Cambridge University Press (CUP) 1993).
[95] *Id.*
[96] Dia Anagnostou, *Domestic Implementation of the European Court of Human Rights, supra* note 2, at 3.
[97] Courtney Hillebrecht, *The Power of Human Rights Tribunals, supra* note 19, at 1.
[98] Courtney Hillebrecht, *Domestic Politics and the European Court of Human Rights, supra* note 43.
[99] Courtney Hillebrecht, *Compliance with Human Rights Tribunals: An assessment*, E-INTERNATIONAL RELATIONS (E-International Relations Nov. 25, 2013), http://www.e-ir.info/2013/11/25/compliance-with-human-rights-tribunals-an-assessment/ (last accessed on February 3, 2016) [hereinafter Courtney Hillebrecht, *Compliance with Human Rights Tribunals*].
[100] Sharanbir Grewal and Erik Voeten, *The Politics of Implementing European Court of Human Rights Judgements*, SSRN ELECTRONIC JOURNAL, 14 (Social Science Electronic Publishing 2012) [hereinafter Grewal and Voeten]
[101] *Id.* at 21.
[102] *Id.*

capacity."[103] And finally, "if states chose to resist implementation, powerful states (or states with high capabilities: France, Germany, Italy, Russia, Spain, Turkey, UK) (…) are more likely to endure that resistance."[104] In other words, countries above mentioned can stand against implementation longer than other states.

Hillebrecht further claims that due to the range of obligations expected from a State following a judgment, the executive cannot comply with the rulings by itself. Many times successful compliance requires the joint work of the executive, legislators and judiciaries. "While executives can start the process of compliance, legislators are instrumental in formulating new policies and practices, while judiciaries can strike down old laws and hold perpetrators accountable."[105] In this view, compliance is likely to result from a variety of domestic factors that are willing to comply with international rules in the first place. A large and complex literature focuses on this particular aspect of compliance.[106] For instance, scholars recognize that national judges have an important role in the implementation of ECtHR.[107]

Civil society organizations can further pressure governments to comply with international tribunals' ruling.[108] Simmons states that compliance with human rights judgements is influenced by interested non-state actors.[109] McIntosh Sundstorm, in her research on Russian NGOs efforts on implementation of Strasbourg judgments, found that NGOs have had a significant impact on implementation in certain areas of ECHR. She adds that NGOs where able to inform and educate local actors to improve implementation regarding cases that concern the capacity of the Russian legal system and bureaucracy. Yet, the situation was different in cases of police torture, torture and disappearances committed by Chechnya. In this case, 'heavy diplomatic pressure' from Committee of Ministers along with the work of NGOs was necessary to get results.[110]

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[103] *Id.*
[104] *Id.*, at 22.
[105] Courtney Hillebrecht, Compliance with Human Rights Tribunals, *supra* note 99, at 2.
[106] Dia Anagnostou, *Domestic Implementation of the European Court of Human Rights*, *supra* note 2, at 41-2.
[107] Helen Keller & Alec Stone, *A Europe of Rights*, *supra* note 16; Courtney Hillebrecht, *Domestic Politics, International Human Rights Adjudication, and the Problem of Political Will: Cases from Inter-American Human Rights System*, 65TH ANNUAL NATIONAL CONFERENCE OF THE MIDWEST POLITICAL SCIENCE ASSOCIATION (2009); BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS (Cambridge University Press 2009). [Hereinafter Beth A. Simmons, *Mobilizing for Human Rights*].
[108] Lisa McIntosh Sundstrom, *Advocacy beyond Litigation: Examining Russian NGO Efforts on Implementation of European Court of Human Rights Judgments*, 45 COMMUNIST AND POST-COMMUNIST STUDIES 255-68 (2012). [hereinafter Lisa McIntosh Sundstrom].
[109] Beth A. Simmons, *Mobilizing for Human Rights*, *supra* note 107, at 372-73.
[110] Lisa Mcintosh Sundstrom, *supra* note 108, at 265.

From a different perspective, Chayes and Chayes and Simmons, Anagnostou and Mungiu-Pippidi argue that "variation in state implementation performance is closely linked to the overall legal infrastructure capacity and government effectiveness of a state."[111] In other words, the implementation of ECtHR's judgments occurs faster when the government and "the legal infrastructure capacity" proves to be efficient.[112] For the authors, compliance is a result of "diffused and well-coordinated efforts and synergies among the civil service, parliamentarians, and administrative elites, courts, independent authorities, and other state bodies."[113]

In his reply to Anagnostou and Mungiu-Pippidi's work on domestic implementation of the Strasbourg Court, Voeten emphasizes that "low capacity countries attract judgments that are more difficult to implement." Additionally, he argues that the rate of compliance depends on a relationship between time, institutional capacity, and checks and balances. "High capacity helps willing politicians to implement judgements quickly. Yet, among judgments that have been pending longer, countries with higher capacity are no quicker to implement than lower capacity countries. By contrast, check and balances initially slow down implementation but help to eventually ensure begrudging implementation."[114]

To sum up, compliance with human rights ruling involves a variety of domestic actors and institutions. Political will, management capacity, and legal infrastructure are playing a decisive role in this process.

B. Assessing the degree of compliance with the European Court's judgments

The central purpose of this thesis is to analyze the extent to which Moldova has implemented the general measures of the ECtHR judgments to date, and to examine the type of compliance that can occur within domestic implementation of the ECtHR judgements. Therefore, this section describes the varieties of compliance: full compliance, partial compliance including selective partial compliance, speedy and slow partial compliance, and lastly, non-compliance.

i. Full compliance

In their study, Hawkins and Jacoby, find that "most states do fully comply with most judgments." And that even lately, when the Court deals with a greater amount of cases, full

[111] D. Anagnostou & A. Mungiu-Pippidi, *Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter*, 25 EUR J INT LAW 205 (2014). [hereinafter D. Anagnostou & A. Mungiu-Pippidi, *Domestic Implementation of Human Rights Judgements in Europe]*.
[112] *Id.* at 225.
[113] *Id.* at 227.
[114] Erik Voeten, *Domestic Implementation of European Court of Human Rights Judgments: Legal Infrastructure and Government Effectiveness Matter: A Reply to Dia Anagnostou and Alina Mungiu-Pippidi*, 14 EJIL 1, 229 (2014).

compliance is reached by most of the states.[115] Hawkins and Jacoby categorize cases as *full* compliance when those cases are already closed, which means that the Committee is satisfied with the implementation of individual and general measures.[116] Statistics show that since 2011 the number of cases closed annually by the adoption of a final resolution has doubled.[117] In 2014, 1502 cases were closed, from which 208 were leading cases and 1294 repetitive cases.[118]

ii. Partial compliance

Hawkins and Jacoby found that "the patterns of partial compliance observed in both Europe and the Americas can be sorted into four types (that are not mutually exclusive): 1) split decisions, where states do some of what a court orders but not all; 2) state substitution, where states sidestep a court order, implementing an alternative response to the decision; 3) slow-motion, where states move so slowly that it is difficult to say that full compliance occurs; and 4) ambiguous compliance amid complexity, in which states face particularly daunting or demanding tasks."[119] The authors argue that these aspects may produce partial compliance instead of non-compliance. Given the circumstances, Hawkins and Jacoby claim that is better to classify developing countries as partial compliance rather than complete non-compliance.

The implementation time depends on the nature of the case and the state. Sometimes states are willing to quickly comply and effectively implement the required general or/and individual measures, while other times the judgment implementation takes several years.[120] While some of the judgments might only require just satisfaction or/and individual remedies, others need enactment of new laws, amendments of legislation or changes in judicial practice.[121]

In their study, Hellen Keller and Alec Stone Sweet found that "ECtHR frustration for both ECtHR judges and the Council of Europe bureaucracy is that some judgements are not fully complied with."[122] The study demonstrates how the ECtHR norms and decisions are treated by all the branches and levels of government. In the ECtHR, partial compliance is

[115] In every Annual Reports of the Committee of Ministers are announced the number of cases closed in the current year.
[116] Darren G. Hawkins & Wade A. Jacoby, *supra* note 92, at 54.
[117] According to the 8th Annual Report of the Committee of Ministers, in 2011, from a total of 816 cases, 322 were leading cases and 494 repetitive cases. The year of 2012 registered a total number of 1035, while 185 where leading cases and 850 repetitive cases. In 2013, 182 leading cases and 1216 repetitive composed 1398 total cases. Finally, in 2014 were registered 208 leading cases, 1294 repetitive cases and a total of 1502 cases.
[118] *See* 8th Annual Report of the Committee of Ministers 2014, *supra* note 38.
[119] Darren G. Hawkins & Wade A. Jacoby, *supra* note 92, at 38.
[120] Dia Anagnostou & Alina Mungiu-Pippidi, *supra* note 111, at 212.
[121] *Id.*, at 206.
[122] Darren G. Hawkins & Wade A. Jacoby, *supra* note 92, at 55.

extremely widespread as most of the cases are pending from more than two years and the "European States very often comply fully and quickly, and they rarely ignore Court judgments completely."[123]

iii. Non compliance

Repetitive cases are evidence of non-compliance in the European Human Rights system. Yet, quite often there is no strong evidence of such non-compliance because States do eventually comply with the judgments. For example, Andreas von Staden notes that the all Court's judgments determined until 1995 had been fully implemented between 1960 and 2005.[124]

In order to improve compliance, D. Hawkins and W. Jacoby note that states need more technical and political assistance with the process of execution of the ECtHR judgments. For Example, EU membership affects positively the states human rights policies and practices. Additionally, the states should involve domestic actors because "domestic capacity building can have a positive effect on compliance."[125]

C. Compliance actors

i. The role of domestic courts in compliance

The national courts are directly affected by ECtHR judgments due to the binding effect of judgments, either through constitutional obligations or other ways. Most of the time, the national courts adapt their legal practices according to Strasbourg case law.[126] The Strasbourg Court considers this approach as a direct effect.[127] Examples of this practice are found in countries such as France, Estonia, Russia, Austria, Greece, and Albania, etc. For example, after a certain number of Strasbourg judgments, the Serbian Constitutional Court changed its practice regarding non-enforcement of judicial decisions cases in accordance with ECtHR's requirements.[128] The CoE considers this type of judicial reform as *compliance under pressure*.[129] Lastly, the national courts have to accommodate international law and in doing so, must harmonize interpretation with ECtHR rulings. For instance, the German Federal Constitutional Court had to change its approach in line with the judgments of the European

[123] Darren G. Hawkins & Wade A. Jacoby, *supra* note 92, at 54-5.
[124] Andreas von Staden, Shaping Human Rights Policy in Liberal Democracies: Assessing and Explaining Compliance with The Judgments of the European Court of Human Rights (Nov. 2009) (PhD Dissertation, Woodrow Wilson School of Public and International Affairs) ("With the exception of *F.C.B. v Italy* case that was later reopened.").
[125] Courtney Hillebrecht, *Compliance with Human Rights Tribunals*, *supra* note 99.
[126] European Court of Human Rights, Seminar background paper, Implementation of the judgments of the European Court of Human Rights: a shared judicial responsibility?, Council of Eur., 9-11 http://www.echr.coe.int/Documents/Seminar_background_paper_2014_ENG.pdf (last visited February 3, 2016).
[127] *Id.*, at 8.
[128] *Id.*, at 11.
[129] *Id.*, at 10.

Court because they were not "directly binding on the German court because they were also required to consider whether the factual circumstances had evolved and whether there was any conflict with the Basic Law."[130]

Judicial dialog between the Strasbourg and domestic courts rarely occurs. This may be due to the fact that the Strasbourg Court has insufficient understanding of specific aspects from domestic processes. In this particular situation, the national courts can refuse to follow the European Court's decision but not without giving reasons for their decision.[131] Furthermore, national courts could be reluctant in following European Court's jurisprudence concerning particular aspects that are contrary to their Constitution, laws or rules. However, the national courts play a key role in compliance with the ECtHR judgments because the judgments often require a shift in their approach and jurisprudence. Peters, in his work concerning the effects of dialogue between national courts and Strasbourg Court, claims that the dialogue between the Court and national courts establish the basis of standards in international rule of law and that demonstrates compliance with ECtHR ruling.[132]

Considering the importance of the national courts, Calı and Wyss hold that while the mere presence of the Court motivates the states to comply with the judgment, the willingness to do so must originate from the state. Therefore, the domestic courts are more important than ECtHR.[133] The authors affirm that "in our research we have not found that the mere existence of the European Court of Human Rights replaces domestic reasons for compliance with human rights judgements."[134] In other words, just because a State is part of the CoE and ECHR does not mean that the State is fully determined to comply with Strasbourg's ruling.

ii. The Strasbourg Court's role in compliance

The reputation of the ECtHR depends on the compliance factor.[135] When finding a violation, the Strasbourg Court exercises delegative compliance, which means that it does not "make orders on how to end a violation, compensate for its effects, or prevent future infringements."[136] In this sense, the Strasbourg Court has no formal role in the process of implementation of judgments. Nevertheless, the ECtHR does assist the CoM and the

[130] *Id.*
[131] *Id.*, at 12.
[132] *See* Birgit Peters, *The Rules of Law Effects of Dialogues between National Courts and Strasbourg*, *supra* note 21 *and* Maarten den Heijer, *Shared Responsibility before the European Court of Human Rights*, 60 NETH. INT'L LAW REV. 411, 427 (2013).
[133] Başak Çalı & Alice Wyss, *Why Do Democracies Comply with Human Rights Judgments? A Comparative Analysis of the UK, Ireland and Germany*, SSRN ELECTRONIC JOURNAL (2009).
[134] *Id.*, at 27.
[135] Dia Anagnostou & Alina Mungiu-Pippidi, *Domestic Implementation of the Human Rights Judgments in Europe*, *supra* note 111, at 206.
[136] Darren G. Hawkins & Wade A. Jacoby, *supra* note 92, at 37.

respondent Government when necessary. In practice, the Court can help in the identification of the remedial action required by its judgment by making a commentary contribution. "It seeks to strike a balance between effectiveness or "*effet utile*" and subsidiarity. Execution has to be a shared responsibility involving all the different actors potentially having a role to play. The obligation for all concerned is one of result."[137] Due to pilot judgment procedure, the Court is effectively involved in the implementation phase. For instance, the Rules of Court provides that the Court is to identify the type of remedial measure, which the respondent State is required to implement.[138]

iii. The Committee of Ministers' role in compliance

The Committee of Ministers is a political body in charge of enforcement of legally binding judgments.[139] "The Committee, in addition to having its own Secretariat, is assisted in its duties by the Council of Europe Directorate General of Human Rights and Legal Affairs (one of five Directorates General), and, since the late 1990s, by the specialized Department for the Execution of Judgments, which is housed within the Human Rights and Legal Affairs Directorate." [140] The Committee adopted certain working methods aimed at improving compliance. First of all, it started to publish annual reports on the implementation of judgments.[141] In this supervisory role it draws attention to all of the problems that the Committee encounters relating to the timely and effective execution of *individual* and *general measures*. Secondly, it supports the rights of victims by enabling them to submit information with regards to the implementation of *individual measures* and just satisfaction.[142] Significantly, NGOs and National Human Rights Institutions can also send written submission as a reply to Action Plans submitted by the Government, especially concerning *individual* and *general measures*.[143] Furthermore, the Committee may adopt interim resolutions to either give information about the progress of the execution or to express concerns and make suggestion regarding execution.[144]

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[137] Courtney Hillebrecht, *Compliance with Human Rights Tribunals*, *supra* note 99, at 8-14.
[138] Eur. Ct. H. R., Rules of Court R.61¶3 (2013), http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf Eur. Ct. H. R., *Rules of Court Registry of the Court Strasbourg* (2015).
[139] Philip Leach, *On Reform of the European Court of Human Rights*, 6 EUR. HUM. RTS. L.R. 725, 732 (2009).
[140] See DAVID C. BAULARTE AND CHRISTIAN M. DE VOS, *supra* note 45, at 46.
[141] *Id.*, at 47.
[142] Council of Europe and Committee of Ministers, Committee of Ministers - Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements (adopted by the Committee of Ministers on 10 may 2006 at the 964th meeting of the Ministers' Deputies) (May 10, 2006), https://wcd.coe.int/ViewDoc.jsp?id=999329 R. 9 ¶1.
[143] Eur. Ct. H. R., Rules of Court R. 9 ¶2 and ¶3 (2013), http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf.
[144] Eur. Ct. of H. R.,, Rules of Court R. ¶16 (2013), http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf.

There is some controversy between scholars regarding the nature of the activity of CoM supervision. The Convention clearly states that the States have the duty to implement the Court judgments and comply with the CoM supervision of the enforcement of judgments. However, for many scholars the duty of guarding the implementation is not only legal, but also of a political nature. For example, Hillebrecht argues that "implementing the tribunals' rulings is an inherently political process that plays out on the domestic level."[145] It is true that in the light of the European Convention on Human Rights, human rights are understood as being best guaranteed by "an effective political democracy". Therefore, without an effective political democracy, the implementation of ECtHR judgments and the application of the Convention are mostly inefficient.

To encourage timely adequate implementation of judgments, the Execution Department and states representatives both aim to establish a plan of execution for individual and repetitive cases. Also, for urgent cases, systemic cases and 'very serious violations', the Committee will reduce the first phase of supervision to under 6 months.[146] Also, if the general measures are not implemented within a year, the Committee may consider adopting another framework for execution. Furthermore, the Committee may also sanction the non-compliant State by suspending the state or expelling it under Article 3 and 8 of the Status of the Council of Europe.

In addition, the Council of Europe's Parliamentary Assembly engages on matters of compliance with court judgments through rapporteur reports, recommendations and resolutions. Also, according to Protocol 14, the European Commissioner for Human Rights has been recently allowed to participate in cases before the Court even though the Committee remains the main body of the Council of Europe supervising execution.

Conclusion

In this chapter I showed the factors that influence compliance with ECtHR judgments. In addition, I identified the types of compliance with human rights judgments, and examined the role of domestic courts, the Strasbourg Court, and the role of Committee of Ministers.

[145] Courtney Hillebrecht, *supra* note 43, at 280.
[146] *Supra* note 138, R.4 ¶1("The Committee of Ministers shall give priority to supervision of the execution of judgments in which the Court has identified what it considers a systemic problem in accordance with Resolution Res (2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem").

CHAPTER III Compliance with the Judgments of the European Court of Human Rights in Moldova

Introduction

In the last chapter I focused on the responsiveness of States to the ECtHR judgements and clarified patterns of compliance with ECtHR judgments. In order to identify where the Republic of Moldova currently stands in the ECHR system regarding compliance with ECtHR judgements, this chapter explains the political background of Moldova. More specifically, I will focus on the political dynamics of Moldova in relation to the so called 'Twitter Revolution" in April 2009 and the following political crisis. Against this background, I will examine, from a general perspective, the human rights challenges in Moldova and the legal status of the ECHR in the legal system of Moldova. This involves analysis of the actors of compliance and the public institutions responsible for the implementation of the ECHR in Moldova, such as the role of the Governmental Agent, the Parliamentary control, the Supreme Court of Justice and the departments involved implementation of the ECHR within the General Prosecutor Office.

A. The case of Republic of Moldova

To understand the implications of ECtHR judgments in Moldova it is vital to examine Moldova's contemporary political dynamics. In this aspect, Schmidtke and Yekelchyk affirms that "historical legacy is not less important than present–day political realities in determining how [..] states will redefine their domestic and external identity and whether these states will one day become members of a united Europe."[147]

Moldova claimed independence during the collapse of the Soviet bloc on 27 August 1991. The imperial collapse provoked popular movements towards sovereignty and raised controversy between minorities regarding a possible unification with Romania.[148] The proposal for Moldova to be part of Romania just after the collapse of Soviet Union was supported by the Moldovan intellectuals, but had little support from the general population.[149] The consequences of Soviet Union politics, the presence of significant Russian minority and tight political and economic connections with Russia made it difficult to shape the identity of

[147] SERHY YEKELCHYK & OLIVER SCHMIDTKE, EUROPE'S LAST FRONTIER? BELARUS, MOLDOVA, AND UKRAINE BETWEEN RUSSIA AND THE EUROPEAN UNION 3 (Palgrave Macmillan 2007) [hereinafter Serhy Yekelchyk & Oliver Schmidtke, *Europe's Last Frontier?*].
[148] *Id.*, at 10.
[149] John B. Dunlop, *Will a Large-Scale Migration of Russians to the Russian Republic Take Place over the Current Decade?*, 27 INTERNATIONAL MIGRATION REV 3, 607 (1993).

Moldovans.[150] Due to its tumultuous past, the population of Moldova went through a strained process of 'russification'.[151] As a result of this period, the citizens of Moldova are often confused with regards to their ethnicity and cultural identity.

Nowadays Moldova is going through an identity shaping process and transition from a strongly communist influence to an emerging democracy. The influence of the West on Moldovan foreign policy was often been made at the expense of the powerful historical relationship with Russia. The Europeanization of the Eastern frontier of the EU has resulted in political and economic reforms. The relationship of the EU with Moldova started to develop since 1994 when Moldova signed the Partnership and Cooperation Agreement with EU.[152] The legal agreement provided a basis for cooperation with the EU in the political, commercial, economic, legal, cultural and scientific areas.[153] Furthermore, the EU's collaboration with Moldova has been designed to promote the EU market, democracy and rule of law. Zagorski claims that Moldova still faces difficulties, such as "economic development and political stability, threats of organized crime, drug trafficking, illegal immigration, and environmental pollution"[154], which slows down the process for EU membership. Despite of all this, Moldova is regarded as a potential candidate for EU membership in the long term.

The new geopolitical reality in Europe, namely the rivalry between Russia and the West has most recently shaped the domestic transformation of the post-communist Moldova. The alignment in Moldovan foreign policy with European institutions has occurred despite the Communists ruling in power until 2009. Noteworthy is that this shift has occurred under the leadership of Communist Party, where the former President Vladimir Voronin and foreign policy has increased the country's diplomatic and economic relations with the EU and EU member states, resulting in the signing of the EU-Moldova Action Plan in February 2005.[155] Nevertheless, Moldova has also kept a strong relationship with Russia which has greatly

[150] Moldova receives natural gas from Russia. Similarly, Russia represents for Moldova one of the most important market for exports. According to the European Commission trade statistics, the value of imports and exports between Moldova and Russia is 1.7 billion euro.
[151] Russification is a form of cultural assimilation process during which non-Russian communities, voluntarily or not, give up their culture and language in favor of the Russian one.
[152] The partnership is currently undergoing ratification.
[153] EEAS, EU-Moldova Relations (2016).
[154] Andrei Zagorski, *Policies towards Russia, Ukraine, Moldova and Belarus*, *in* EUROPEAN UNION FOREIGN AND SECURITY POLICY: TOWARDS A NEIGHBOURHOOD STRATEGY 80 (Roland Dannreuther ed., Taylor & Francis 2003) [hereinafter Andrei Zagorski, *Policies towards Russia, Ukraine, Moldova and Belarus*].
[155] European Commission, DG External Relations, *EU-Moldova Relations Political and Legal Foundations the Partnership and Cooperation Agreement* (2007) http://eeas.europa.eu/moldova/pdf/political_legal_foundations_en.pdf (last accessed February 3, 2016).

influenced the political and cultural development of the country and the possibility of future integration in European politics.[156]

The established partnership with the EU is designed to develop a trade regime based on the World Trade Organization principle of 'Most Favored Nations' (MNF), to encourage political dialog with the EU for a better cooperation and finally, to respect the EU's conditions imposed within this agreement regarding the economic and political progress of Moldova.[157] Even though Moldova was not a priority for Brussel for a long period of time, Zagorski predicts that Moldova has the potential to sign an association agreement with EU in the near future. After 2009, the integration of Moldova in the EU represents a strategic objective of the foreign policy of Moldova. As a result of these efforts, Moldova signed the association agreement with the EU on June 2014.[158]

i. 7 April 2009 Events – The 'Twitter Revolution'

According to the Polity IV Country Report on Moldova, released by the Center for Systemic Peace in 2010, "Moldova became the first and only former Soviet country to be governed by a democratically elected Communist regime, which was in power from April 2001 to April 2009."[159] On April 5, 2009, the ruling Communist Party won 60 out of 101 seats in parliamentary elections, which was only one seat less to elect the new President. The opposition parties accused the Communists of electoral fraud and called on civil society to participate in protests in Chisinau's main square.[160] The crowd amounted to more than 15,000 participants, mainly young Moldovans, who were mobilized through Twitter, and this event subsequently became known as the "Twitter Revolution" in Moldova.[161] As Tismaneanu notes the events were "spontaneous and characterized by a liberal anticommunism centered

[156] Serhy Yekelchyk & Oliver Schmidtke, *Europe's Last Frontier?, supra* note 147, at 4.
[157] Andrei Zagorski, *Policies towards Russia, Ukraine, Moldova and Belarus, supra* note 154.
[158] European Commission - Press Release - The EU's association agreements with Georgia, the Republic of Moldova and Ukraine (Jun. 23, 2014), http://europa.eu/rapid/press-release_MEMO-14-430_en.htm (last accessed February 3, 2016) *See* also *supra* note 147 at 79-97; *and* IRIS KEMPE AND FRANCO ALGIERI, DIRECT NEIGHBOURHOOD: RELATIONS BETWEEN THE ENLARGED EU AND THE RUSSIAN FEDERATION, UKRAINE, BELARUS AND MOLDOVA (Bertelsmann Foundation 1998).
[159] *Polity IV Country Report 2010: Moldova* (Sistemic Peace 2010) http://www.systemicpeace.org/polity/Moldova2010.pdf (last accessed February 3, 2016).
[160] G. Dura & E. Gnedina, *Moldova's 'wannabe democracy' is worth rescuing*, 1 (2009) http://aei.pitt.edu/10816/1/1832.pdf (last accessed February 3, 2016).
[161] Radio Free Europe, Moldova's "Twitter Revolution", 8 April 2009, http://www.rferl.org/content/Moldovas_Twitter_Revolution/1605005.html; *see also* Spiegel Online International, 'Twitter Revolution': Fearing Uprising, Russia Backs Moldova's Communists, 10 April 2009, http://www.spiegel.de/international/europe/twitter-revolution-fearing-uprising-russia-backs-moldova-s-communists-a-618563.html (last accessed February 3, 2016).

on honoring and actualizing individual human rights. The primary and essential principle of modern liberalism is the recognition of the inalienable rights of any human being".[162]

On the following day of 6th of April 2009, the protests turned violent culminating in the destruction of the Parliamentary and the Presidency buildings by protesters.[163] Professor Ceslav Ciobanu writes that according to Vladimir Voronin's declarations to RIA Novosti, the former President let the events to degenerate. "We decided to cede to them [to protesters, called by him "fascists headed by leaders of opposition parties and supported by Romania in an anti-constitutional "putsch"] for one day all that in their imaginations represents the government power: president's and speaker's offices, parliament's sessions hall, telephones and computers".[164] The next day, the Communist Government responded to the protesters' attacks by arresting, torturing and ill-treating hundreds of young people.[165] The country's borders were closed and the media was censored.[166] 'The communist prime-minister Zinaida Greceanii was sent by V. Voronin to appear on television to warn that "the police would shoot rioters..."[167] The police forces arrested peaceful protesters, witnesses, journalists, and some opposition figures. Four confirmed deaths[168] followed the civil unrests, while several hundred were arrested, tortured and ill-treated by Moldovan police.[169] The Communist Government then had to call early elections, as the Moldovan Parliament had failed to elect the President.[170] On 29 July 2009, the Communist Party lost power to a new formation of political elite in the form of a pro-European coalition. The communist regime's effects on the country were devastating. They left behind a State lacking the rule of law, where there was little evidence of political pluralism and an old generation frightened to speak up for itself.[171] The

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[162] Vladimir Tismaneanu, *Moldova's revolution against cynical and cronyist authoritarianism* (2009) http://www.rferl.org/content/Moldovas_Revolution_Against_Authoritarianism/1607656.html (last accessed January 25, 2016).
[163] The Economist, *Moldova Burning ,Violent protests erupt against the government of Moldova* (April 8, 2009) http://www.economist.com/node/13447119 (last accessed February 3, 2016).
[164] Ceslav Ciobanu, *Lessons of 'Velvet Revolutions': From Romanian 'December 89' to Moldovan 'April 09'. Moldova: Quo Vadis?*, COGITO MULTIDISCIPLINARY RESEARCH JOURNAL (2010) [hereinafter Ceslav Ciobanu, *Lessons of 'Velvet Revolutions'*].
[165] *Id*.
[166] Media Azi, *Journalists about the Twitter Revolution (7 April 2009)*, Apr. 4, 2014, http://www.media-azi.md/en/stiri/journalists-about-twitter-revolution-7-april-2009 . (last accessed January 25, 2016).
[167] Ceslav Ciobanu, *Lessons of 'Velvet Revolutions', supra* note 164.
[168] UNIMEDIA, *COMUNIŞTII RECUNOSC: Valeriu Boboc a Murit În Urma Unor Lovituri Dure*, Aug. 18, 2011, http://unimedia.info/stiri/-11736.html . (last accessed February 3, 2016); Mediafax, *Familia Unui Tânăr Moldovean Susţine Că Acesta a Murit După Ce a Fost Bătut de Poliţie*, Apr. 11, 2009, http://www.mediafax.ro/externe/familia-unui-tanar-moldovean-sustine-ca-acesta-a-murit-dupa-ce-a-fost-batut-de-politie-4206538 (last accessed February 3, 2016).
[169] Alina Mungiu-Pippidi and Igor Munteanu, *Moldova's 'Twitter Revolution',* 20 J. OF DEMOCRACY 136-42 (2009).
[170] Balazs Jarabik, *Moldova between Elections: Europe or Isolation?*, 16 POLICY BRIEF 1-5 (2009).
[171] Ceslav Ciobanu, *Lessons of 'Velvet Revolutions', supra* note 164.

Communist party had also influenced the judiciary by corrupting the impartiality of the judges. The post-electoral impasse that Moldova experienced in April 2009 rocked the country's traditionally tolerant and peaceful society. Under the Communist Government leadership more than 300 protesters were arrested and human rights violations were registered.[172]

ii. Post 'Twitter Revolution' – the Moldova political crisis

The "Alliance for European Integration" was not successful in gathering enough votes in Parliament to elect the President. This was the first phase of a long constitutional and political crisis that lasted more than 917 days.[173] Only in March 2012, Nicolae Timofti was elected as President. However, on March 2013, the Alliance collapsed and dragged the country into another political crisis. Moldova "has been locked in political turmoil since the disappearance of some $1bn (£710m) from the banking system in 2014."[174] Last year Moldova witnessed large waves of protests amid a worsening economic situation and corruption scandals. In September 2015 up to 100,000 people demonstrated in the largest protest since Moldova's independence.[175] The protests were coordinated by the Dignity and Truth (Demnitate și Adevăr) civic platform lead by lawyers, journalists and well known figures in Moldova.[176] These demonstrations led to the 2016 political crisis, where the last government was dismissed by the parliament on 29 October 2015.[177] The country entered 2016 without a Government as a result of the unending protests that had continued since early September 2015. Moldova's President appointed Pavel Filip prime minister in January 2016. However, the protesters are now demanding early elections.[178]

iii. Human rights challenges in Moldova

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[172] Olga Danii and Mariana Mascauteanu, *Moldova under the European Neighbourhood Policy: 'Falling between Stools',* 27 JOURNAL OF COMMUNIST STUDIES AND TRANSITION POLITICS 99, 102 (2011).
[173] Judithanne Scourfield McLauchlan, *The Rule of Law, Judicial Review, Reform and the Protection of Human Rights in Moldova and Transnistria*, 9 INTERCULTURAL HUM. L. REV.103, 103-36 (2014).
[174] Rayhan Demytrie, *Moldova Anger Grows over Banking Scandal*, BBC EUROPE, Sept. 14, 2015, http://www.bbc.com/news/world-europe-34244341 (last accessed February 3, 2016).
[175] *A Început Marea Adunare Naţională; Mii de Oameni Protestează În Centrul Chişinăului Faţă de Regimul Oligarhic*, Jurnal MD, Sept. 5, 2015, http://www.jurnal.md/ro/politic/2015/9/6/a-inceput-marea-adunare-nationala-mii-de-oameni-protesteaza-in-centrul-chisinaului-fata-de-regimul-oligarhic (last accessed February 3, 2016).
[176] Oazu Nantoi et al., *Platforma Civică Demnitate Și Adevăr DA MANIFESTUL PLATFORMEI CIVICE DEMNITATE ȘI ADEVĂR (DA)* (2015) (last accessed February 3, 2016).
[177] CTV News, *Moldovan Parliament Dismisses Government of Prime Minister Valeriu Strelet*, CTV NEWS, Oct. 29, 2015, http://www.ctvnews.ca/world/moldovan-parliament-dismisses-government-of-prime-minister-valeriu-strelet-1.2633090 (last accessed February 3, 2016).
[178] BBC, *Moldova Political Crisis: Protesters Break into Parliament*, BBC EUROPE, Jan. 21, 2016, http://www.bbc.com/news/world-europe-35366194 (last accessed February 3, 2016).

The major problem for Moldova is the widespread practice of corruption in all State institutions.[179] According to Transparency International, in 2014 the country ranks 103 out of 175 countries researched by the survey.[180] The Global Corruption Barometer 2010/2011[181] shows that 37 per cent of the participants in the survey declared paying a bribe in 2010. Moreover, 52 per cent feel that their government efforts to fight corruption are ineffective. More than 50 per cent believe that the level of corruption has risen further in recent years, and that the police is the institution most affected by corruption. Institutions representing the judiciary, political parties, public officials and civil servants, the parliament, and legislature and education are also significantly affected by corruption in the eyes of Moldovan citizens.[182] Over the past two years the level of corruption has increased, according to the participants. In 2013, the most corrupt institutions remained the same with the medical, and health system also being affected.[183]

The corrupt public authorities undermine the credibility and effectiveness of the police, judiciary, and the respect for rule of law. Significant other human rights problems include poor detention conditions, arbitrary detention by police, restrictions on freedom of assembly and association, and freedom of speech by the local authorities, discrimination against Roma and persecution of LGBT individuals.[184]

Before being part of the CoE, Moldova had different social values and a different political system compared to the Western Block. Moldova had to adapt its legal system. Therefore, the ECHR was used as a tool for justice reform.[185] Holger Hembach holds that "the ECHR did not reflect their legal traditions and the values underlying the Convention were not entrenched to the full extent in their laws."[186] Moreover, it adds that the ECHR proved useful

[179] FREEDOM HOUSE: *Moldova, with Serious Problems of Corruption, Oligarchy and on the Brink of Semi Authoritarian Regime*, Apr. 2, 2015, http://jurnal.md/en/politic/2015/6/23/freedom-house-moldova-with-serious-problems-of-corruption-oligarchy-and-on-the-brink-of-semi-authoritarian-regime/ (last accessed February 3, 2016).
[180] Transparency International, *Corruption Index 2014* Dec. 3, 2014 (last accessed February 3, 2016).
[181] Transparency International, The Global Corruption Barometer is a worldwide public opinion survey on views and experiences of corruption. *See* Transparency International, *Transparency International - Country Profiles*. (last accessed February 3, 2016).
[182] *Id.*
[183] Transparency International, Moldova 2013 - World's largest opinion survey on corruption - Transparency International (2003), http://www.transparency.org/gcb2013/country/?country=moldova (last accessed February 3, 2016).
[184] U.S. Department of State, *MOLDOVA Country Reports on Human Rights Practices for 2012 United States Department of State Bureau of Democracy, Human Rights and Labor* (2013) and *Moldova 2013 Human Rights Report* (United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Report on Human Rights Practices for 2013) (last accessed February 3, 2016).
[185] Holger Hembach, *The European Convention on Human Rights as a tool for justice reform*, ECHR-ONLINE.INFO, http://echr-online.info (last accessed February 3, 2016).
[186] *Id.*

not only as an instrument of human rights protection but also as a guideline for capacity building and justice reform.[187] In light of the European Convention on Human Rights, human rights are understood as being best guaranteed by "an effective political democracy". Therefore, without an effective political democracy, the implementation of ECtHR judgments and the application of the Convention are mostly inefficient. The unhealthy democratic regime is evidenced by the high number of case law of the ECtHR dealing with factors of concern specific to problems of transitioning regimes such as violations of right to freedom of expression, or right to property, and right to a fair trial.

B. The legal status of the European Convention on Human Rights in the legal system of the Republic of Moldova

In theoretical terms, Moldova is a republic with a form of parliamentary democracy. The Moldovan Constitution was adopted in 1994 and drafted in line with European Human Rights Convention. [188] The Moldovan Constitution provides for a multiparty democracy with legislative and executive branches, independent judiciary, and a clear segregation of powers. Legislative authority is put in the hands of the unicameral parliament.[189]

The ECHR has been automatically incorporated through a constitutional provision which recognizes a super-legislative rank to international treaties in the domestic hierarchy of sources of law. As far as the Republic of Moldova is concerned, Article 4 of the Constitution states:

"(1) Constitutional provisions on human rights and freedoms shall be interpreted and enforced in accordance with the Universal Declaration of Human Rights, other conventions and treaties to which the Republic of Moldova is a party.

(2) Wherever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations."

Moreover, Article 8 of the Moldovan Constitution reads:

"(1) The Republic of Moldova pledges to observe the Charter of the United Nations Organization and the treaties to which it is a party, to institute relationships with other states on the basis of unanimously recognized principles and norms of the international law.

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[187] *Id.*

[188] CRJM Report 1997-2012, *supra* note 60, at 43.

[189] *See* Constitution of the Republic of Moldova (adopted Jul. 29, 1994), available at http://ijc.md/Publicatii/mlu/legislatie/Constitution_of_RM.pdf .

(2) The coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter."

In 1999, the Constitutional Court explained that the norms of international law can be applied by the law enforcement bodies when necessary.[190] It also clarified that the norms of international law can overrule the national laws but not constitutional norms.[191] The Criminal Procedure Code, the Civil Procedure Code and the Contravention Code of the Republic of Moldova provides detailed provisions on direct application of international law norms and on reopening of court proceeding following violations decisions before international courts.[192] The Supreme Court of Justice regularly adopts decisions where it explains how the ECHR should be applied by judges.[193] Furthermore, the Supreme Court of Justice adapted its ruling in the light of the ECtHR jurisprudence.[194] In addition, since 2008, the Constitutional Court has started to make more frequent references to the ECtHR case-law while examining the constitutionality of the normative acts issued by the Parliament, Government and President[195] on the basis that the Constitution requires Moldovan Courts to implement the ECtHR case law.[196]

Even though judicial practice shows no constant application of the ECHR,[197] reputable NGOs argue, based on interviewed respondents that legal practice in Moldova has evolved towards a better application of the ECHR.[198] Regarding the compensation granted for violation of the European Convention on Human Rights, Moldova offers compensation only in civil proceedings. In contrast, "no monetary compensation of the damage caused can be awarded in criminal proceedings. In order to be compensated, it is necessary to prove the damage, the wrongful act and to establish a causal link between the wrongful act and the damage."[199]

Regarding the Republic of Moldova, after the pronunciation of the ECtHR judgements on the payment of *just satisfaction*, the applicant contacts the Governmental Agent to receive

[190] Constitutional Court of Moldova, Decision No. 55 of 14 October 1999 on interpreting certain provisions of Art. 4 of the Constitution of the Republic of Moldova says 'the given provision entails legal consequences while assuming, first of all, that law enforcement authorities, including the Constitutional Court […] in the process of examination of concrete cases are entitled to apply international law provisions […] granting priority to the international provisions in case of any discrepancy".
[191] CRJM Report 1997-2012, *supra* note 60, at 41.
[192] *Id.*, at 41.
[193] *Id.*, at 48.
[194] *Id.*, at 46.
[195] *Id.*, at 42.
[196] *Id.*, at 41.
[197] *Id.*, at 46.
[198] *Id.*, at 46.
[199] *Id.*, at 51.

the awarded compensation by the ECtHR. The Ministry of Finance is informed by the Governmental Agent about the financial compensation. The above-mentioned Ministry, within three months from the date of the judgment becomes final, has to pay the compensation awarded to the applicant.

To sum up, Moldova now has the means to apply and guarantee a faithful and effective application of the Convention in the domestic legal system.

C. Moldovan national mechanism of execution of European Court of Human Rights Judgments

Taking into consideration the complexity of implementation, the Strasbourg Court judgments are not possible to be executed without the joint efforts of domestic institutions. For this reason, the Member States created national mechanisms for the execution of judgments. The Strategy for reforming the justice sector for 2011-2016 (Law No. 231, of 25 November 2011) acknowledges that the current mechanism of monitoring execution of ECtHR judgments is inefficient. No complex assessment of the process of executing ECtHR judgments by the Republic of Moldova has not been carried out on the domestic level by national authorities.

The growing number of applications to the Human Rights Court proves that the enforcement process in Moldova is not effective and that the Moldovan courts do not take into account the jurisprudence of the ECtHR systematically. The national mechanism of the execution of the ECtHR judgements involves public institutions such as the Governmental Agent, the Parliamentary control, Supreme Court of Justice and the department in analysis and implementation of the ECHR within the General Prosecutor Office. In what follows, I will analyze the role of these institutions in the execution process.

i. Governmental Agent (GA)

Appointed by the Government, the Governmental Agent (GA) represents the Government in the ECtHR proceedings and oversees the measures taken for execution of the Court judgments.[200] The GA informs the Committee of Ministers, namely the Department of the Council of Europe for Execution of ECtHR judgments about the measures taken to ensure execution with the Court's judgments. From December 2012, the GA may request reopening of civil proceedings and in criminal cases only to recommend prosecutors to request

[200] Law 151 of July 30, 2015 concerning the Governmental Agent http://lex.justice.md/md/360465/ (last accessed on February 3, 2016) [hereinafter The Law on Governmental Agent].

reopening of proceedings, which are mechanisms that only the Supreme Court of Justice had maintained before.[201]

In order to increase the enforcement efficiency of the GA, a new Law on GA was drafted and positively validated by CoE expert review.[202] In July 2015 the Law entered into force. The present law improves the present situation by solving the problem of the shortage of staff within the GA.[203] Judges can now contribute in the representation of the Moldovan government before the Strasbourg Court. The Law also establishes an advisory council composed of representatives of public authorities, academia and civil society. This Council will replace the current body responsible for the execution of the judgments, the Permanent Governmental Commission for organizing execution of judgments of the ECtHR. The Commission's aim was to organize and supervise the implementation of the ECtHR judgements and it is composed of nine persons, including the GA, the minister of justice, the minister of finances, the deputy general prosecutor and the head of the Department for execution of domestic judgments.[204] In 2013, the *Centrul de Resurse Juridice din Moldova* wrote that "the contribution of the Governmental commission in execution of ECtHR judgments was not very visible. No report informing the Government about measures taken in order to organize execution of ECtHR judgments was ever made public. Information concerning sittings of the commission is also not available to the public."[205]

The new Law on GA strengthens the entire process of implementation. The new Law makes *individual measures* regarding compensation binding and mandatory to be communicated to public authorities. In relation to the implementation of the *general measures*, within 3 months after the ECtHR becomes final, the GA will send the *general measures* that have to be implemented to the public authorities, coordinate and monitor their implementation. According to the Law, all competent authorities involved in enforcement of the *general measures* must send annual reports to the GA. This information will assist the GA to elaborate a report of ECtHR judgments, which will be further sent to the Government for

[201] Civil Procedure Code of the Rep. of Moldova, The Gen., Title Appeal of Judicial Decisions, Chp. XXXVII, Article 447, in force from 1 December 2012 http://lex.justice.md/md/286229/ (last accessed on February 3, 2016).
[202] Roeland A.A. Roeland and Vit A. Böcker, Opinion of the Directorate General of Human Rights and Rule of Law Human Rights Policy and Development Department Prepared on the Basis of the Expertise by Government Agent of the Netherlands to the European Court of Human Rights, SECRETARIAT GENERAL DIRECTORATE GENERAL OF HUMAN RIGHTS AND RULE OF LAW (2014).
[203] Legal Resources Centre from Moldova, Execution of judgments of the European Court of Human Rights by the Republic of Moldova, 2013-2014 (March, 2015), at 122.
[204] CRJM, *Report 1997-2012*, *supra* note 60, at 172.
[205] CRJM, *Report 1997-2012*, *supra* note 60, at 173.

approval. Overall, the GA remains to have the key role in implementation, and both coordination and monitoring of the enforcement process of the Strasbourg Court's judgments.

ii. Parliamentary oversight

The legislation of the Republic of Moldova provided no special competences of the Parliament concerning the execution of ECtHR judgments until 2015, when new rules on parliamentary control of the execution of the ECtHR judgments and decisions were drafted. The Law on GA has certain effects on the role of the Parliament too. The GA has to inform the Parliament about the measures that have to be taken and the Parliament has the responsibility to adopt normative laws in order to adapt the national legislation to the ECtHR standards.

According to the new rules, the Legal Commission for Appointments and Immunities will be responsible for the parliamentary control. The commission will closely cooperate with the GA regarding the *general measures* that need to be taken and proposing additional ones when necessary. The GA will have to submit an Action Plan for the enforcement of the *general measures* and the Commission will exercise the parliamentary control. The process is finalized by issuing a resolution on termination of monitoring of the enforcement of ECtHR by the CoM. Competent authorities and civil society will be involved in the process of issuing a final report by the Parliament with regards to execution of the ECtHR judgments. The Law proposes that an Action Plan must be submitted to the CoM within 6 months after the judgment becomes final.[206]

iii. Supreme Court of Justice

The Supreme Court of Justice is the judicial body that is empowered to examine requests for reopening civil and criminal cases when requested by the ECtHR. In this context, the Supreme Court of Justice adopts explanatory decisions with regards to the issues identified by the Strasbourg Court. The Legal Resources Center of Moldova emphasizes that in most cases the judgment ruled by the Supreme Court of Justice is in accordance with ECtHR standards and that from 2012 it has been more active in clarifying the jurisprudence of the Strasbourg Court.[207]

iv. General Prosecutor Office

Within the General Prosecutor's Office, there is a person authorized to analyze and organize the Strasbourg case-law, cooperate with GA and give information when necessary for drafting

[206] The Law on Governmental Agent, *supra* note 189.
[207] CRJM, *Report 1997-2012*, *supra* note 60, at 177.

observation concerning pending cases against Moldova. In addition, this person "checks the possibility of submitting regress actions for compensating amounts paid by the state based on ECtHR judgments and decisions, examines the degree of correspondence of the national legal framework with the ECHR, prepares proposals for amendments to the legislation, initiates reopening of proceedings at the domestic level following ECtHR proceedings, and participates in examining revision requests in civil and contravention cases."[208]

To sum up, the existing mechanisms in the Republic of Moldova concerning supervision of execution of ECtHR judgments are likely to improve during the following years. It is clear that the national authorities are determined to take further steps to ensure an effective and timely appropriate execution. In addition to this, the active role in implementation of ECtHR ruling returns to the GA.

Conclusion

In this chapter I showed the political dynamics in Moldova. Then, I explained how the ECHR has been incorporated into the domestic hierarchy of Moldovan law and presented the domestic institutions that are responsible for the implementation of ECtHR judgements. Moreover, the aim of the chapter was to familiarize the reader with the Moldovan political atmosphere and the reception of the ECHR in the Moldova legal system. It was crucial for the study to examine the national mechanism of enforcement of the ECHR, because in the following chapter I will analyze 63 case closed by a final resolution of the CoM and 76 leading cases against Moldova pending before the CoM and observe where Moldova is more willing to implement the general measures of the ECtHR judgements.

[208] CRJM, *Report 1997-2012*, *supra* note 60, at 178.

Chapter IV Moldova from Strasbourg - Execution of General Measures of European Court of Human Rights Judgments in Moldova

Introduction

In this chapter I will begin by offering a general view on the execution of the general measures of ECtHR judgements in Moldova. I then explain the nature of the cases brought against Moldova. In order to have a better understanding of the willingness or unwillingness of Moldova to implement the general measures of the ECtHR judgements, I first analyze the nature of closed cases by examining the CoM final resolutions, HUDOC database of closed cases and CoM's Annual Reports. Furthermore, I look at the nature of Moldovan cases pending under the CoM supervision. In doing so, I examine the 76 lead cases. These steps are essential for my main research question because it helps identify how willing is Moldova to comply with ECtHR judgements, in general. Meanwhile, analyzing these leading cases will also give a clear understanding of which of the general measures are more likely to be implemented by the Moldovan authorities and for which particular cases. In terms of structural organization, I analyze the pending cases after I classify them in eight problematic areas.

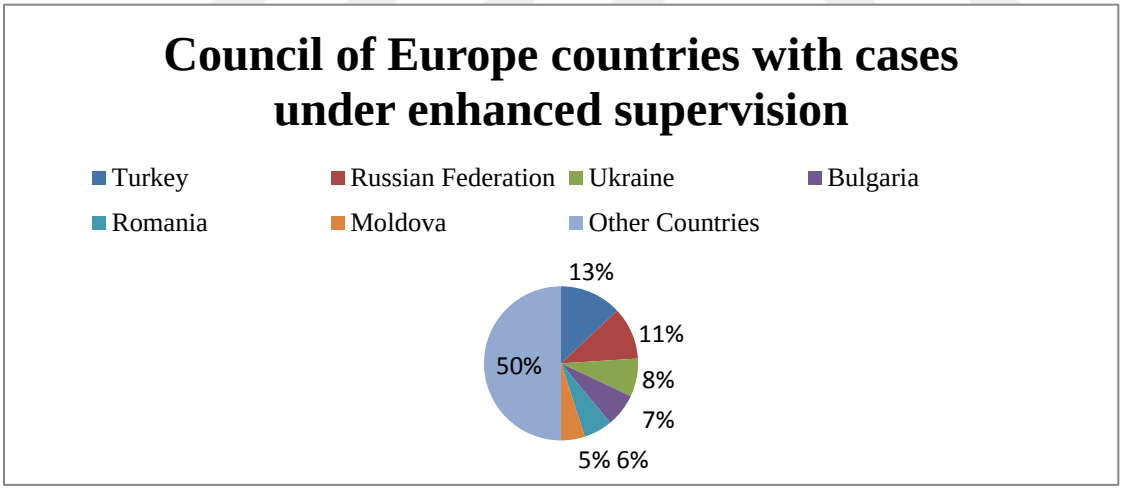
A. The execution of general measures of European Court of Human Rights judgments in Moldova

From 1998 until June 2014, more than 10,300 applications from Moldova where brought before the ECtHR.[209] The ECtHR has released 297 judgments concerning Moldova between 1998 and 2014[210] The ECtHR dealt with 3,162 applications against the Republic of Moldova in 2013 alone, of which 3,143 were declared inadmissible or struck out. In 2013, the Strasbourg Court delivered 19 judgments (concerning 19 applications), 18 of which found to involve at least one violation of the ECHR.[211] Between 1998 and 2015 63 cases were closed by a final resolution.[212] There are 242 judgments currently pending under the supervision of

[209] CRJM *Report 1997-2012, supra* note 60, at 24.
[210] Eur, Ct. H. R., *Violations by Article & State 1959-2014* (2015), http://www.echr.coe.int/Documents/Stats_violation_1959_2014_ENG.pdf (last accessed at January 19, 2015).
[211] Eur. Ct. H. R., *Country Profile Republic of Moldova* (2013), http://www.echr.coe.int/Documents/CP_Republic_of_Moldova_ENG.pdf (last accessed at January 19, 2015).
[212]

CoM of which 76 are leading cases.[213] 1159 applications are pending before a judicial formation as of 31 December 2014.[214]

Moldova is one of the main states with a relatively high number of cases under *enhanced* supervision.[215] According to the database of the Department for the Execution of Judgments of the ECtHR, the CoM classifies the cases under either *standard* or *enhanced* supervision. Cases under enhanced supervision refer to cases that require distinct attention by the CoM because of the nature of the case.[216] In accordance with the CoM of the CoE to supervise their execution, *enhanced supervision* applies to "judgments requiring urgent individual measures; pilot judgments; judgments raising major structural and/or complex problems as identified by the Court or by the Committee of Ministers; interstate cases; and other judgments which for special reasons require such supervision."[217] The amount of judgments against Moldova concerning torture, inhuman and degrading treatment and impunity for offenders reveals a systemic problem. Similar conclusion may be drawn regarding protection of property and the right to a fair trial. The Figure 1 depicts the CoE countries with cases under enhanced supervision. Turkey, Russian Federation, Ukraine, Bulgaria, Romania and Moldova hold as many cases as the rest of the CoE countries altogether.



[213] *Council of Europe*, Pending cases: State of execution, http://www.coe.int/t/dghl/monitoring/execution/reports/pendingcases_EN.asp?CaseTitleOrNumber=&StateCode=MDA&SectionCode=&HideClones=1 (last accessed at February 1, 2015).
[214] Eur. Ct. H. R., *Pending Cases 2014* (2015). http://www.echr.coe.int/Documents/Stats_pending_2014_ENG.pdf (last accessed at January 19, 2015).
[215] *Id. See also* Figure 3.
[216] *Council of Europe*, Judgments of the European Court of Human Rights: First meeting of the Committee of Ministers of the Council of Europe to Supervise their execution, 2011, https://wcd.coe.int/ViewDoc.jsp?Ref=PR195(2011)&Language=lanEnglish&Ver=original&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE (last accessed February 3, 2016).
[217] *See* Başak Çalı & Nicola Bruch, Monitoring the Implementation of the Judgments of the European Court of Human Rights: A Handbook for Non-Governmental Organizations, May 2011, 13-14, https://ecthrproject.files.wordpress.com/2011/07/monitoringhandbook_calibruch1.pdf .

Figure 1: The Council of Europe countries with cases under enhanced supervision.

B. The nature of Moldovan cases closed by final resolution

The CoM adopts final resolutions that ends the supervision of a case when considers that the individual and general measures required for the execution of the cases were successfully implemented. The table below shows the number of cases closed by a final resolution between the years of 2007 and 2014, as reported by the CoM Annual Reports, HUDOC database and CoM's data on final resolutions. 63 cases were closed in seven years.

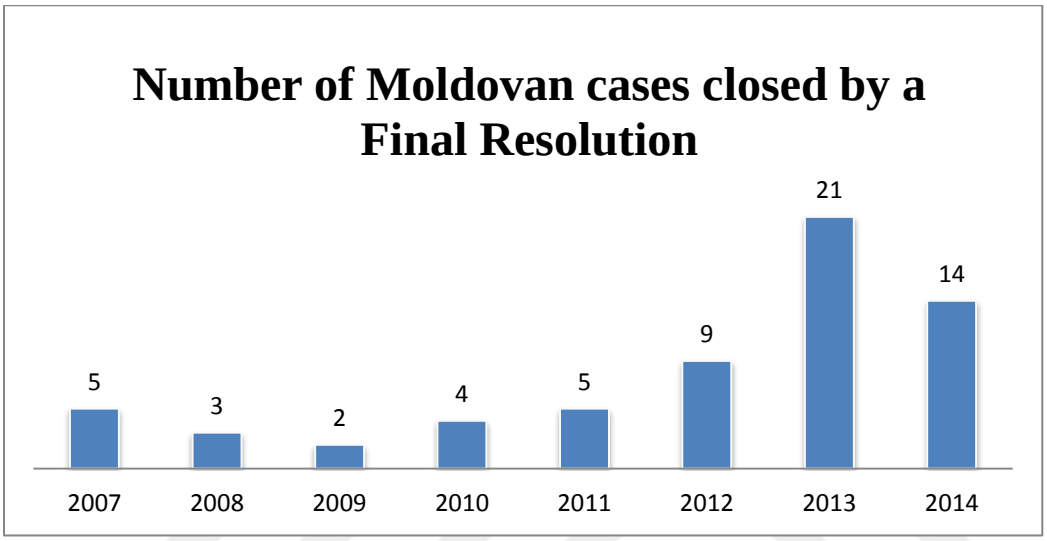


Figure 2: The number of Moldovan cases closed by a Final Resolution between 2007 and 2014.

The Committee closed five cases in 2007 by issuing three Resolutions.[218] Two of the cases concern violations of Article 10 (freedom of expression), namely "infringement of freedom of expression of the applicants, two journalists, in that they were ordered to pay damages for publishing articles criticizing the personnel management of the Chisinau International Airport and the traffic police, respectively".[219] The cases revealed irregularities in domestic courts' practice in respect to application of the well-established case-law under Article 10 of the Convention. The domestic courts failed to distinguish between facts and value judgments. The general measures implemented in this respect amounted to the training of Moldovan judges on the application of Article 10 of the Convention, translation and dissemination of the judgment to relevant authorities.[220] The other three cases concern violations of the applicants' right to

[218] Council of Eur. Comm. of Ministers, Resolution CM/ResDH(2007)156 and Resolution CM/ResDH(2007)157, 101th Sess. (Dec.19, 2007), Council of Eur. Comm. of Ministers, Resolution CM/ResDH(2007)56, 992nd Sess. (April 20, 2007).
[219] Council of Eur. Comm. of Ministers, Appendix to Resolution CM/ResDH(2007)156 and Savitchi and Busuioc v. Republic of Moldova, App. No. 61513/00 and 11039/02, Eur. Ct. H.R. (2004) http://hudoc.echr.coe.int/eng?i=001-84506
[220] Council of Eur. Comm. of Ministers, Appendix to Resolution CM/ResDH(2007)156.

fair trial and to the peaceful enjoyment of their possessions.[221] The cases required legislative measures regarding the enforcement of final judgments. According to the New Code of Civil Procedure, entered into force on 12 June 2003, the final judgments may no longer be annulled on the basis of an annulment lodged by the Prosecutor Office.[222]

In 2008, the Committee issued one Resolution closing three cases.[223] The cases concern violations of right to a fair hearing and to the peaceful enjoyment of possessions.[224] The general measures required to be implemented for the present cases are the same as for the cases closed in 2007, whereby the Moldova authorities have already adopted the necessary general measures.[225]

Two Resolutions closed two cases in 2009.[226] The cases concerned violations of freedom of expression, right to a fair hearing and to the peaceful enjoyment of applicant's possessions.[227] In the first case, the ECtHR held that there was an infringement of the freedom of expression of the applicant.[228] The judgment was translated and published in the Official Gazette.[229] Furthermore, the Ministry of Justice sent the judgment to all domestic courts.[230] The general measures required for the second case were already implemented by the Moldovan authorities.

In 2010, the Committee released three Resolutions closing four cases.[231] The cases mainly concerned violations of the right to a fair trial before an impartial and independent

[221] Josan v. Republic of Moldova, App. No. 37431/02, Eur. Ct. H. R, (2006) http://hudoc.echr.coe.int/eng?i=001-72800 , Macovei and others v. Republic of Moldova, App. Nos. 19253/03, 17667/03, 17695/03, 19263/03, 31761/03, 31960/03, Eur. Ct.H. R., (2006) http://hudoc.echr.coe.int/eng?i=001-75160 and Rosca v. Republic of Moldova, App. No. 6267/02, Eur. Ct. H. R. (2005) http://hudoc.echr.coe.int/eng?i=001-68580.
[222] Council of Eur. Comm. of Ministers, Appendix to Resolution CM/ResDH(2007)157.
[223] CM/ResDH(2008)28, adopted by the CoM on 27 March 2008 at the 1080th meeting of the Ministers' Deputies.Council of Eur. Comm. of Ministers, Resolution on judgments revealing an underlying systemic problem, 114th Sess. Res.3 (May 12, 2004).
[224] Mihalachi v. Republic of Moldova, App. No. 37511/02, Eur, Ct. H. R., (2007) http://hudoc.echr.coe.int/eng?i=001-78929 , Ermicev v. Republic of Moldova, App. No. 42288/02, Eur. Ct. H. R, (2006) http://hudoc.echr.coe.int/eng?i=001-76636 , Venera-Nord-Vest Borta A.G. v. Republic of Moldova, App. No. 31535/03, Eur. Ct. H. R., (2007) http://hudoc.echr.coe.int/eng?i=001-79394
[225] Council of Eur. Comm. of Ministers, Appendix to Resolution CM/ResDH(2008)28.
[226]Council of Eur. Comm. of Ministers, 1051st meeting, Resolution CM/ResDH(2009)150; Council of Eur. Comm. of Ministers, Resolution CM/ResDH(2009)5 (January 9, 2009).
[227] Ovciarov v. Republic of Moldova, App. No. 31228/02, Eur. Ct. H. R., (2007) http://hudoc.echr.coe.int/eng?i=001-80149 , Amihalachioaie v. Republic of Moldova, App. No. 60115/00, ECHR 2004-III Eur. Ct. H. R. (2009).
[228] Amihalachioaie v. Republic of Moldova, App. No. 60115/00, ECHR 2004-III Eur. Ct. H. R. (2009).
[229] Moldovan Official Gazette, No. 150-155 (Aug. 20, 2004).
[230] Council of Eur. Comm. of Ministers, Appendix Resolution CM/ResDH(2009)51.
[231] Council of Eur. Comm. of Ministers, 1100th meeting, Resolution CM/ResDH(2010)204, (Dec. 2, 2010), Council of Eur. Comm. of Ministers, 1078th meeting, Resolution CM/ResDH(2010)8, (Mar. 4, 2010), and Council of Eur. Comm. of Ministers, 1092nd meeting, Resolution CM/ResDH(2010)102, (Sept.15, 2010).

tribunal and right to property.[232] A novelty is the case of *Metropolitan Church of Bessarabia and others*, concerning interference with the applicants' right to freedom of religion (Article 9), on the grounds that the Moldovan Government failed to recognize and register the Church.[233] The Strasbourg Court found violations of Article 9, 13, Article 1 of the Protocol 1 and violations of Article 13 taken in conjunction with Article 9. The Moldovan authorities had to reform the Law on Religious Denominations in order to recognize religious freedoms and to set up an effective remedy for victims to prevent similar violations.[234] In addition, publication and dissemination of the judgment was taken and different amendments of the law had to be made, such as the Code of Contraventions, in order to fully safeguard freedom of religion.[235]

Five cases where closed in 2011 by five Final Resolutions.[236] The cases concerned irregularities regarding the right to fair trial and property rights.[237] For example, in the case of *Malahov v. Republic of Moldova*[238], the Court found that the refusal of the domestic courts to examine the applicant's claim against her employer, on ground that she had not paid the court fees, amounted to a violation of the right to access to a court.[239] Due to the fact that the case was an exception, the Moldovan authorities published the case in the Official Gazette and disseminated the judgement to the domestic courts.[240] The closed case of *Straisteanu v. Republic of Moldova*[241] reveals violations of Article 3 and Article 13 taken together with

[232] Braga v. Republic of Moldova, App. No. 74154/01, Eur. Ct. H.R., (2006), http://hudoc.echr.coe.int/eng?i=001-77977 , Nistas GMBH v. Republic of Moldova, App. No. 30303/03, Eur. Ct. H. R., (2006) http://hudoc.echr.coe.int/eng?i=001-78437 , Gurov v. Republic of Moldova, App. No. 36455/02, Eur. Ct. H. R., (2006) http://hudoc.echr.coe.int/eng?i=001-76297.
[233] Metropolitan Church of Bessarabia and others v. Republic of Moldova, App. No. 45701/99, 2001-XII Eur. Ct. H. R. (2001)
[234] Council of Eur. Comm. of Ministers, Appendix Resolution CM/ResDH(2010)8.
[235] *Id.*
[236] Council of Eur. Comm. of Ministers, 1120th meeting, Resolution CM/ResDH(2011)131 (Sept. 14, 2011), Council of Eur. Comm. of Ministers, 1120th meeting, Resolution CM/ResDH(2011)132 (Sept. 14, 2011), Council of Eur. Comm. of Ministers, 1108th meeting, Resolution CM/ResDH(2011)15 (March 10, 2011), Council of Eur. Comm. of Ministers Resolution, 1120th meeting, Resolution CM/ResDH(2011)133 (Sept. 14, 2011), Council of Eur. Comm. of Ministers Resolution, 1220th meeting, Resolution CM/ResDH(2011)134 (Sept. 14, 2011).
[237] Episcopia Edinet si Briceni v. Republic of Moldova, App. No. 22742/06, Eur. Ct. H. R., (2010) http://hudoc.echr.coe.int/eng?i=001-100594 , Leagun v. Republic of Moldova, App. No. 35316/06, Eur. Ct. H. R., (2011) http://hudoc.echr.coe.int/eng?i=001-106922 , Malahov v. Republic of Moldova, App. No. 32268/02, Eur. Ct. H. R., (2007) http://hudoc.echr.coe.int/eng?i=001-80914 Munteanu v. Republic of Moldova, App. No. 24092/07, Eur. Ct. H. R., (2010) http://hudoc.echr.coe.int/eng?i=001-101850
[238] Malahov v. Republic of Moldova, App. No. 32268/02, Eur. Ct. H. R., (2007) http://hudoc.echr.coe.int/eng?i=001-80914
[239] *Id.*
[240] Council of Eur. Comm. of Ministers, Resolution CM/ResDH(2011)15, 1108th meeting, (March 10, 2011).
[241] Straisteanu v. Republic of Moldova, App. No. 40699/08, Eur. Ct. H. R., (2010) http://hudoc.echr.coe.int/eng?i=001-101532

Article 3, making the *Straisteanu case* the first closed case concerning the right to be free from torture, ill-treatment and degrading and inhuman treatment.[242]

In 2012 the CoM released four Resolutions closing nine cases.[243] A large majority of the cases concerned irregularities about the right to a fair trial, one of which was the first closed case concerning violations of Articles 8 and 9, namely the right to family life.[244] Furthermore, the Moldovan Government and the applicants agreed on friendly settlements for eight out of nine closed cases in 2012.[245] The case of *Tanase v. Republic of Moldova*[246] concerned "violation of the freedom of expression of the opinion of the people in the choice of legislature caused by the enacted law preventing elected MPs with multiple nationalities from taking seats in Parliament'[247]. The ECtHR found a violation of Article 3 of the Protocol 1. The general measures required were to amend the laws on the election of MPs with dual citizenship and publish and disseminate the judgment to all concerned domestic authorities.

The Committee released three Final resolutions in 2013, closing 21 cases[248], while in 2014, it closed 14 cases with five Final resolutions.[249] The 2013 cases mainly dealt with issues concerning Article 3 and Article 6, and Article 5 concerning torture, fair trial, security and liberty respectively. Some of the 2014 cases also concerned Article 3 and 6. However, in 2014, there were cases recording violations of Article 9 and 8, and Article 2 of the Protocol 4

[242] *Id.*
[243] Council of Eur. Comm. of Ministers, 1136th meeting, Resolution CM/ResDH(2012)38, (Mar. 8, 2012), Council of Eur. Comm. of Ministers, 1136th meeting, Resolution CM/ResDH(2012)40, (Mar. 8, 2012), Council of Eur. Comm. of Ministers, 1144th meeting, Resolution CM/ResDH(2012)97, (June 6, 2012), Council of Eur. Comm. of Ministers, 1136th meeting, Resolution CM/ResDH(2012)39, (Mar. 8, 2012).
[244] Dimitrov v. Republic of Moldova, App. No. 22254/08, Eur. Ct. H. R., (2011) http://hudoc.echr.coe.int/eng?i=001-106158 , Fusu v. Republic of Moldova, App. No. 22218/06, Eur. Ct. H. R., (2012) http://hudoc.echr.coe.int/eng?i=001-112200 Gabura v. Republic of Moldova, App. No. 12197/08, Eur. Ct. H. R., (2011) http://hudoc.echr.coe.int/eng?i=001-104605, Laguta v. Republic of Moldova, App. No. 44712/06, Eur. Ct. H. R., (2011) http://hudoc.echr.coe.int/eng?i=001-104506 , Mereuta v. Republic of Moldova, App. No. 39153/05, Eur. Ct. H. R., (2011) http://hudoc.echr.coe.int/eng?i=001-103198 , Tisar Invest v. Republic of Moldova, App. No. 31526/07, Eur. Ct. H. R., (2011) http://hudoc.echr.coe.int/eng?i=001-104079 , Jesteov v. Republic of Moldova, App. No. 50129/06, Eur. Ct. H. R., (2010) http://hudoc.echr.coe.int/eng?i=001-101893 , Popa v. Republic of Moldova, App. No. 29837/09, Eur. Ct. H. R., (2010) http://hudoc.echr.coe.int/eng?i=001-100777 and Tanase v. Republic of Moldova, App. No. 7/08, 2010-III Eur. Ct. H. R. (2010).
[245] Council of Eur. Comm. of Ministers, 1144th meeting, Resolution CM/ResDH(2012)97, (June 6, 2012)
[246] Tanase v. Republic of Moldova, App. No. 7/08, 2010-III Eur. Ct. H. R. (2010).
[247] Council of Eur. Comm. of Ministers, Appendix Resolution CM/ResDH(2012)40.
[248] Council of Eur. Comm. of Ministers, 1172nd meeting, Resolution CM/ResDH(2013)110, (June 6, 2013), Council of Eur. Comm. of Ministers, 1183rd meeting, Resolution CM/ResDH(2013)219, (Nov. 6, 2013), Council of Eur. Comm. of Ministers, 1164th meeting, Resolution CM/ResDH(2013)35, (March 7, 2013).
[249] Council of Eur. Comm. of Ministers, 1197th meeting, Resolution CM/ResDH(2014)49, (April 16, 2014), Council of Eur. Comm. of Ministers, 1197th meeting, Resolution CM/ResDH(2014)50, (April 16, 2014), Council of Eur. Comm. of Ministers, 1208th meeting, Interim Resolution CM/ResDH(2014)184, (Sept. 25, 2014), Council of Eur. Comm. of Ministers, 1208th meeting, Resolution CM/ResDH(2014)167, (Sept. 25, 2014), Council of Eur. Comm. of Ministers, 1211th meeting, Resolution CM/ResDH(2014)217, (Nov. 12, 2014), Council of Eur. Comm. of Ministers, 1203rd meeting, Resolution CM/ResDH(2014)88, (June 18, 2014) and Council of Eur. Comm. of Ministers, 1193rd meeting, Resolution CM/ResDH(2014)37, (March 6, 2014).

(freedom of movement) and right to property. Other case concerned violations of Article 10 and 14, while in another case, the ECtHR identified violations of the right to life and death penalty.

The cases concerning violation to the right to a fair hearing and peaceful enjoyment of possessions mainly required the adoption of new laws regarding compulsory insurance and particular amendments for the Code of Civil Procedure.[250] Ten cases from 14 closed cases concerned violations of the right to be free from torture, ill treatment and inhuman and degrading treatment.[251] The remaining cases presented violations of the right to private life and freedom of religion[252] and violations of the Article 2 Protocol No.4.[253]

Overall, the Moldovan closed cases by a final resolution are about violations of the right to fair trial as in all the years the CoM closed a large majority of the cases concerning the right to a fair hearing and the right to access to a court. In addition, cases about violations of the right to peaceful enjoyment of their possessions were closed in all these years, except in 2012 and 2014. The CoM closed freedom of expression cases mainly before 2010. In contrast, from 2011 onwards the CoM closed cases concerning violations of the prohibition of torture. Many of these cases are attributed to the April 2009 Events – The 'Twitter Revolution' as the Moldovan authorities become more interested to comply with these types of cases. This is because of the "Pro-European' shift that happen in the Moldova politics at that time The 'Twitter Revolution' laid the basis of the next legislative and judicial reform in Moldova.

In contrast, the Moldova took the necessary measures to be implemented for a well-known case on freedom of thought, conscience, and religion, the *Metropolitan Church of Bessarabia v Republic of Moldova*. Besides, very few cases concerned violations of the

[250] Asito v. Republic of Moldova, App. No. 40663/98, Eur. Ct. H. R., (2005/2007), http://hudoc.echr.coe.int/eng?i=001-144245 , Council of Eur. Comm. of Ministers, Appendix to Resolution CM/ResDH(2014)49.

[251] Tretiacov v. Republic of Moldova, App. No. 28171/10, Eur. Ct. H.R., (2014) http://hudoc.echr.coe.int/eng?i=001-144116 , Nedelcu v. Republic of Moldova, App. No. 35149/10, Eur. Ct. H.R., (2014) http://hudoc.echr.coe.int/eng?i=001-144104 , Cicala v. Republic of Moldova, App. No. 45778/05, Eur. Ct. H.R., (2012) http://hudoc.echr.coe.int/eng?i=001-110405 , Plate v. Republic of Moldova, App. No. 56608/08, Eur. Ct. H.R., (2012) http://hudoc.echr.coe.int/eng?i=001-124537 , Grecu v. Republic of Moldova, App. No. 32829/08, Eur. Ct. H.R., (2014) http://hudoc.echr.coe.int/eng?i=001-144118 , Sperciuc v. Republic of Moldova , App. No. 16938/06, Eur. Ct. H.R., (2013) http://hudoc.echr.coe.int/eng?i=001-139808 Livadari v. Republic of Moldova, App. No.47619/10, Eur. Ct. H.R., (2013), http://hudoc.echr.coe.int/eng?i=001-139802 , Banari v. Republic of Moldova, App. No. 74450/11, Eur. Ct. H.R., (2013), http://hudoc.echr.coe.int/eng?i=001-127288 , Ilascu v. Republic of Moldova, App. No. 48787/99, 2004-VII Eur. Ct. H. R. (2004), Ivantoc v. Republic of Moldova, App. No.23687/05, Eur. Ct. H.R., (2011) http://hudoc.echr.coe.int/eng?i=001-107480 .

[252] Bigea v. Republic of Moldova, App. No. 21867/09, Eur. Ct. H.R., (2012) http://hudoc.echr.coe.int/eng?i=001-109094 .

[253] Bigea v. Republic of Moldova, App. No. 21867/09, Eur. Ct. H.R., (2012) http://hudoc.echr.coe.int/eng?i=001-109094 and Sperciuc v. Republic of Moldova , App. No. 16938/06, Eur. Ct. H.R., (2013) http://hudoc.echr.coe.int/eng?i=001-139808.

Article 8 (the right to private and family life), 9 (the right to freedom of religion) and Article 3 of the Protocol No.1, and Article 2 of the Protocol No. 4 (freedom of movement).

The present interpretation of the closed cases shows that Moldova had irregularities with regards to fair trial issues. Moldovan judicial authorities were predisposed to breach the right to a fair hearing and the principle of legal certainty, and interfere with the right to peaceful enjoyment of possessions of its citizens. The 'Twitter Revolution' constrained Moldova to implement cases on prohibition of torture and but not the other ones. Consequently, this upraising had a positive implication in regards to the cases concerning fundamental violations of human rights in Moldova. Thus far, Moldova appears to be selective while implementing the general measures of the ECtHR judgements that present repetitive violations. It chose to comply with general measures required by cases concerning prohibition of torture, violations of property rights and right to a fair trial cases.

I next examine the nature of the pending cases and observe in which areas Moldova has made any progress towards implementation of the pending ECtHR judgments before the CoM from 1997 to 2015.

C. The nature of pending Moldovan cases under Committee of Ministers' supervision

Moldova annually sends an average of 1000 cases to Strasbourg.[254] Considering the population of the country this is a significant number. Given the implementation record of the Moldovan Government, there is no surprise about the high number of cases brought before the ECtHR. In response to this systemic problem, Moldova is the beneficiary of the Human Rights Trust Fund 1(HRTF) a project coordinated by the CoE which aims "at supporting the beneficiary countries' efforts to design and adopt effective norms and procedures at national level for a better enforcement of national court's judgments."[255] As well, the country is part of the HRTF 18 project, focused on the execution of judgments concerning conditions of detention.[256]

The 2014 Annual Report of CoM, shows that Moldova has demonstrated slight progress concerning the number of new cases, the pending cases, and the cases closed in 2014. Firstly, in 2013 Moldova had 3 new leading cases and 9 repetitive cases under enhanced

[254] 8th Annual Report of Ministers, *supra* note 38, at 26.
[255] This project has been implemented in Albania, Azerbaijan, Bosnia and Herzegovina, Republic of Moldova, Serbia and Ukraine. HRTF project: Presentation, http://www.coe.int/t/DGHL/Monitoring/Execution/Themes/HRTF/Intro_HRTF_en.asp (last accessed January 19, 2016).
[256] The HRTF 18 Implementing judgments concerning conditions of detention involve six partner countries: Bulgaria, Poland, the Republic of Moldova, Romania, the Russian Federation and Ukraine.

supervision, whereas in 2014, there was 1 leading case and 6 repetitive cases.[257] In 2013, there was 1 new leading case and 8 new repetitive cases under enhanced supervision, whereas in 2014 there were 3 leading cases, and 6 cases under standard supervision.[258] However, the number of pending leading cases under enhanced supervision rose from 24 in 2013 to 25 in 2014; and the number of pending cases under standard supervision rose from 47 in 2013 to 49 in 2014.[259] Lastly, since 2 years none of the leading cases under enhanced supervision have been closed, and only 2 leading cases under standard supervision were closed.[260] The figure below depicts the percentage of Moldovan the pending lead cases under CoM's supervision.

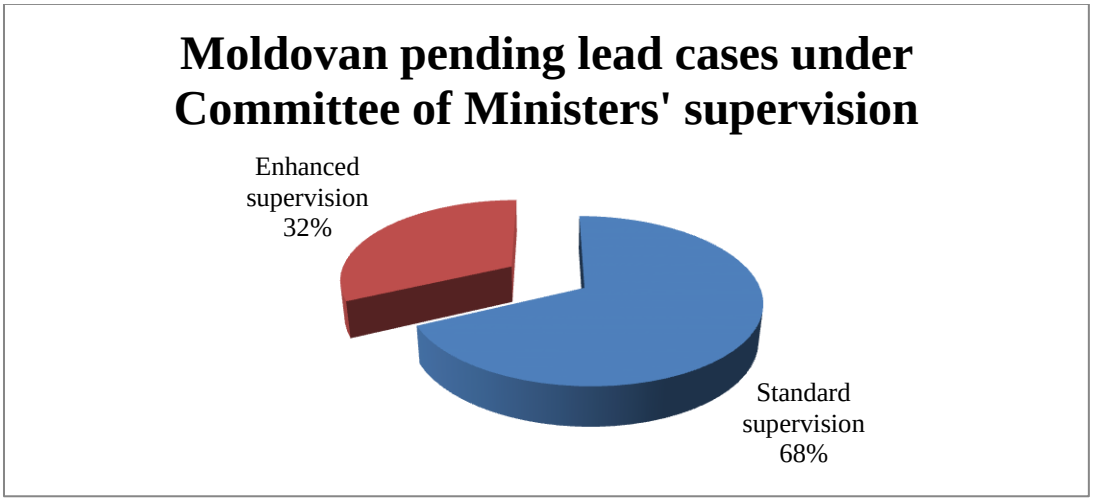


Figure 3: The Moldovan pending lead cases under Committee of Ministers supervision.

In 2014, according to the 8th Annual Report of CoM, Moldova is one of the main States with cases under enhanced supervision in relation to the number of leading cases. Countries such as Russia, Ukraine, Turkey, Bulgaria, and Italy are among the other leading States dealing with implementation problems.[261]

In this section I will examine the implementation status of 76 leading cases. 25 of these are cases under enhanced supervision, while 51 cases are ranked under standard supervision. The main structural problems under enhanced supervision and standard supervision are analyzed thematically. The leading cases with enhanced and standard supervision, as updated on the CoM website at May 2015, concern eight problematic areas: 1) access to efficient justice, 2) protection of private and family life, 3) protection of rights in detention, 4) right to life and protection against torture, 5) property rights, 6) freedom of

[257] See 8th Annual Report of Committee of Ministers, *supra* note 38, at 33.
[258] *Id.*
[259] 8th Annual Report of Committee of Ministers, *supra* note 38, at 36.
[260] 8th Annual Report of Committee of Ministers, *supra* note 38, at 38.
[261] *Id.*

assembly and association, 7) freedom of expression and information, and lastly, 8) freedom of religion. Figure 4 below represents the allocation of the types of ECtHR judgements against Moldova.

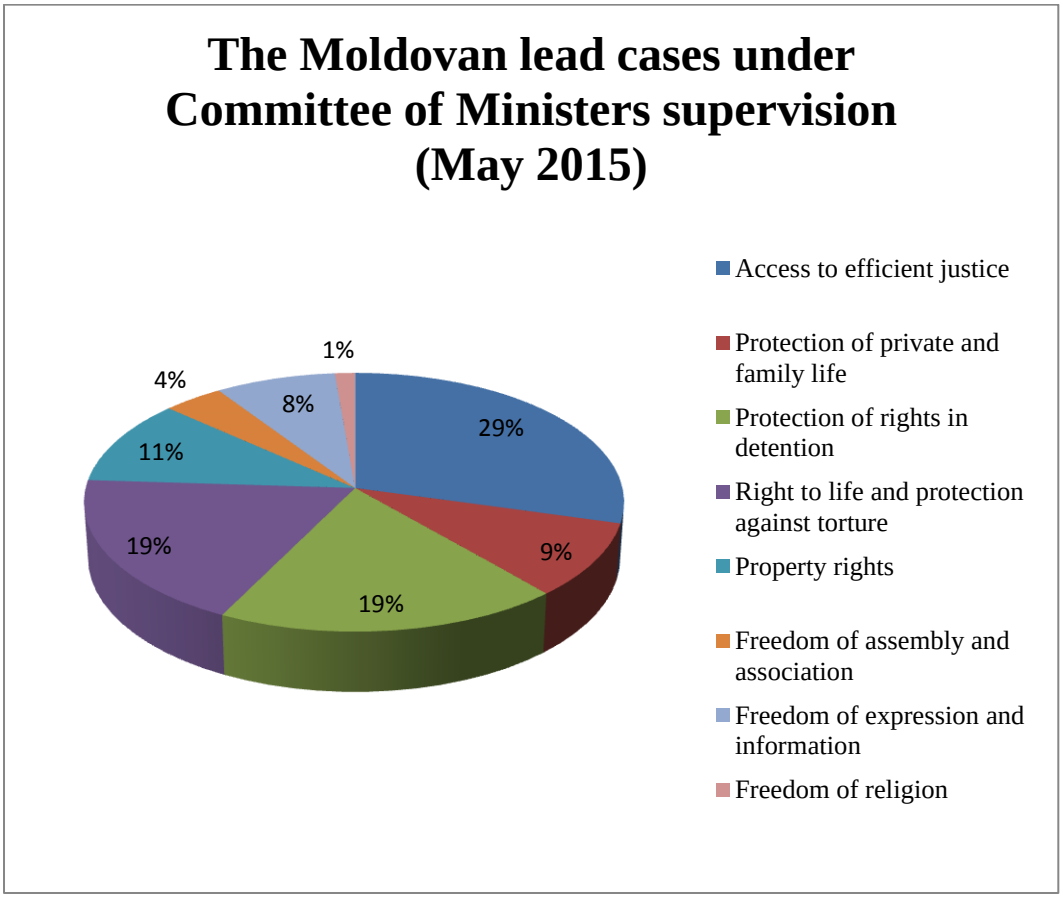


Figure 4: The lead cases under Committee of Ministers supervision as for May 2015.

Having these prominent issues, the Parliamentary Assembly of the Council of Europe decided to give priority to the examination of major structural problems concerning cases in which extremely worrying delays in implementation have arisen in Moldova. Moldova was invited by the Parliamentary Assembly to communicate the reasons the problematic execution or for non-compliance. Moreover, the domestic authorities were requested to present solutions to the problems that are facing.[262]

According to Committee of Legal Affairs and Human Rights, along with the Russian Federation, Moldova is criticized for human rights problems such as deaths and ill-treatment by law enforcement officials, and a lack of effective investigations for such physical acts.[263]

[262] Eur. Consult. Ass., Committee on Legal Affairs and Human Rights Implementation of judgments of the European Court of Human Rights,7th Report, Mr Christos Pourgourides, Cyprus, Group of European People's Party http://assembly.coe.int/nw/xml/News/FeaturesManager-View-EN.asp?ID=956 . [hereinafter 7th Report, Mr Christos Pourgourides]
[263] *Id.*, ¶5.3.

In addition to that, unlawful detention and excessive length of detention on remand represent grave concerns in the country.[264] The Assembly argued that the problems mentioned above are unacceptable and declared its willingness to assist Moldova and the CoM to bring an end to these issues.[265] The Assembly has urged Moldova to promptly take measures to ensure enforcement of domestic final judgments, in particular for so-called *social housing* cases. Moreover, Moldova should strengthen its efforts in order to avoid further cases of ill-treatment in police custody and ensure effective investigations into such abuses. Moldova also has to take measures aiming to improve the conditions in detention facilities and draw clear procedures concerning arrest and detention on remand, revealed by the Court's judgments. Lastly, it is essential that an effective domestic remedy is introduced in response to the pilot judgment of *Olaru and others v. the Republic of Moldova*.[266]

i. The right to life and protection against torture

The Moldovan Constitution protects the right to life, to physical and mental integrity.[267] While the right to life is guaranteed under the Constitution, the Moldovan authorities fail to entirely enforce it. The cases concerning deaths are more likely not to be properly investigated. More than 15 of the 76 leading cases taken for this study present substantial and procedural violations of Article 2 and Article 3 of the Convention, and a lack of effective remedy in this respect. Also, these cases are mostly "groups of cases" which means that more than 70 cases out of 270 judgments released by the Court are related to violations of the right to life or torture, degrading and ill treatment.[268]

According to Promo-Lex Report on Human Rights in Moldova, ill-treatment is widespread in Moldova and used by police officers in order to obtain self-incriminating statements from detainees. The complaints concerning ill treatment are poorly investigated by the police authorities. Also, the penalties imposed by the judges to police officers are too

[264] *Id.*, ¶5.4.
[265] *Id.*, ¶6.
[266] Olaru v. Moldova, App. Nos. 476/07, 22539/05, 17911/08, 13136/07, 2009, Eur. Ct. H. R. (2009) http://hudoc.echr.coe.int/eng?i=001-93687.
[267] Constitution of the Republic of Moldova, Chapter II Fundamental Rights and Freedoms, Article 24. Right to life, to physical and mental integrity '(1) The State shall guarantee to everyone the right to life, to physical and mental integrity. (2) No one should be subject to torture or other cruel, inhuman and degrading punishments or treatments. (…)' .
[268] Eur. Ct. H. R, Statistics on the judgment by State *1959-2014*, www.echr.coe.int/Documents/Stats_violation_1959_2014_ENG.pdf (last visited February 3, 2016).

indulgent.[269] Since the ratification of the Convention by Moldova, the ECtHR has released 74 decisions of conviction against Moldova for violations of Article 3 of the Convention.[270]

1. The right to life

The cases of *Eduard Popa v. Republic of Moldova*[271], *Timus and Tarus v. Republic of Moldova*[272], *Railean v. Republic of Moldova*[273], *Ghimp and others v. Republic of Moldova*[274], and *Anusca v. Republic of Moldova*[275] concern failures to conduct effective investigations of the circumstances surrounding the killing of the applicants' brothers or sons by police forces or in circumstances involving police officers. For example, the case of *Anusca v. Republic of Moldova* regards the failure of Moldovan authorities to conduct effective investigation of the suicide of the applicant's brother during military service. The case of *Ghimp and others v. Republic of Moldova* concerns violations of substantive and procedural elements of Article 2. The Strasbourg Court found that the manner in which domestic courts assess the circumstances of the case lead to an ineffective investigation of the deaths. Despite the fact that the cases are of leading importance, no Action Plan has been received from Moldova until now.[276] Thus, information is expected concerning measures to be taken to ensure an efficient investigation by Moldovan authorities.

The authorities' reaction regarding the case of *Timus and Tarus v. the Republic of Moldova* was to raise the question of the quality of police operations and investigation by the prosecutors for criminal cases involving police officers. The ECtHR stressed that Moldova has the positive obligation to take necessary and reasonable measures to provide evidence of the event that led to the death of a person.[277]

2. Protection against torture, inhuman and degrading treatment

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[269] Promo-Lex, *Report Human Rights in Moldova 2009-2010 385* (2011), https://promolex.md/index.php?module=publications&Lang=en [hereinafter Promo-Lex Report 2009-2010].
[270] *Id.*
[271] Eduard Popa v. Republic of Moldova, App. No. 17008/07, Eur. Ct. H. R. (2013) http://hudoc.echr.coe.int/eng?i=001-116408
[272] Timus and Tarus v. Republic of Moldova, App. No. 70077/11, Eur. Ct. H. R. (2013) http://hudoc.echr.coe.int/eng?i=001-126983
[273] Railean v. Republic of Moldova, App. No. 23401/04, Eur. Ct. H.R. (2010) http://hudoc.echr.coe.int/eng?i=001-144507
[274] Ghimp and others v. Republic of Moldova, App. No. 32520/09, Eur. Ct. H. R. (2012)) http://hudoc.echr.coe.int/eng?i=001-114099
[275] Anusca v. Republic of Moldova, App. No. 24034/07, Eur. Ct. H. R. (2010) http://hudoc.echr.coe.int/eng?i=001-98517
[276] *Council of Europe*, Committee of Ministers, Execution of Judgments, e.g. the case of Ghimp and others v. Republic of Moldova, App. No. 32520/09, Eur. Ct. H. R. (2012) http://hudoc.echr.coe.int/eng?i=001-114099 (According to the Committee of Ministers website on Execution of Judgments, the cases mentioned above, received no Action Plan from Moldovan Government.).
[277] Promo-Lex Report 2009-2010, *supra* note 268, at 386.

Moldova is a State party to most of the international instruments that prohibit torture and ill treatment.[278] Moldova ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, under which the Committee on the Prevention of Torture has undertaken several visits to Moldova.[279] Article 24 (2) of the Constitution prohibits torture and cruel, inhuman or degrading treatment. The right not to be subjected to ill treatment is also protected by Article 309/1 of the Penal Code. The definition of torture from the Penal Code corresponds to Article 1 of the United Nations Convention against Torture and other punishments or treatments with cruelty, inhuman and degrading (CAT).[280] It should be concluded that Moldovan legislation has been adjusted to comply with international standards. However, much remains to be done in applying the legislation.

2.1. Ill-treatment by police officers

Since Moldova became a State party of the ECHR, many decisions adopted by the European Court have concerned violations of Article 3 which refer to the mistreatment of the applicants by police.[281] In a way, most of these cases either refer to inadequate investigation of complaints regarding ill-treatment[282], inadequate punishment of the persons who have tortured the applicants[283], or the national courts granting insufficient compensation for the violations of Article 3 of the ECHR[284]. The lead cases, *Boicenco v. Republic of Moldova*[285], *Corsacov v.*

[278] The Republic of Moldova is a party to the major United Nations human rights treaties prohibiting torture and ill-treatment, such as: the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman and Degrading Treatment and Punishment, the Convention of the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women. Moldova has ratified the Optional Protocols of ICCPR and the Optional Protocol of CAT.

[279] UN, A/HRC/10/44/Add.3, Report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Manfred Nowak, Mission to the Republic of Moldova, 7 (February 12, 2009).

[280] Promo-Lex Report 2009-2010, *supra* note 268, at 387.

[281] *E. g.*, Gurgurov v. Republic of Moldova, App. No. 7045/08, Eur. Ct. H. R. (2009) http://hudoc.echr.coe.int/eng?i=001-127846 , Buzilov v. Republic of Moldova, App. No. 28653/05, Eur. Ct. H. R. (2009) http://hudoc.echr.coe.int/eng?i=001-93086 , Pădureţ v. Republic of Moldova, App. No. 33134/03, Eur. Ct. H. R. (2010) http://hudoc.echr.coe.int/eng?i=001-96440

[282] Breabin v. Republic of Moldova, App. No. 12544/08, Eur. Ct. H. R. (2009) http://hudoc.echr.coe.int/eng?i=001-92096 , Petru Roşca v. the Republic of Moldova, App. No. 2638/05, Eur. Ct. H. R. (2010) http://hudoc.echr.coe.int/eng?i=001-94638 , Parnov v. the Republic of Moldova, App. No. 35208/06, Eur. Ct. H. R. (2010) http://hudoc.echr.coe.int/eng?i=001-99921 , Popa v. the Republic of Moldova, App. No. 29772/05, Eur. Ct. H. R. (2010) http://hudoc.echr.coe.int/eng?i=001-100548 , Mătăsaru and Savițchi v. the Republic of Moldova, 38281/08, Eur. Ct. H. R. (2011) http://hudoc.echr.coe.int/eng?i=001-101564

[283] Valeriu and Nicolae Roşca v. Republic of Moldova. App. No. 41704/02, Eur. Ct.H.R. (2010) http://hudoc.echr.coe.int/eng?i=001-95259 , Pădureţ v. Republic of Moldova, App. No. 33134/03, Eur. Ct. H. R. (2010) http://hudoc.echr.coe.int/eng?i=001-96440

[284] Ciorap (No.4) v. Republic of Moldova, App. No.14092/06, Eur. Ct. H. R. (2014) http://hudoc.echr.coe.int/eng?i=001-145649

[285] Boicenco v. Republic of Moldova, App. No. 41088/05, Eur. Ct. H. R. (2006) http://hudoc.echr.coe.int/eng?i=001-76295

Republic of Moldova[286], *Taraburca v. Republic of Moldova*[287], and *Petru Rosca v. Republic of Moldova*[288], mainly involve ill-treatment or torture inflicted by the police officers to the applicants, which have had a noteworthy impact on the drafting process of the national Strategy for Justice Sector Reform.

The Committee of Ministers monitors the case of *Corsacov v. Republic of Moldova* since 2006. The *Corsacov group of cases* concerns ill-treatment and torture inflicted on the applicants while in police custody. The police officers were extracting confessions by inflicting torture and ill treatment to the applicants. Also, the Court has found violations of Article 3 of the Convention concerning lack of effective investigations and lack of effect remedies in this respect.

The Moldovan Government submitted the latest Action Plan for the *Corsacov group of cases* on June 19th, 2014.[289] Different measures have been taken and planned for the future to prevent similar violations: legislative changes, regulatory changes, training and raising awareness. The general measures adopted by the Government focused on three particular legislative amendments: the first one regards the question of impunity.[290] The other two relate to the matter of securing effective investigation, and removing the causes leading to ill-treatment and torture.[291]

In 2010 the Ministry of Internal Affairs adopted the Anti-Torture Action Plan aiming to implement the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT). In addition, the Moldovan experts developed the National Human Rights Action Plan (2011-2014) with the scope to bring the Moldovan legislation and legal practice closer to the European standard. With the aim of raising the quality of the police practice, the Government reports that they offer continuing training of the Police regarding the matter in question and additionally, more information concerning the effectiveness of investigations.

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[286] Corsacov v. Republic of Moldova, App. No. 11944/02 , Eur. Ct. H. R. (2006) http://hudoc.echr.coe.int/eng?i=001-73012

[287] Taraburca v. Republic of Moldova, App. No. 18919/10, Eur. Ct. H. R. (2012) http://hudoc.echr.coe.int/eng?i=001-107669

[288] Petru Rosca v. Republic of Moldova, App. No. 2638/05, Eur. CT. H. R. (2010) http://hudoc.echr.coe.int/eng?i=001-94638

[289] *Council of Europe*, Committee of Ministers, DH-DD(2014)836, Communication from the Republic of Moldova concerning the Corsacov group of cases against Republic of Moldova (App. No. 18944/02) [Hereinafter DH-DD(2014)836].

[290] Promo-Lex Report 2009-2010, *supra* note 268, at 380 (As Promo LEX implies in their report, one of the main problems of Moldova next to the ones of corruption and poverty, is the one of impunity.).

[291] DH-DD(2014)836, ¶59.

The Parliament adopted on 12th of October 2012 a law that amended the Criminal Code. With a view to preventing ill-treatment, the changes made focused on the legal concepts and procedures to be taken in case of torture, ill-treatment, degrading and inhuman treatment. A clear definition of the former legal concepts was established and adopted accordingly to UN requirements and ECtHR case law. Additionally, severe punishments for such abuses where set up.[292] Coercion of a person by any authority to testify or confess is prohibited and criminalized by Article 309 of the New Criminal Code even in the cases where the acts do not reach the level or torture or inhuman and degrading treatment. The New Criminal Code set up that the amnesties laws cannot be applied for such abuses.[293] Article 60(8) was amended having the scope to avoid impunity by excluding any possibility for suspension of punishments or applying other alleviating measures for torture and ill-treatment crimes.[294]

The Law No. 1545 is a remedy law that was adopted with the aim to compensate illegal detention, unjustified criminal accusations, and unlawful actions of investigations bodies. The Strasbourg Court declared that the Law no. 1545 is an effective available remedy for such complaints.[295] Furthermore, the Article 175/1 (2) of the Execution Code prescribes that medical examinations should be realized immediately after a person is taken in custody, during the detention of the person after 72 hours, and before escorting the person to a prison.[296]

Overall, the measures taken by the above regulations aim to regulate the investigative bodies to gather medical evidence in cases of ill-treatment and torture, to influence the effectiveness in of the investigation and to reduce the causes that lead to the apparent ill-treatment and torture. Until now, the Moldovan authorities have observed a modest or limited tendency in decreasing of the number of complaints concerning alleged ill-treatment and police abuses.[297]

Regarding the judicial practice concerning ill-treatment and police abuses cases, the Explanatory Decision of the Supreme Court Decision No. 8 of 24 December 2012 draws a clear interpretation of the applicable law and of the ECtHR case-law for such a breach of the Convention.[298] Then again, the Supreme Court's Recommendation No. 6 of 1 November 2012

[292] DH-DD(2014)836, ¶ 62.
[293] DH-DD(2014)836, ¶ 63.
[294] *Id.*.
[295] DH-DD(2014)836, ¶ 64, 76-8.
[296] DH-DD(2014)836, ¶ 67.
[297] DH-DD(2014)836, ¶ 72-3.
[298] DH-DD(2014)836, ¶ 78.

explains how to use in practice the compensatory remedy introduced after the *Olaru and others v. Republic of Moldova*[299] pilot judgment. The recommendations set an average amount of money applicable for breaches within the meaning of the Court's case-law.[300]

As an interpretation of the Action Plan, the Human Rights Embassy NGO argued that Article No. 166 (1) and (2)[301] contains imprisonment and monetary sanctions as alternative sanctions. Therefore, a judge is allowed to apply only one of these sanctions. As a result, the penalty for police forces may be a financial sanction.[302] Concerning the general measures taken in order to ensure effective investigation of complaints of ill-treatment, it appears that there are no legislative barriers on this aspect. However, it is more an institutional problem which reflects that the police forces lacks or has a low interest in conducting effective investigations regarding ill-treatment, inhuman and degrading treatment cases.[303] So far, the effectiveness of the general measures taken cannot be measured. The Human Rights Embassy NGO argues that a longer period of time is necessary to observe in the practice whether the Moldovans authorities including Prosecutor's Office, Ministry of Interiors, Centre of Forensic Medicine, national courts, and penitentiary system will implement the amended legislation.[304]

The Human Rights Embassy recommends amending "the text of the current version of Article No. 166 (1) and (2) – Torture inhuman and degrading treatment – of Criminal Code of Republic of Moldova in order to provide imprisonment and monetary sanctions as cumulative, but not alternative sanctions."[305] It must also monitor the impact of the Strategy for Justice Sector Reform, the National Reform on Judicial System 2011-2016 and the Action plan for its

[299] Olaru, *supra* note 265.
[300] Sup. Ct. of Justice of the Rep. of Moldova, Recommendation No.6 on compensatory remedy of November 1, 2012 http://jurisprudenta.csj.md/search_rec_csj.php?id=21.
[301] Illegal Deprivation of Liberty (1) The illegal deprivation of the liberty of a person, if unrelated to the kidnapping of that person, shall be punished by community service for 120 to 240 hours or by imprisonment for up to 2 years. (2) The same action committed: [Letter a) excluded by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009] b) against two or more persons; c) against a person known to be a juvenile or against a pregnant woman or by taking advantage of the victim's known or obvious helpless condition caused by advanced age, disease, physical or mental handicap or another factor; d) by two or more persons; e) with violence dangerous to the person's life or health; f) with the use of a weapon or another object used as a weapon, shall be punished by imprisonment for 2 to 7 years. (3) The actions set forth in par. (1) or (2), provided that such actions caused severe bodily injury or damage to health or death of the victim shall be punished by imprisonment for 5 to 10 years. [Art.166 amended by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009] [Art.166 amended by Law No. 184-XVI dated 29.06.2006, in force as of 11.08.2006]
[302] *Council of Europe*, Communication from a NGO (Human Rights Embassy NGO-as the applicant's representative) and the applicant (24/09/2014) in the case of Gurgurov (Corsacov Group) against the Republic of Moldova (App. No. 7045/08) and reply from the authorities (09/10/2014) 2-3.
[303] *Id.*
[304] *Id.*
[305] *Council of Europe*, Communication from a NGO (Human Rights Embassy NGO-as the applicant's representative) and the applicant (24/09/2014) in the case of Gurgurov (Corsacov Group) against the Republic of Moldova (App. No. 7045/08) and reply from the authorities (09/10/2014) 6.

implementation.[306] The NGO demands that ill-treatment, inhuman and degrading treatment crimes not be tolerated by the national authorities and that amnesties law should not be used as impunity. Lastly, they require the reduction of the number of arrests that are not properly motivated and "undertake urgent measures to ensure effective, timely, independent and thorough investigation of applicant's complaints of torture."[307]

Other notable cases such as *Petru Rosca v. Republic of Moldova*[308], *Boicenco v. Republic of Moldova*[309], and the *Colibaba v. Republic of Moldova*[310] treat ill-treatment in police custody and the lack of effective investigation in this respect. For example, the *Colibaba case* also concerns a violation of the applicant's right of individual petition due to a threat by the Prosecutor General to prosecute his lawyer on the ground of his "improper" complaint to an international organization.[311] However, the Government submits that the perspectives of re-examination of the case are poor and that the applicant did not seek reopening it.[312]

2.1.1. Post-Election Events of April 2009

The Moldovan authorities claim that after the April 2009 post-election events, they have a more careful approach to cases concerning ill-treatment by police officers.[313] The outcome of these events disrupted the stability of politics in Moldova. It took months and later on, years, to enable the Parliament and for the Government to place attention on human rights violations. On 20 October 2009, the Parliament instituted a special ad-hoc commission for an inquiry of causes and consequences of 7 April Events.[314] However, national NGOs such as Promo-Lex, Memoria NGO together with Amnesty International state that Moldova has a long way to go until the phenomenon of torture and ill-treatment inflicted by police will be totally eliminated. Promo-Lex argues that "the authorities have yet to effectively investigate and impose sanction on those responsible for the abuses committed during the April post-

[306] *Id.*
[307] *Council of Europe*, Committee of Ministers, Communication from a NGO (Human Rights Embassy NGO-as the applicant's representative) and the applicant (24/09/2014) in the case of Gurgurov (Corsacov Group) against the Republic of Moldova (App. No. 7045/08) and reply from the authorities (09/10/2014) 7
[308] Petru Rosca, *supra* note 287.
[309] Boicenco, s*upra* note 284.
[310] Colibaba v. Republic of Moldova, App. No. 29089/06, Eur. Ct. H. R. (2007) http://hudoc.echr.coe.int/eng?i=001-82877 .
[311] DH-DD(2014)836, ¶9.
[312] DH-DD(2014)836, ¶28.
[313] DH-DD(2014)836, ¶47.
[314] Parliament Decision No. 43 of October 20, 2009 on establishment of the Commission to investigate the causes and consequences of post –April 5, 2009 events http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=332436.

elections violence. This inaction by some officials and representatives of the Prosecutor and some Courts has contributed to a culture of impunity."[315]

Case of *Taraburca v. Republic of Moldova*[316] concerns the ill treatment of Mr. Taraburca in police custody during the post-election events of April 2009 and the lack of effective remedy in this respect. The ECtHR found that the authorities did not give an acceptable explanation for the cause of applicant's injuries suffered while he was in detention. Moreover, the investigation did not comply with procedural requirements set by the Court's case law. Furthermore, the Court indicated that there were many ill-treatment cases that took place in the same period of time around the post-election events of April 2009. Additionally, the Court expressed concerns in respect of the independence and quality of work of the lawyers and the judges while dealing with the events and especially the ill-treatment cases presented.[317]

In the Action Plan, the authorities admitted that the reaction of the national law enforcement bodies to the April 2009 Events was inappropriate and conceded that "the judiciary system had actually collapsed after these unfortunate events".[318] The Government stressed that the judicial reform through which all the sectors were going through at this time, touches upon all the issues raised by this case. The Parliament instituted a special ad-hoc Parliamentary commission to investigate all the cases that occurred as a result of the April 2009 Events. The General Prosecutor's Office, the Ministry of Interiors, the Security Services and the Ministry of Interiors jointly, the Government and lastly the Supreme Council of Magistrates all had specific duties to bring remedies to the victims and restore trust in public authorities. [319] The Government also instituted a Special Permanent Governmental Commission aiming to identify the civilians and policemen that suffered from the April 2009 Events.[320] The Governmental Commission mostly rewarded compensation to a number of 150 victims. Concerning the preliminary Action Plan, the case "requires general measures concerning the reformation of the entire judicial system and the law enforcement bodies."[321] All the general measures taken related to the field of combating torture, ill-treatment and impunity are part of the framework of strategy for reformation of the judicial system.

[315] Promo-LEX, Report 2009-2010, *supra* note 268, at 382.
[316] Taraburca, *supra* note 286.
[317] *Council of Europe*, Committee of Ministers, DH-DD(2013)450, Communication from the Republic of Moldova concerning the case of Taraburca against Republic of Moldova (Application No. 18919/10), 26 April 2013 [hereinafter , DH-DD(2013)450].
[318] DH-DD(2013)450, ¶4.
[319] DH-DD(2013)450, ¶6.
[320] DH-DD(2013)450, ¶7-8.
[321] DH-DH(2013)450, ¶23.

As a result, the April 2009 Events initiated a change in the practice of police security forces in performing their duties on securing peaceful demonstrations and the reaction thereof during and after mass riots. In the Action Plan, the Government emphasized the difficulty of this issue and that it requires substantial change in the entire judicial, prosecution and police systems in Moldova. The Moldovan authorities admit that the April 2009 Events have been a catalyst for changes in judicial practice and legislation, and that their duty is to secure the implementation of these changes. However, the outcomes of these changes are not yet very clear.

2.2. Domestic violence

The *Eremia group of cases*[322] presents the failure to observe positive obligations under Article 3 of the ECHR in relation to the manner in which the authorities and courts handled complaints about domestic violence by their ex-/husbands. The ECtHR acknowledged that Moldova has a legislative framework that permits relevant authorities to take measures against persons accused of family violence.[323] However, the Court found that the applicants were subjected to gender discrimination.[324]

The Moldovan authorities replied promptly with an Action Plan for the judgment in the *Eremia group of cases* due to the urgency of the question of individual measures. However, the general measures are included in the Action Plan. Concerning the non-discrimination aspect, the Government notes that Moldova has several anti-discrimination procedures, such as the Law on gender equality[325], the Contravention and Criminal Codes have set responsibility for offences committed based on discrimination, and the Labour Code contains clear provisions prohibiting discrimination on gender. Furthermore, the Law no. 121 of 25 May 2012 on securing equality (the Antidiscrimination Law) entered into force on 01 January 2013. The Antidiscrimination Law sets "clear procedures and remedies for settlement and quasi-judicial assessment of all discrimination-related disputes." Furthermore, the law sets up the Antidiscrimination Committee that has quasi-judicial and investigative powers. The Antidiscrimination Committee began its activities in June 2013. Every individual by means of an official request submitted to prosecution and judicial authorities can notify the

[322] Eremia v. Moldova, App. No. 3564/11, Eur. Ct. H. R. (2013) http://hudoc.echr.coe.int/eng?i=001-119968 , B. v. Moldova, App. No. 61382/09, Eur. Ct. H. R. (2013) http://hudoc.echr.coe.int/eng?i=001-122372 , Mudric v. Moldova, App. No. 74839/10, Eur. Ct H. R. (2013) http://hudoc.echr.coe.int/eng?i=001-122375.
[323] *Council of Europe*, Committee of Ministers, DH-DD(2014)522, Communication from the Republic of Moldova concerning Eremia group of cases against Republic of Moldova (Application No. 3564/11), ¶15 [hereinafter DH-DD(2014)522].
[324] DH-DD(2014)522, ¶16-7.
[325] Law No. 5 of February 9, 2006 on equality between women and men http://lex.justice.md/viewdoc.php?action=view&view=doc&id=315674&lang=1.

Committee. An investigation will be initiated to determine if there has been a violation of non-discrimination clauses.[326]

By Government Decision no. 72 of 7 February 2012, the Coordination Inter-ministerial Committee was instituted for fighting against domestic violence. The main objective of the Committee is to coordinate the activities taken to prevent domestic violation by all the authorities involved. The Committee is composed of representatives from local and central authorities and civil society. The activities consist of regular meetings and reports that are aimed at bringing awareness to the authorities and civil society regarding their policy for fighting domestic crimes. The Committee proposes regulation or legislative amendments if necessary and offers consultations for authorities interested. The Committee also organizes thematic events, conferences, publicity campaigns to inform the population about their rights.

As a result of this dedicated and properly implemented publicity campaign, the representatives of UN WOMEN mentioned that Moldova was the first country able to bring a thorough anti-violence message and to engage the national authorities in a proactive manner.[327] A very important aspect of this issue is that police officers are instructed on how to conduct themselves with victims and how to prevent domestic violence. More than 5000 meetings attended by police officers with the general population, including young people and students, were held in 2013.[328]

The Supreme Court delivered an Explanatory Decision on 28 May 2012 that explained in clear terms the application of the Law on domestic violence and the applicable civil and criminal provisions. Furthermore, the Supreme Court emphasized that in domestic violence cases, "the right to physical and psychical integrity of the victim prevails over all the possession rights of an aggressor regardless of his or her civil status and relation with that victim."[329] Also, privacy rights prevail in these cases. The Supreme Court notes that the ECtHR case law should be directly applied and "The judges should give priority to the victim's interests and to rule in such a way as to discourage any other recurrences and to underline non-tolerance of the domestic violence."[330]

The Government adds that the public authorities involved in cases concerning domestic violence, the police, the prosecutors and the judges give importance to this matter and that both the General Prosecutor and the Police General Inspectorate adopted rules and

[326] DH-DD(2014)522, ¶17-20 .
[327] DH-DD(2014)522, ¶21-7.
[328] DH-DD(2014)522, ¶24-6.
[329] DH-DD(2014)522, ¶28.
[330] *Id.*

regulations, practical guidelines for combating domestic violence.[331] The public servants, such as judges, prosecutors and police officers were instructed for combating violence through activities in cooperation with OSCE, UNFPA and UN WOMEN.[332]

2.3. Ineffective investigation of Article 3 cases

The cases of *Ceachir v. Republic of Moldova*[333] and *I.G. v. Republic of Moldova*[334] concern violations of the respondent State's positive obligations under Article 3. In the case of *Ceachir*, the domestic authorities failed to act with due diligence and effectively investigate the body injuries of the applicant caused by a seller in a public market. The Strasbourg Court held that the poor investigation of the case, particularly by failing to bring the case to an end before expiry the statute of limitations and failing to ensure protection of the applicant against the acts of violence.[335] Regarding the *I.G.* case, the Court held that "the final decision discharging the alleged offender of the accusations was adopted without some important investigative measures having been conducted."[336] Furthermore, the Court identified a breach of the principle *ne bis in idem*, as only a hierarchically superior prosecutor has the right to supervise the decisions adopted by the prosecutor.[337]

An Action plan was submitted for the case of *I.G.* on 15th of May 2012. Besides the publication and dissemination of the judgment, the Government noted that at the time of the events the domestic legislation "set that only the Prosecutor General and his Deputies were empowered to annul a decision of a subordinated prosecutor."[338] After the present case, the procedural rules of hierarchic prosecutor for annulment of decisions of his/her subordinates were amended.[339] Now, the prosecutor's decisions taken in the course of the criminal investigations are subject to supervision by any hierarchic prosecutor.[340] Furthermore, the Government notes that the concerned case presents irregularities in the application of the criminal procedure legislation. The Government submits that the actions requested by the

[331] DH-DD(2014)522, ¶29.
[332] DH-DD(2014)522, ¶30-2.
[333] Ceachir v. Republic of Moldova, App. No. 50115/06, Eur. Ct. H. R. (2014) http://hudoc.echr.coe.int/eng?i=001-138889 .
[334] I.G. v. Republic of Moldova, App. No. 53519/07, Eur. Ct. H. R. (2012) http://hudoc.echr.coe.int/eng?i=001-110904 .
[335] Committee of Ministers, Execution of the ECtHR Judgments, Ceachir v. Moldova, App. No. 50115/06, 10 December 2013.
[336] Committee of Ministers, Execution of the ECtHR Judgments, I.G. v. Moldova, App. No. 53519/07, 15 May 2012.
[337] I.G., *supra* note 333, ¶27.
[338] *Council of Europe*, Committee of Ministers, DH-DD(2014)446, Communication from the Republic of Moldova concerning the case of I.G. against Republic of Moldova (Application No. 53519/07) , ¶10 [hereinafter DH-DD(2014)446].
[339] DH-DD(2014)446, ¶11.
[340] DH-DD(2014)446, ¶12.

Court were fully satisfied and that the change of the criminal procedural legislation is an effective remedy that affects the judicial or administrative practice.[341]

ii. Protection of rights in detention

1. Poor material conditions of detention facilities

There are several issues concerning detention facilities in Moldova. One of main ones is the poor material conditions of detention in penitentiaries and prisons, and detention special places in police custody. Poor material conditions refers to inadequate sanitary conditions, poor ventilation and heating, lack of access to natural and artificial light, lack of outdoor activities for recreation, insufficient provision of food, and severe overcrowding. In the lead case *Becciev v. Republic of Moldova*[342], the applicant, at the time the case was filed, argued that the conditions of the Temporary Detention Facility of the General Inspectorate of the Chișinău Municipality amounted to inhumane and degrading treatment.[343] The ECtHR found a violation of Article 3 of ECHR.

2. Lack of medical care in detention facilities

The lack of access to adequate medical care while in detention is as important as the first issue. In cases such as *Istratii and others v. Republic of Moldova*[344], *Holomiov v. Republic of Moldova*[345], *Ostrovar v. Republic of Moldova*[346] the Court found that the Moldovan authorities failed to provide emergency medical assistance and care for serious and chronic illnesses in accordance with professional medical advice. Additionally, for applicants who needed to be transfered to specialized institutions for medical care, such in the case of *Paladi v. Republic of Moldova*[347] and *Oprea v. Republic of Moldova*[348], the Court held that the authorities' lack of diligence in this respect worsened the medical condition of the applicants. The *Becciev*[349] and *Ciorap groups of cases*[350] concerns poor conditions of detention in

[341] DH-DD(2014)446, ¶9-13.
[342] Becciev v. Republic of Moldova, App. No. 9190/03, Eur. Ct. H. R. (2006) http://hudoc.echr.coe.int/eng?i=001-70434
[343] *Id.*, ¶35.
[344] Istratii and others v. Republic of Moldova, App. Nos. 8721/05, 8705/05 and 8742/05, Eur. Ct. H. R. (2007) http://hudoc.echr.coe.int/eng?i=001-79910
[345] Holomiov v. Republic of Moldova, App. No. 30649/05, Eur. Ct. H. R. (2005) http://hudoc.echr.coe.int/eng?i=001-77850
[346] Ostrovar v. Republic of Moldova, App. No. 35207/0313, Eur. Ct. H. R. (2005) http://hudoc.echr.coe.int/eng?i=001-70138
[347] Paladi v. Republic of Moldova, App. No. 39806/05, Eur. Ct. H. R. (2009) http://hudoc.echr.coe.int/eng?i=001-91702 .
[348] Oprea v. Republic of Moldova, App. No.38055/06, Eur. Ct. H. R. (2011) http://hudoc.echr.coe.int/eng?i=001-102427 .
[349] Malai v. Republic of Moldova, App. No. 7101/06, Eur. Ct. H. R. (2008)

penitentiary establishments under the authority of the Ministry of Interior and the Minister of Justice. The CoM has been examining these cases since 2006. In 2013, the Moldovan authorities provided up to date information.[351]

The authorities' attitude concerning these issues of detention is doubtful. The Moldovan government disagrees with the fact that the issues at stake are "indications of structural or systemic problem".[352] It is more a problem of implementation due to the State's budget restraint.[353] Given the example of the United Nations Special Rapporteur findings[354], the Moldovan Government acknowledged the seriousness of the problem and argues that the necessary legislative measures had already been taken. Moreover, because of financial constraints, the reconstruction or renovation of the old Soviet detention buildings is more than the State can afford to bring them to an international standard.[355]

A number of *legislative measures* were taken to answer the problems regarding detention. An amendment to the Code of Execution of Sentences now requests that a person detained can be held in a police remand centre for a maximum 72 hours.[356] As a result of this measure, any detention exceeding the 72 hours' time limit will be declared unlawful. Amendments to the Criminal Code in December 2008 "reduced the minimum and maximum

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http://hudoc.echr.coe.int/eng?i=001-89577, Ciorap (No.2) v. Republic of Moldova, App No. 7481/06, Eur. Ct. H. R. (2010) http://hudoc.echr.coe.int/eng?i=001-99996.

[350] Ciorap v. Republic of Moldova, App. No. 12066/02, Eur. Ct. H. R. (2007), http://hudoc.echr.coe.int/eng?i=001-81136, Arseniev v. Republic of Moldova, App. No.10614/06+, Eur. Ct. H. R. (2012), http://hudoc.echr.coe.int/eng?i=001-109729, Ciorap (No.3) v. Republic of Moldova, App. No. 32896/07, Eur. Ct. H. R. (2012), http://hudoc.echr.coe.int/eng?i=001-115006, Constantin Modarca v. Republic of Moldova, App. No. 37829/08, Eur. Ct. H. R. (2012), http://hudoc.echr.coe.int/eng?i=001-114519, Culev v. Republic of Moldova, App. No. 60179/09, Eur. Ct. H. R. (2012) http://hudoc.echr.coe.int/eng?i=001-110393, Hadji v. Republic of Moldova, App. No. 328844/07+, Eur. Ct. H. R. (2012) http://hudoc.echr.coe.int/eng?i=001-109066, Haritonov v. Republic of Moldova, App. No. 15868/07, Eur. Ct. H. R. (2011) http://hudoc.echr.coe.int/eng?i=001-105511, Holomiov v. Republic of Moldova, App. No. 30649/05, Eur. Ct. H. R. (2006) http://hudoc.echr.coe.int/eng?i=001-77850, I.D. v. Republic of Moldova, App. No. 47203/06, Eur. Ct. H. R. (2010) http://hudoc.echr.coe.int/eng?i=001-101985, Istratii and others v. Republic of Moldova, App. No. 8721/05+, Eur. Ct. H. R. (2007) http://hudoc.echr.coe.int/eng?i=001-79910, Meriakri v. Republic of Moldova, App. No. 53487/99, Eur. Ct. H. R. (2005) http://hudoc.echr.coe.int/eng?i=001-68425, Mitrofan v. Republic of Moldova, App. No. 50054/07, Eur. Ct. H. R. (2013) http://hudoc.echr.coe.int/eng?i=001-115874, Rotaru v. Republic of Moldova, App. No. 51216/06, Eur. Ct. H. R. (2011) http://hudoc.echr.coe.int/eng?i=001-103369, Ostrovar v. Republic of Moldova, App. No. 35207/03, Eur. Ct. H. R. (2005) http://hudoc.echr.coe.int/eng?i=001-70138.

[351] *Council of Europe*, Committee of Ministers, DH-DD(2013)1168, Communication from the Republic of Moldova concerning the Groups Becciev, Ciorap and Paladi against the Republic of Moldova (Application No. 91090/03, 12066/02 and 39806/05) [hereinafter DH-DD(2013)1168].

[352] DH-DD(2013)1168, ¶62.

[353] DH-DD(2013)1168, ¶63.

[354] United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Human Rights Council, 10th session, Report on the special rapporteur's mission to Moldova, document A/HRC/10/44/Add.3, February 12, 2009).

[355] DH-DD(2013)1168, ¶65- 6.

[356] Moldovan Execution Code, Article 175/1 (1) http://lex.justice.md/index.php?action=view&view=doc&id=336538 .

penalties, prompted a general review of penalties and reoffending, and provided for alternatives to detention, thus contributing to the reduction in the total number of prison population."[357] Additionally, Article 175/1 (2) of the Execution code made mandatory "medicals examination immediately before a person is in custody, during his or her detention and after 72 hours, before escorting him or her to a prison or a house of arrest."[358] The detainee may request free medical examination when he or she demands at any time within her or his 72 hours detention. Article 232 of the Execution code was also amended and at this time provides a wide regulatory framework for medical assistance within and outside the penitentiary system and the medical services in the remand centres. The law obliges doctors to inform prosecution services about any clues or injuries resulted from ill-treatment. The provision gives to a detainee, at his or her expenses, varied possibilities to call private doctors and even legal forensic experts. It also sets, of course, a minimum standard of medical services free of charge. A medical examination, pursuant to the above Article, is mandatory when a person is escorted and/or transferred from other detention centres. Compensatory medical treatment is fixed, upon a decision of the Medical Commission, for certain types of infections and addiction deceases. It seems that the above regulations for medical assistance would preclude the investigative bodies and prison supervision staff to prohibit any particular demands of a detained person to call for private and mandatory medical care.[359]

A number of *administrative measures* were taken and proposed to be implemented in the future by the Government. Concerning the poor detention conditions in penitentiary, Prison no. 13 (*Ciorap* Case), during 2007-2013 a certain number of measures were taken, such as increasing the quality of the food and material conditions; the cells and building blocks were renovated, as well as an internal and autonomous heating system was installed.[360] Furthermore, a new construction project for a new prison was concluded in partnership with Council of Europe Development Bank.[361] The prisons under the authority of Ministry of Justice[362], the centre of Chișinău Police (*Becciev* case) were renovated with funds from the EU and the Government.[363] The detention centre of the Chișinău Police (*Popovici* and *Stepuleac* cases) for combating organized crime was closed.[364] Regarding the remand centres of the regional and sectorial police stations, six centers were closed and some partially

[357] DH-DD(2013)1168, ¶81.
[358] DH-DD(2013)1168, ¶95.
[359] DH-DD(2013)1168, ¶95-8.
[360] DH-DD(2013)1168, ¶71-3.
[361] DH-DD(2013)1168, ¶73.
[362] Taraclia Prison no. 1, Rusca Prison no. 7, Rezina Prison no. 17, Goian Prison for minors.
[363] DH-DD(2013)1168, ¶74-6.
[364] DH-DD(2013)1168, ¶77.

suspended.[365] Regarding inadequate medical care in detention facility - Anticorruption Centre - (*Paladi* and *Oprea* cases), the Ministry of Justice and the Anticorruption Centre are now discussing to transfer the centre to the authority of the Ministry of Justice.[366] Thousands of euros and millions of MDL have been invested in the penitentiary system and detention facilities according to Moldavian Government.[367]

Concerning remedies for claims about the conditions of detention, the Moldovan Government states that the detainee can claim transfer or change to another prison or appeal to the prison or the remand centre administration. Moreover, complaints about the lack of medical assistance are entitled to remedies under recent amendments to the Executive code (March 2012).[368] Another change in response to concerns about overcrowding has resulted in the implementation of "strategies for reducing of prison population, enhancing probation services and increasing application of preventive measures alternative to arrest."[369] As a result of this measure, the Government submits that between 2008 and 2013 the number of the prison population has decreased constantly with almost 10 per cent per year, in average.

The Moldovan Government reports that the methods proposed in 2013 are not the only ones they wish to implement. In the future, a close relationship with CoM will be nurtured and the Government emphasizes that they are open to cooperation and willing to adopt steps to put an end to these violations. Also, the Strategy for Justice Sector Reform 2011-2015 is another aspect on which the Government intends to eradicate systemic violations and raise the level of trust of Moldovan citizens in the national judicial system.[370]

The Action Plan submitted in 2013 regulates future amendments to the legislation governing the activity of Parliament, Government, Governmental Agent, judiciary, prosecution services, and other relevant authorities entering in force in 2014 in order to increase the control over the execution of the Court's judgments.[371] However, the Action Plan concerning *Becciev group of cases* contains no updated information regarding issue of excessive length of criminal proceedings. The Government argues that the measures adopted for *Olaru and the others* pilot judgment are applicable in this case too. The forced feeding of detainees on hunger strike is prohibited, as the Law on Pre-trial Detention was amended on 9

[365] DH-DD(2013)1168, ¶78.
[366] DH-DD(2013)1168, ¶79.
[367] DH-DD(2013)1168, ¶88-94
[368] DH-DD(2013)1168, ¶104-5.
[369] DH-DD(2013)1168, ¶80-7.
[370] DH-DD(2013)1168, ¶108-117.
[371] DH-DD(2013)1168, ¶118.

October 2003. Furthermore, the glass partition at the Centre against Economic Crime and Corruption was removed.[372]

After the Moldovan's Government Action Plan for *Becciev group of cases* was submitted on 21 October 2013, the CoM had their 1186 meeting (3-5 December 2013). The CoM requested more information regarding the 72 hours detention time limit. They asked for a clarification of the manner in which Moldovan's authorities will sanction breaches and how they will ensure "strict respect in practice of the new legislative and regulatory provisions" concerning this change. Additionally, the issue of access to medical care required more information regarding the concrete manner in which the authorities remedied any violations on the basis that legislative changes were not enough. More information was also required about the measures taken to remedy the violations of Article 34 concerning *Paladi* case and Article 8 about censorship of correspondence and authorization of family visits.[373]

When the response of Moldovan government and the follow up of the CoM on the *Becciev, Paladi* and *Ciorap group of cases* is considered in relation to the issues of detention, one can argue that the Moldovan authorities have made notably progress during a seven year period. The political will and commitment of the Moldovan authorities to undertake measures of any kind are important. However, a deficit budget with underqualified staff and a low number of working people in the administration of penitentiary are slowing down the process of implementing the ECtHR judgments concerning detention.

The following collection of cases present strong evidence of the wrongdoing of Moldovan judicial practice concerning the right to be free from torture, inhuman and degrading treatment: *Holomiov v. Republic of Moldova* [374], *Meriakri v. Republic of Moldova*[375], *Ostrovar v. Republic of Moldova*[376], *Paladi v. Republic of Moldova*[377], *Conev v. Republic of Moldova*[378], *David v. Republic of Moldova*[379], *Gorobet v. Republic of Moldova*[380],

[372] Committee of Ministers, Execution of the ECtHR Judgments, Becciev v. Republic of Moldova, App. No. 9190/03.
[373] *Id.*
[374] Holomiov, *supra* note 344.
[375] Meriakri, *supra* note 349.
[376] Ostrovar, *supra* note 345.
[377] Paladi, *supra* note 346.
[378] Conev v. Republic of Moldova, App. No. 28431/08, Eur. Ct. H. R. (2014) http://hudoc.echr.coe.int/eng?i=001-148063 .
[379] David v. Republic of Moldova, App. No. 41583/05, Eur. Ct. H. R., http://hudoc.echr.coe.int/eng?i=001-83466.
[380] Gorobet v. Republic of Moldova, App. No. 30951/10, Eur. Ct. H. R., http://hudoc.echr.coe.int/eng?i=001-106769.

Becciev v. Republic of Moldova[381], *Brega v. Republic of Moldova*[382], *and Ciorap v. Republic of Moldova*[383]

The case of *Gorobet* is significant for the fact that the Court did not request a change of legislation in Moldova but rather a change of practice. Therefore, no special general measures were taken for the case of *Gorobet v. Republic of Moldova*, except that the Government undertook to conduct research concerning the detention of persons of unsound mind and those who require compulsory medical and psychological treatment as a way to identify unlawful detentions and to prevent the occurrence of these situations.[384] In response, the Government confirmed that further information regarding developments and measures for these issues will be provided in the future.[385]

Furthermore, the case of *Ciorap (No.4) v. Republic of Moldova*[386] involved a violation of Article 3 of the ECHR that was concerned with the amount of compensation that the applicant received following Supreme Court's judgment that the operation performed in the prison hospital against his will. The Strasbourg held that the amount granted by the Moldovan authorities (400 euros) was significantly lower than the amounts allocated for similar cases and awarded the applicant EUR 9,000 in respect of non-pecuniary damage.[387] There is no information with regards to the outcomes of this case on Committee of Ministers Website.

3. Unlawful and arbitrary detention

Other cases such as *Brega v. Republic of Moldova*[388] and *Cebotari v. Republic of Moldova*[389] received the attention of the Committee of Ministers for unlawful and arbitrary detention issues. For example, the *Brega group of cases*[390] is concerned with arrest without reasonable suspicion in administrative proceedings. The case raises the issue regarding "abusive apprehensions of persons under the Code of Administrative offences, police entry onto private premises and lack of effective remedies in this respect."[391] An Action Plan is awaited in this

[381] Becciev, *supra* note 341.
[382] Brega v. Republic of Moldova, App. No. 61485/08, Eur. Ct. H. R., http://hudoc.echr.coe.int/eng?i=001-108787.
[383] Ciorap v. Moldova, App. No. 12066/02, Eur. Ct. H. R. (2007), http://hudoc.echr.coe.int/eng?i=001-81136
[384] *Council of Europe,* Committee of Ministers, DH-DD(2013)1213, Communication from the Republic of Moldova concerning the case of Gorobet against Republic of Moldova (Application No. 30951/10) ¶9.
[385] *Id.* ¶5-9.
[386] Ciorap (No.4), *supra* note 283.
[387] *Id.*
[388] Brega, *supra* note 381.
[389] Cebotari v. Republic of Moldova, App. No. 35615/06, Eur. Ct. H. R. (2007) http://hudoc.echr.coe.int/eng?i=001-83247.
[390] Brega, *supra* note 381, Gutu v. Republic of Moldova, App. No. 20289/02, Eur. Ct. H. R. (2007) http://hudoc.echr.coe.int/eng?i=001-80910.
[391] Committee of Ministers, Execution of Judgments, Brega v. Republic of Moldova, App. No. 61485/08.

concern. Another question raised by the CoM regarding the *Brega* case, is whether individuals detained under the Code of Administrative offences are detained in the same facilities as the one held under the Penal Code and whether they are entitled to the same general measures taken for *Becciev* case concerning poor detention facilities under the authority of the Ministry of the Interior.

Furthermore, the *Cebotari group of cases*[392] concerns arrest without reasonable suspicion. As the CoM explains, police abuses are examined in the *Corsacov* group of cases, but raises specific questions regarding arrests without reasonable suspicion and refusing to release a prisoner because of his/her failure to pay the amount set for bail. The Moldovan authorities have not submitted an Action Plan concerning this particular case.[393]

The CoM has been following the implementation of this group of cases since 2006. The *Sarban group of cases*[394] regards a large variety of violations concerning Article 5 of the ECHR. The general measures implemented by Moldova, on September 2014, concern both legislative and judicial practice improvements. In light of the first one, the Government has modified Article 186 of the Code of Criminal Procedure in order to eliminate the possibility of the judicial authorities to keep a person in detention without any judicial decision.[395] Later on, the Moldovan Government addressed the issues raised by the *Sarban* group of cases on 15 September 2014 concerning the matter of 'continued detention without any judicial reasons'. In response, the authorities noted that modifying Article 186 of the Criminal Code Procedure on 3 November 2006 has brought an end to this issue. According to the article, the Prosecutors have the duty to request detention during the trial stage before the court that examines the criminal case. Furthermore, the individual can appeal the detention order and can seek application of other preventive measures alternative to arrest.[396]

The practice of holding individuals under arrest without sufficient reasons is highly encountered in Moldova. In order to eliminate such problems, the Moldovan government has introduced a number of legislative amendments to Article 176 of the Criminal Procedure Code. The arrest can be applied only as an exceptional measure according to Article 176 (2).

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[392] Musuc v. Republic of Moldova, App. No. 42440/06, Eur. Ct. H. R. (2007) http://hudoc.echr.coe.int/eng?i=001-83081, Stepuleac v. Republic of Moldova, App. No. 8207/06, Eur. Ct. H. R. (2007) http://hudoc.echr.coe.int/eng?i=001-83085, Cebotari, *supra* note 388.
[393] Committee of Ministers, Execution of Judgments, Cebotari v. the Republic of Moldova, App. No. 35615/06.
[394] *See Sarban group of cases* as defined by the Moldovan authorities in Committee of Ministers, DH-DD(2014)1147, Communication from the Republic of Moldova concerning the Sarban group of cases against Republic of Moldova (Application No. 3456/05), 1.
[395] *Council of Europe,* Committee of Ministers, DH-DD(2014)1147, Communication from the Republic of Moldova concerning the Sarban group of cases against Republic of Moldova (Application No. 3456/05), ¶22 [hereinafter DH-DD(2014)1147].
[396] DH-DD(2014)1147, ¶22.

Article 172 (2) and (3) establishes the reasons for detention set by the Court's case law as (i) a risk of disappearance, (ii) interference with the course of justice and (iii) committing other offences were included as the sole grounds authorizing the arrest.[397] Furthermore, Article 308 (1) obliges prosecutors to provide detailed reasons in their requests for arrest orders and to enclose evidence. Article 177 (1) affirms that judges must reply and deliver reasoned judgements. For this instance, the Moldovan Supreme Court released an explanatory decision on application by the courts of certain provisions of the criminal procedural law on detention on remand and house arrest.[398] Concerning the excessive length of proceedings in the appellate court, amendments to Articles 311 and 312 (2) now clears out the time limits for lodging appeals and the deadlines for their examination and transmission to the appellate courts.[399]

The Department for the execution of judgments of ECHR (Directorate General of Human Rights and Legal Affairs) prepared a memorandum concerning the general measures required from the Moldovan authorities in response to various violations of Article 5 of the ECHR found by the ECtHR in the *Sarban group of cases*. The Moldovan Government argues that the memorandum was the basis on which they drafted changes to legislation and judicial practices. Regarding improvement to judicial practices, the Supreme Court has intervened in judicial practices by applying the new amendments during arrest proceedings. The Explanatory Decision No. 1 of 15 April 2013 clarifies the issues regarding arrest proceedings and how the judges and prosecutors must apply the new legislation. The Decision discussed issues concerning detention on remand, equality of arms principle, access to the case file materials and the time limits of the judicial examination. Refusal to hear witnesses during the arrest proceedings in the courts and imposed a duty to hold such hearings if the defense requires it. The Government adds that the Decision has actually been implemented and its impact should be evaluated in the future, in particular regarding the practices in reasoning of the judicial orders and extension.[400]

Remedies available for the victims of violation of Article 5 of ECHR in Rep Moldova are now embodied in the Law No. 1545. Judicial compensatory remedies consist in exhaustion of domestic available remedies, namely the Law No. 1545. The ECtHR noted that the law in question is an effective available remedy. Even so, for certain cases where the

[397] DH-DD(2014)1147, ¶31.
[398] Plenary of the Sup. Ct. of Justice of the Republic of Moldova: Explanatory Decision No.1 of April 15, 2013 http://jurisprudenta.csj.md/search_hot_expl.php?id=48.
[399] DH-DD(2014)1147, ¶43.
[400] DH-DD(2014)1147, ¶49-55.

remedy provided by Law No. 1545 was sufficiently used, the Strasbourg Court argued that the financial compensation that the domestic courts apply to the cases is not sufficient or comparable with the case-law of the ECtHR. In this case the domestic courts should apply the rationale from the *Ciorap (No.4) case*.[401] The Explanatory Decision of the Supreme Court No. 8 of the 24th December 2012 explains the applicable law and procedure by which a person can claim compensation for alleged violations of Article 5 of the Convention. The Supreme Court's Recommendation No. 6 of November 2012 requires that the Convention and the Court's case law to be applied directly while applying the compensatory remedy introduced after the *Olaru pilot judgment*. In other words, the national courts have to respect the standards of the ECtHR case-law with respect to the amounts awarded to similar cases.[402] In the Explanatory Decision No. 3 of June 2014 the Supreme Court ordered that all domestic courts should examine and refer in their judgments to the Convention and ECtHR case-law.[403] There is now extensive domestic case law applying the rationale of *Ciorap (No.2) case.* Furthermore, the Government has a plan of measures proposed to deal with all the issues raised in the present case.[404]

The case of *Gutu v. Republic of Moldova*[405] concerns unlawful arrest and detention of the applicant arrested on the ground that she failed to comply with a lawful order of a police officer. This case involved a greater number of violations but for the purposes of monitoring of general measures taken, the issues related to police abuses that were also examined in the *Corsacov group of cases*. However, the *Gutu case* also raises questions concerning "abusive apprehensions of persons under the Code of Administrative offences, police entry onto private premises and lack of effective remedies in this respect."[406]

The cases of *Cebotari v. the Republic of Moldova*[407] and *Musuc v. the Republic of Moldova*[408] raises questions regarding arrests without reasonable suspicion and refusing to release the prisoner because of his failure to pay the amount set for bail[409] in addition to the issues related to the police abuses which are studied in the *Corsacov group of cases.*

[401] DH-DD(2014)1147, ¶58-64, *Ciorap no. 4* rationale refers to the fact that the national courts should offer compensation that is sufficient and similar with the amounts that the Strasbourg Court awards the applicants for non-pecuniary damages.
[402] *Id.*
[403] *Id.*
[404] DH-DD(2014)1147, ¶65-75.
[405] Gutu, *supra* note 389.
[406] Committee of Ministers, Execution of Judgments, the Case of Gutu v. the Republic of Moldova, App. No. 20289/02.
[407] Cebotari, *supra* note 388.
[408] Musuc, *supra* note 391.
[409] Three cases concerning arrest without a reasonable suspicion had been filed to the ECtHR: *Musuc*, *Stepuleac* and *Cebotari*.

Consequently, the Committee has requested the Moldovan authorities to set up general measures concerning these three cases.

iii. Access to efficient justice

The largest number of lead cases concern problems related to the efficient administration of justice. The cases include alleged violations of Article 6 (1) of the Convention that guarantees everyone the right to a 'fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'. 20 cases out of the 76 examined on this paper relate to violations of right to fair trial, and other rights, such as access to a lawyer, non-enforcement or delayed enforcement of domestic judicial decisions, as well as the lack of effective remedy in that regard.

1. Erroneous application of the domestic law

One of the cases for which Moldova as already submitted an Action Plan is *Asito (No.2) v. Republic of Moldova*[410]. The case concerns a violation of the applicant company's right to a fair hearing and the principle of legal certainty that raised the question whether the problem encountered was a problem of erroneous application of the domestic law or the quality of the law.[411] The Government asserted that the case needs to be widely disseminated and that changes of judicial practices are a proper remedy for this case.[412] It further provided data which maintained that the range of extraordinary revision proceedings had been considerably reduced in the last years.[413] In addition, the Supreme Court adopted Explanatory Decision No. 2 that concerns "the practices and the application of the extraordinary revision in civil cases". According to the decision, there are particular circumstances when the revision procedure might be used, such as for consolidation of the domestic case law where the judgments reveal inconsistency after the Strasbourg Court's judgment.[414] The Government concluded that the case is a one-time case and that the applicant's situation was remedied.[415] However, the CoM is still supervising the case.

2. Insufficient amount for compensations

[410] Asito (No.2) v. Republic of Moldova, App. No. 39818/06, Eur. Ct. H. R. (2012) http://hudoc.echr.coe.int/eng?i=001-70839.
[411] *Council of Europe*, Committee of Ministers, DH-DD(2013)1191, Action report (18/07/2013), Communication from the Republic of Moldova concerning the case of Asito (No. 2) against Republic of Moldova (Application No. 39818/06)[hereinafter DH-DD(2013)1191].
[412] *Id*. ¶8.
[413] *Id.*
[414] DH-DD(2013)1191, ¶9.
[415] *Supra* note 410.

The following case, *G.B. and R.B. v. Republic of Moldova*[416], concerns violation of the applicants' private and family lives on account of the amount of compensation (EUR 607) awarded by the domestic courts in 2007-2008 for the first applicant's sterilization performed without her permission during a Caesarean section in 2000. The Court held that the amount is considerably below the minim level of compensation generally awarded by the Court in cases in which it has found violations of Article 8 of the ECHR. Furthermore, the Strasbourg Court requested sufficient *just satisfaction* as the devastating effects on the victim make this a particular serious interference with her Convention rights.[417] In addition, the Court held that the Moldovan courts failed to apply general criteria while making the awards in the applicants' case, namely to consider the appropriate ECtHR case-law in order to establish appropriate awards.[418]

As a result, the Government published and disseminated the judgment. It further argued that even though the Court found some violations in different cases[419] the reasons behind this issue is the fact that the domestic courts are inconsistent in their practice awarding moral damages.[420] Therefore, there is no need for legislation to be amended but instead to ensure that the domestic courts apply the rationale of *Ciorap no. 2*. In this respect, the Supreme Court through its Explanatory Decision No. 8 of 24 December 2012 explained the applicable law and the procedure by which a person could claim compensation for such a breach of the Convention. Additionally, the Supreme Courts' Recommendations No. 6 of 01 November 2012 sets average amounts of money applicable for breaches within the meaning of the Court's case law. The issue can also be eradicated through education and continuous instruction of the judges by the National Institute of Justice.[421]

3. Failure to summons the applicants

[416] G.B. and R.B. v. Republic of Moldova, App. No. 16761/09, Eur. Ct. H. R. (2012) http://hudoc.echr.coe.int/eng?i=001-115395.
[417] *Council of Europe,* Committee of Ministers, DH-DD(2014)447, Communication from the Republic of Moldova concerning the case of G.B. and R.B. against Republic of Moldova (Application no. 16761/09) [hereinafter DH-DD(2014)447].
[418] *Id.*, ¶4.
[419] For e.g., the Court found that the Moldovan courts grant insufficient compensation on account of inhuman conditions of detention, as in case of Ciorap (No.2) v. Republic of Moldova, App. No. 7481/06; and in the cases of Ganea v. the Republic of Moldova, App. No. 2474/06; Cristina Boicenco v. Republic of Moldova, App. No. 25688/09 the Strasbourg Court held that there has been a violation of Article 5, on account of unlawful arrest and detention.
[420] DH-DD(2014)447, ¶8.
[421] DH-DD(2014)447, ¶10-5.

Other cases of *Ziliberberg v. Republic of Moldova*[422] and *Levinta (No.2) v. Republic of Moldova*[423] concern violation of the right to a fair trial as the Moldovan national courts failed to summons the applicant in adequate time which deprived the applicant of the right to prepare his/her defense and of the possibility to be present at the hearings. A significant problem was the Moldovan legislation had no provisions on traceability of delivery of summons.

As part of the general measures taken for this judgment, the Code of Administrative Offences and of Criminal Procedure was amended and now provides that summons must be served on the person concerned not later than 5 days before a hearing.. However, the new legislation still does not contain provisions detailing the procedure nor the body responsible for ensuring that an accused receives the summons. In consequence, the Committee is waiting for further information from Moldovan authorities. In *Levinta (No.2) v. Republic of Moldova* the violations occurred as a result of extraordinary reopening of the domestic proceedings following the Court's findings in the case of *Levinţa v. Republic of Moldova*[424] after December 2008.[425]

4. Non-enforcement or delayed enforcement of domestic judicial decisions

The *Luntre group of cases*[426] is constituted of 48 cases concerning the failure or substantial delay by the administration in abiding by final domestic judgments.[427] The cases concern non-enforcement or delayed enforcement of domestic judicial decisions, as well as the lack of effective remedy in that regard. The first subgroup of the cases relate to the failure to enforce judicial decisions awarding compensation for depreciated savings in decisions of the Government and Parliament of 19 July 1994 and of 16 February 1994. The second subgroup relate to the failure to enforce final judicial decisions ordering restitution or compensation for property nationalized or lost due to political repression during the previous regime. Subgroup 3 focuses on the failure to enforce final judicial decisions in the field of housing policy, including decisions ordering allocation of accommodation, and decisions ordering payment of monetary compensation in lieu of accommodation. Subgroup 4 is concerned with the failure

[422] Ziliberberg v. Republic of Moldova, App. No. 61821/00, Eur. Ct. H. R. (2005) http://hudoc.echr.coe.int/eng?i=001-68119.
[423] Levinta (No.2) v. Republic of Moldova, App. No. 50717/09, Eur. Ct. H. R. (2012) http://hudoc.echr.coe.int/eng?i=001-108607.
[424] Levinţa v. Republic of Moldova, App. No. 17332/03, Eur. Ct. H. R. (2009), http://hudoc.echr.coe.int/eng?i=001-90304.
[425] *Council of Europe*, Committee of Ministers, DH-DD(2014)232, Communication from the Republic of Moldova concerning the case of Levinta (No.2), App. No. 50717/09, 2012
[426] Luntre and others v. Republic of Moldova, App. No. 2916/02, Eur. Ct. H. R. (2004) http://hudoc.echr.coe.int/eng?i=001-61820
[427] See also CM/Del/OJ/DH(2010)1100prelE/ 11 October 2010.

to enforce final judgments in due time for the reinstatement of applicants in their posts in public bodies and payment of salary arrears for the period of their involuntary absence from work. Subgroup 5 relates to the failure of domestic authorities to enforce final judicial decisions on account of the ineffectiveness of the competent authorities (bailiffs) delivered against State authorities or institutions, or implicated private parties. Finally, subgroup 6, is concerned with the belated enforcement of or failure to enforce final court judgments delivered against State authorities or institutions, involving financial obligations or non-financial obligations, or state-owned companies ordering financial award.[428]

The cases from the *Olaru and others group of cases*[429] are closely connected to the present group of cases. The Government will submit an updated Action Plan concerning the *Olaru group* in due course.[430]

As to the general measures undertaken by the authorities, the Government has proposed to treat the problem of these cases from two different perspectives. "First is to change the entire system of execution and the second is to erase the causes leading to non-execution or delayed enforcement."[431] The Government amended the laws regarding the enforcement system, namely the Execution Code[432], and enacted new law for bailiffs. The changes aim to improve the quality of bailiffs' activity.[433] The Explanatory Decision No. 10 of 16 December 2013 adopted by the Supreme Court discusses "the issues of judicial control over the execution proceedings in civil cases". In addition, the Explanatory Decision No. 9 of 24 December 2010 concerning compensation of the pecuniary damages resulting from non-execution or delayed execution of pecuniary obligations clarifies the reforms and the improvements concerning the matter of execution.

In order to address the root causes of these issues, each subgroup of cases was treated separately in the Action Plan. Most of them needed legislation to be amended, but the amendment of the Execution Code simplified the entire process and eradicated some of the root causes.[434] The implementation of the proposed measures is a long-standing process;

[428] *Council of Europe,* Committee of Ministers, DH-DD(2015)48, Action Plan (06/01/2015) Communication from the Republic of Moldova concerning the Luntre group of cases against Republic of Moldova (Application no. 2916/02) ¶2 [hereinafter DH-DD(2015)48]
[429] *See* for details CM/Del/Dec(2011)1115/16 8 June 2011, CM/Del/Dec(2011)1120/5 / 12 September 2011 and CM/Del/Dec(2012)1136/15 / 06 March 2012.
[430] DH-DD(2015)48, ¶4
[431] DH-DD(2015)48, ¶22
[432] Codul de Executare al Republicii Moldova, 24.12. 2004, The Execution Code
[433] DH-DD(2015)48, ¶24-26
[434] DH-DD(2015)48, ¶29-50

however, the Moldovan Government seems willing to improve the list of measures and to keep the Committee informed.[435]

5. Violations of the right to a fair hearing

Another important case is *Dan v. Republic of Moldova*[436]*;* in which the applicant's initial acquittal had been overturned on appeal without the witness for the prosecution being re-heard.[437] The Court found a violation of Article 6(1) of the Convention, which regulates the principle of fairness.

Regarding the general measures, the present cases requires changing judicial practices with regard to the re-hearing of criminal cases in appellate courts. Even if it is not necessary or requested by the Court for Moldovan legislation to be amended or changed, the Moldovan Government has proposed to initiate research to determine whether the current legislation meets the requirements of the Convention.[438] Furthermore, the Government has proposed to disseminate the Court case-law, and offer professional education to judges in this regard.[439] By the end of 2013, the Government had planned to fully investigate and research the domestic court's case law examined by appellate criminal courts and come up with a clear and practical general measures to deal with these situations. Furthermore, the Government believes that the case is a difficult one and it will take time to identify the best legal measures to be implemented to eliminate the occurrence of this type of cases.[440]

In the case of *Ghirea v. Republic of Moldova*[441] the ECtHR found a violation of Article 6(1) and the applicant's right to a fair hearing on account of the breach of the principle of legal certainty and of equality of arms. In an appeal lodged out of time by the prosecutor against the applicant's acquittal in 2003, the Supreme Court accepted that the prosecutor's absence for an ordinary leave was a reason to justify an application for allowing the appeal out of time. An Action Report was received on October 7, 2013.[442] Beside publication and dissemination of the case, other general measures were presented by the authorities.[443]

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[435] DH-DD(2015)48, ¶52-53
[436] Dan v. Republic of Moldova, App. No. 8999/07, Eur. Ct. H. R. (2012) http://hudoc.echr.coe.int/eng?i=001-105507
[437] *Council of Europe,* Committee of Ministers, DH-DD(2012)881, Communication from the Republic of Moldova concerning the case of Dan against Republic of Moldova, (Application No. 8999/07).
[438] *Id*. at 1.
[439] *Id.*
[440] *Id.* at 2.
[441] Ghirea v. Republic of Moldova, App. No.15778/05, Eur. Ct. H. R. (2013) http://hudoc.echr.coe.int/eng?i=001-111583
[442] *Council of Europe,* Committee of Ministers, DH-DD(2013)1189, Action report (07/10/2013), Communication from the Republic of Moldova concerning the case of Ghirea against Republic of Moldova (Application No. 15778/05) [hereinafter DH-DD(2013)1189].
[443] DH-DD(2013)1190, ¶6-7.

As to the general measures taken to redress the matter, the Government found no reason to conclude that the present case would require amendments to legislation. The national authority argued that the relevant provisions of the Criminal Procedure Code are compatible with the principles of legal certainty and equality of arms.[444] "The violation occurred because of the inappropriate application of the procedural legislation in the practice or legislation that would be incompatible with the Convention."[445] In consequence, no legislative improvements or amendments were taken by the Moldovan Government. Yet, the matter of changing judicial or administrative practice was examined and the Supreme Court explained to all criminal courts and courts of appeal the correct application of the relevant domestic criminal procedure law through the Explanatory Decision No. 12 of 24 December 2012.[446] Furthermore, in terms of training and education, the National Institute of Justice included the present case in the *curriculum* as a mandatory element for judicial and prosecution discipline.[447] Until now, the case in question still waits for the final examination of the Committee of Ministers.[448]

6. Insufficient reasons for conviction for administrative offences

The *Fomin v. Republic of Moldova*[449] judgment concerns the failures of domestic courts to give sufficient reasons for the applicant's conviction for an administrative offence. The ECtHR held that the case had not been "duly considered by a domestic tribunal". In other words, the domestic courts had failed to take into consideration the applicant's arguments and evidence.[450]

The Moldovan Government submitted an Action Plan in 2013. At the time of judgment, the national legislation had no provisions with regards to the motivation of the domestic court's judgments in the matters concerning minor administrative offences. The new Code of Contravention Offences was adopted in 2008. Article 462 of the New Code of Contravention Offences comprises a set of requirements concerning the form and the text of any judgment given under that code, which in its relevant part reads as follows: "(1) *Judgment shall be lawful, justified and well-reasoned….(2) Judgment shall comprise introductory,*

[444] DH-DD(2013)1189, ¶8.
[445] *Id.*
[446] DH-DD(2013)1189, ¶11.
[447] DH-DD(2013)1189, ¶13.
[448] According to the Committee of Ministers Execution of Judgments website, by May 2015, the Moldovan authorities had not provided any information on the present case.
[449] Fomin v. Republic of Moldova, App. No. 36755/06, Eur. Ct. H. R. http://hudoc.echr.coe.int/eng?i=001-106789
[450] *Council of Europe,* Committee of Ministers, DH-DD(2013)1212, Action Plan (18/03/2013), Communication from the Republic of Moldova concerning the case of Fomin against Republic of Moldova (Application no. 36755/06) 1[hereinafter DH-DD(2013)1212]

description and operative parts. … (4) Description part shall comprise: a) circumstances of the case as found by the judge; b) evidences that prove the conclusion and the reasons for their dismissing; c) legal text upon which the case is decided". In absence of such elements, any judgment is unlawful.[451] Besides the dissemination and publication of the judgement, the Government intends to amend or enact new legislation, if necessary. The national authorities are further prepared to change their judicial practice on this matter.[452]

iv. Protection of private and family life

The Moldovan Constitution guarantees the protection of private and family life.[453] 10 leading cases out of 76 are concerned with violations of Article 8 of the ECHR. The following cases have not only pushed for changing the legislation but also for the implementation of general measures concerning new challenges for the Moldovan legal system, such as defamation, reputation and disclosure of information to third parties.

1. Defamation

In the case of *Avram and the others v. Republic of Moldova*[454], the ECtHR held that the applicants' rights to privacy had been violated in respect of both secret filming of them and broadcasting the video on television. Moreover, the events that occurred after the broadcasting were considered by the Court as defamation. The Strasbourg Court found that the Supreme Court of Justice had failed to fulfil its positive obligations under Article 8 of the Convention, particularly because the amount granted for compensation was much less than the gravity of the circumstances.

The general measures concern changes in judicial practice in respect of awards for compensation in 'libel' cases. The Government reported that it intended to change the anti-defamation legislation, if necessary, to conform with the ECtHR's demands in 2013.[455] In doing so, the Government found that up until 2012 there was not much information in Moldovan legal practice or jurisprudence about defamation. The intention of the Government has been to undertake analysis of the libel case-law of the ECtHR and disseminate it around the National Institute of Justice and relevant Law High Education schools. The findings will

[451] DH-DD(2013)1212, ¶5-6
[452] DH-DD(2013)1212, ¶ 9-11
[453] Article 28 of the Constitution says "*The State shall respect and protect private and family life*'.
[454] Avram and the others v. Republic of Moldova, App. No. 41588/06, Eur. Ct. H. R. (2013) http://hudoc.echr.coe.int/eng?i=001-105468
[455] *Council of Europe*, Committee of Ministers, DH-DD(2012)883, Communication from the Republic of Moldova concerning the case of Avram against Republic of Moldova (Application no. 41588/05)

amount to a professional support for the relevant authorities and the analysis was planned to start in the first semester of 2013.[456]

The case of *Petrenco v. Republic of Moldova*[457] concerns violation of the applicant's right to protection of his reputation on account of the domestic courts' failure to strike a fair balance between his right and the freedom of expression when assessing a newspaper article suggesting that the applicant collaborated with the KGB. An Action Plan or report is still pending on the general measures to secure the right to protection of applicant's reputation.

2. Ethnic identity

Ciubotaru v. Republic of Moldova[458] concerns refusal to change the ethnic identity of the applicant in his personal identity papers, which is a violation of Article 8 of the Convention. An Action Plan was received on August 2, 2011.[459]

As to the matter of general measures taken by the Moldovan Government, the judgment has been translated in Romanian and made accessible to the public on the web page of the Ministry of Justice. Furthermore, the Official Gazette of the Republic of Moldova had to receive information about this particular case.[460] Regarding dissemination, the copy of the judgment was translated in Romanian forwarded to all concerned national authorities. Especially, copies were sent to the Superior Council of Magistrates and the Supreme Court in order to notify the judgment to all judges and domestic courts.[461]

The procedure of amending the Law of the Republic of Moldova on civil status documents (No.100-XV from April, 2001) was commenced. The Moldovan authorities proposed to exclude any mention of the ethnic identity from civil status documents, referring to the exclusion of Article 68, which consequently would lead to the withdrawal of any references to ethnicity in the civil status acts. It was expected that these amendments would have been passed by the Parliament by the end of the year 2011. According to CoM website, updated information was requested on February 8, 2012, but no answer was received from the Moldovan Government until May 15, 2015.

3. Adequate diligence to execute domestic judgments

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[456] *Id.*
[457] Petrenco v. Republic of Moldova, App. No. 20928/05, Eur. Ct. H. R. (2010) http://hudoc.echr.coe.int/eng?i=001-97991
[458] Ciubotaru v. Republic of Moldova, App. No. 27138/04, Eur. Ct. H. R. (2011) http://hudoc.echr.coe.int/eng?i=001-98445
[459] *Council of Europe,* Committee of Ministers, DH-DD(2011)561E, Communication from Moldova concerning the case of Ciubotaru against Moldova (Application No. 27138/04)[hereinafter DH-DD(2011)561E]
[460] DH-DD(2011)561E, at 2.
[461] *Id.*

The case of *Bordeianu v. Republic of Moldova*[462] concerns violations of Article 8 of the ECHR. In the present case the authorities failed to act with "adequate diligence" to execute a domestic judgment concerning the applicant. The judgment required that the children of the applicant to live at their mother's place. Furthermore, the authorities responsible for enforcement failed to protect the children and the mother from their father. Lastly, the Court found that the domestic judgment provides no effective measures with regards to "regular and effective contacts between the mother and the daughter.'[463]

The Governmental Agent in the Action Report for execution of the judgment declared that the case requires changes to practices in Moldova. In the present case, the applicant did not benefit by the child custody granted by the domestic court.[464] The Government reformed and improved the execution system by setting a remedial mechanism to deal with lengthy enforcement proceedings (*see Luntre* and *Olaru group of cases*). In the last communication, the Government deliberates that even if no legislative changes were made regarding the present case, the execution system has been changed. In addition, the Government has requested to close the present case.[465]

4. Protection of lawyers

The case of *Mancevschi v. Republic of Moldova*[466] concerns a violation of Article 8 of the Convention, which regulates the right to respect the private life of the applicant (a lawyer) on account of "(i) the broad formulation of the warrant authorizing the search of his home and office and (ii) the failure by the judge, ordering the search, to put in place any particular measures to protect lawyer-client confidentiality in the course of the search."[467]

According to the Committee of Ministers' website, Moldova amended the relevant articles of the New Code of Criminal Procedure in 2006. Up to now, Moldova has not submitted an Action Plan or report presenting to what extend the new provisions comply with the Convention's and judgment's requirements. Also, information is still pending "on current rules governing searches and seizure in lawyers' premises and in particular on the existence of any particular provisions (…) safeguarding privileged material protected by professional

[462] Bordeianu v. Republic of Moldova, App. No. 49868/08 , Eur. Ct. H. R. (2011) http://hudoc.echr.coe.int/eng?i=001-102723
[463] *Council of Europe,* Committee of Ministers, DD-DH(2014)837, Communication from the Republic of Moldova concerning the case of Bordeianu (general measures) against Republic of Moldova (Application No. 49868/08)
[464] DD-DH(2014)837, ¶11.
[465] DD-DH(2014)837, ¶13-9.
[466] Mancevschi v. Republic of Moldova, App. No. 33066/04, Eur. Ct. H. R. (2008) http://hudoc.echr.coe.int/eng?i=001-88719 .
[467] Committee of Ministers, Execution of Judgments, the case of Mancevschi v. Republic of Moldova, App. No. App. No. 33066/04

secrecy."[468] Also, information is still pending regarding the publication and dissemination to all the domestic courts and prosecutors with proper instructions from the Prosecutor General.

5. Disclosure of information of medical nature

The case of *Radu v. Republic of Moldova*[469] concerns a violation of the applicant's right to respect private life on the ground of disclosure of information of a medical nature by a medical institution to the applicant's employer in 2003, including sensitive details about her pregnancy, her state of health and treatment received. Given that the domestic legislation expressly prohibits disclosure of such information and that none of the exceptions to the rule of non-disclosure were applicable to the applicant's situation, the Court concluded that the interference was not 'in accordance with the law' within the meaning of Article 8 of the Convention. An Action Plan or report is still pending from Moldovan authorities.

6. Telephone tapping

The case of *Iordachi and others v. Republic of Moldova*[470] concerns the absence of safeguards in the relevant domestic law against abusive interception of telephone communications. The applicants had their telephone tapped in connection with their activities as members of a non-governmental organization specialized in the defense of human rights.[471] Moldova did not submit an Action Plan for the present case.

v. Property rights

Nine out of 76 leading cases under Committee of Ministers supervision involve violations of Article 1 of the Protocol No. 1 of the ECHR that reads as follows: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by the law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

1. Olaru and others v. Republic of Moldova Pilot Judgment

[468] *Id.*
[469] Radu v. Republic of Moldova, App. No. 50073/07, Eur. Ct. H. R. (2004) http://hudoc.echr.coe.int/eng?i=001-142398
[470] Iordachi and others v. Republic of Moldova, App. No. 25198/02, Eur. Ct. H. R. (2009) http://hudoc.echr.coe.int/eng?i=001-91245
[471] Committee of Ministers, Execution of Judgments, the case of Iordachi and others v. Republic of Moldova

The well-known pilot judgment case of *Olaru and others v. Republic of Moldova*[472] speaks about the non-enforcement of domestic judgments. After a number of 133 applications concerning structural problems identified by the ECtHR, the Moldovan Government had to establish a domestic remedy in respect of non-enforcement or delayed enforcement of domestic judicial decisions concerning social housing. As a result, the Moldovan Parliament adopted a law[473] that aims to bring remedies for cases concerning excessive length of judicial proceedings as from 1st of July 2011. Moreover, the Court accepted, in the case of *Balan v. Republic of Moldova*[474], that the law in question "addresses the issue of delayed enforcement of judgments in an effective and meaningful manner, taking account of the Convention requirements."[475] Additionally, in the case of *Balan*, the Court declared inadmissible the application because the applicant had not exhausted the new remedy.[476] The Committee registers that more than 100 cases out of 152 have been settled so far and that the progress is noteworthy.[477] In 2009, Moldova established social housing privileges by law and the Court believes that this measure will solve the problem for future cases but it will not affect the remaining unsettled cases. The last communication from Moldova, in May 2011, was that the implementation of the pilot judgment was progressing.[478] The Moldovan authorities were discussing the adoption of the draft law on State compensation for damage caused as a result of the violation of the reasonable deadline concerning the adjudication process of the cases or the execution process of the Court's judgments. Until the last judgment is settled, the case will remain under the supervision of the Committee under standard procedure.[479]

2. Non-enforcement of final judgments

The case of *Oferta Plus SRL v. Republic of Moldova*[480] concerns non-enforcement of a final judgment given in the favor of the applicant due to "fan unjustified extension of the time for lodging an appeal by the opposite party and the wrongful quashing of the final judgment in

[472] Olaru, *supra* note 265.
[473] The Law No. 87of 21.04.2011on remedy for the damage caused by breach of the right to trial within a reasonable time of the case or the right to execution of the judgment within a reasonable time http://lex.justice.md/viewdoc.php?action=view&view=doc&id=339023&lang=1 .
[474] Vasile Balan v. Republic of Moldova, App. No. 44746/08, Eur. Ct. H. R. http://hudoc.echr.coe.int/eng?i=001-109049
[475] *Id.* ¶19.
[476] Committee of Ministers, Execution of Judgments, Olaru and others v. Moldova, App. No. 476/07 (2009)
[477] *Id.*
[478] *Council of Europe,* Committee of Ministers, DH-DD(2011)377, Updated information from the Moldovan authorities in the case of Olaru and others against Moldova (Application no. 476/07)
[479] *Id.*
[480] Oferta Plus SRL v. Republic of Moldova, App. No. 14385/04, Eur. Ct. H. R. (2006) http://hudoc.echr.coe.int/eng?i=001-78585

violation of the principle of legal certainty".[481] The Supreme Court of Justice infringed the principle of certainty, the right to peaceful enjoyment of the applicant's possessions, and the right of individual petition altogether. Moreover, "the ECtHR expressed serious concern that despite its abundant case-law and regardless of the findings in its principal judgment, the Supreme Court has adopted a solution which once again failed to respect the finality of the judgment of 1999."[482] According to the Committee of Ministers' website, the Moldovan courts received heavy criticism from the Strasbourg Court vis-à-vis the judicial practices in Moldova. Therefore, the Committee awaits information from Moldovan authorities on measures that aim to align the practice of the Supreme Court with the precedent law of the ECtHR and with the principles of the Convention infringed in the present case.

3. Irregularities within judicial practice

Other cases such as *Megadat.com v. Republic of Moldova*[483] and *Dacia SRL v. Republic of Moldova*[484] speak about the failure of Moldovan courts to respect basic principles of law such as: the principle of equality of arms and of legal certainty. Moreover, both of these cases present inconsistency and discriminatory conduct of the Supreme Court of Justice regarding the *Megadat.com* case, and the Prosecutor General for the *Dacia SRL* case. As an outcome of the former case, *Dacia SRL*, the possibility for States organizations to lodge a lawsuit without time limitation has been abolished in Moldova.

Balan v. Republic of Moldova[485], *Bimer v. Republic of Moldova*[486], and *Cazacu v. Republic of Moldova*[487] reveal that the judicial practice in Moldova concerning the cases on property rights raise questions of legality and discrepancy between national courts while interpreting domestic law. Action Plans for these cases are still pending.

In the *Balan* case, the violation of the author's right was a consequence of an inappropriate application of the legislation. In 2008, the Moldovan authorities noted that the Supreme Court of Justice adopted a decision illustrating how the domestic courts should apply certain legal provisions concerning copyright. The CoM awaits information on measures to

[481] Eur. Consult. Ass., Committee on Legal Affairs and Human Rights Implementation of judgments of the European Court of Human Rights,7th Report, Mr Christos Pourgourides, Cyprus, Group of European People's Party http://assembly.coe.int/nw/xml/News/FeaturesManager-View-EN.asp?ID=956, ¶73
[482] *Id.*
[483] Megadat.com v. Republic of Moldova, App. No. 21151/04, 2011-III 91 Eur. Ct. H. R. (2011)
[484] Dacia SRL v. Republic of Moldova, App. No. 3052/04, Eur. Ct. H. R. (2008) http://hudoc.echr.coe.int/eng?i=001-85480
[485] Balan v. Republic of Moldova, App. No. 19247/03, Eur. Ct. H. R. http://hudoc.echr.coe.int/eng?i=001-84720
[486] Bimer v. Republic of Moldova, App. No. 15084/03, Eur. Ct. H. R. (2007) http://hudoc.echr.coe.int/eng?i=001-81505
[487] Cazacu v. Republic of Moldova, App. No. 40117/02, Eur. Ct. H. R. (2007) http://hudoc.echr.coe.int/eng?i=001-82867

ensure that the domestic courts release judgments in compliance with the law. In addition, the CoM is interested to know if the judgment was published and disseminated and, moreover, if judicial training was offered to the national competent authorities.

In *Bimer v. Republic of Moldova*[488] the applicant was unlawfully deposed of his goods by a Custom order. The applicant was sanctioned by the domestic authorities based on amendment to the Customs Code. However, the amendment was in violation of Article No. 43 of the Law on Foreign Investments, law that aims at preventing the company from continuing to operate its duty-free business and withdrawing its existing license to carry on business at a designated location.[489] Moldova is yet to submit an Action Report that reports on measures taken to harmonize legislation, namely 'the Customs Department's regulations concerning duty-free trading, in line with Section 43 of the Law on Foreign Investments and the requirements of the Convention'. Information is also pending on the publication and dissemination of the judgment, in particular to the Customs authorities.

For both *Cazacu* and *Dolneanu v. Republic of Moldova*[490] cases, the Committee is also waiting on information on measures to be taken to prevent similar violations.

vi. Freedom of expression and information

From the early 2000's, the Supreme Court of Justice of the Republic of Moldova has had an important role in facilitating the application of ECtHR jurisprudence. However, in the early 2000's the leadership of the country was represented by the Communist Party which exercised control over the judges to deliver judgments in accordance with their interests. In consequence, the Moldovan judges used the jurisprudence of the ECtHR as an interpretative mechanism only in rare instances. Six cases regarding violation of Article 10 of the Convention are analyzed in the following sections.

1. Political censorship

Moldova was under the ruling of the Communist Party between 2001 and 2009. The case of *Manole and others v. Republic of Moldova*[491] reflects the effects of this political situation. For a period of 10 years the State National Television Company, Teleradio-Moldova (TRM), was constrained to report favorably about the activities of the President and the Government.[492] The right wing political parties had limited chances to express their views, while the media

[488] Bimer, *supra* note 485.
[489] Committee of Ministers, Execution of Judgments, the case of Bimer v. the Republic of Moldova, App. No. 15084/03, (2007)
[490] Dolneanu v. Republic of Moldova, App. No. 17211/03, Eur. Ct. H. R. (2007) http://hudoc.echr.coe.int/eng?i=001-83251.
[491] Manole and others v. Republic of Moldova, App. No. 13936/02, 2009-IV 213 Eur. Ct. H. R.
[492] *Id.*, ¶2.

was conducted by "a policy of restricting discussion or mention of certain topics because they were considered to be politically sensitive to reflect badly in some way on the Government."[493] Therefore, the ECtHR found a violation of the applicants' right to freedom of expression due to censorship and political control by the State authorities. Moreover, the applicants, holding different work positions, faced continuing interference with their right to freedom of expression.

The Strasbourg Court found that the State authorities had failed to comply with the positive obligations under Article 10 of the Convention. The ECtHR argued that former legislation concerning the right to freedom of expression was insufficient, without providing appropriate safeguards against the political organ of the Government.[494] The ECtHR requested to be notified by the parties concerning any agreements they had reached.

The Moldovan Government undertook legislative reforms concerning this matter. In 2006, the Audiovisual Code of the Republic of Moldova came into force. The Code aimed to provide public access "to a pluralistic and balanced audio-visual service and that the broadcasters were guaranteed editorial independence."[495] Furthermore, the sole Chapter VII of the Code prescribed provisions regulating TRM. By setting up a Supervisory Board to manage TRM and detailed provisions regulating TMR the Government intended to safeguard the 'editorial and financial independence' of the company.[496] As the Government changed its legislative framework to ensure that the public were provided with a balanced and pluralistic audio-visual service, the Court issue a just satisfaction judgment. On 2nd of August 2011, the Moldovan authorities submitted an Action Plan concerning the case *of Manole and others v. Republic of Moldova*.[497] The Government disseminated the Judgment to the following institutions: The Supreme Council of Magistrates, the Supreme Court of Justice and to the General Prosecutor Office and finally, published the judgment on the Official Website of the Ministry of Justice.[498] However, further information was requested by the Committee of Ministers on 29 February 2012. The Moldovan authorities were yet to send any information as of May 15, 2015.

2. Insufficient grounds for conviction

[493] *Id.*
[494] *Id.*
[495] Manole, *supra* note 490 , ¶7
[496] *Council of Europe,* Committee of Ministers, DH-DD(2011)562E, Communication from Moldova concerning the case of Manole and others against Moldova (Application No.13936/02).
[497] *Id.*
[498] *Id.*, at 2.

The cases of *Kommersant Moldovy v. Republic of Moldova*[499] concern violation of applicant's right to freedom of expression on account of the Moldovan Economic Court's decision to close the newspaper without giving sufficient reasons.[500] Both of these cases present the incapacity of the Moldovan Courts to provide sufficient legal arguments while setting a judgment. The Strasbourg Court found that in these cases the domestic courts did not give sufficient reasons for their decisions. Consequently, a change in domestic courts' practice in this respect was determined to be necessary. The Moldovan authorities informed the Committee that the translation of the judgments was published in the Official Journal and on the website of the Ministry of Justice. Yet, no information was received concerning amendments of legislation or change of the case-law to guarantee that the mechanisms provided by Article No. 450 (g)[501] of the Code of Civil Procedure comply with the Convention.

In the case of *Kommersant Moldovy*, the domestic courts analyzed "whether the articles could be considered as reproductions in good faith of public statements for which the applicant could not be held responsible in accordance with domestic law."[502] The Strasbourg Court held that the Moldovan Courts had to consider "the question whether it was necessary to interfere as they did in the applicant's rights."[503] Additionally, the courts did not specify "which passages of the articles at issue were objectionable and in what way they endangered national security or the territorial integrity of the country or defamed the President of the Country and the country."[504]

3. Political criticism

The cases of *Gavrilovici v. Republic of Moldova*[505] and *Flux (No.2) group of cases*[506] concern violations of the applicant's right to freedom of expression on account of his conviction to a 5 days detention for insulting a politician[507] and holding them liable for defamation in civil

[499] Kommersant Moldovy v. Republic of Moldova, App. No. 41827/02, Eur. Ct. H. R. (2007) http://hudoc.echr.coe.int/eng?i=001-78892.
[500] Council of Europe, Committee of Ministers, Execution of Judgments, the case of Kommersant Moldovy v. Republic of Moldova, App. No. 41827/02.
[501] Civil Procedure Code of the Rep. of Moldova, The Gen., Title Appeal of Judicial Decisions, Chp. XXXVII, Article 440g, in force from 1 December 2012 http://lex.justice.md/md/286229/ (last accessed on February 3, 2016).
[502] *Supra* note 499.
[503] *Id.*
[504] *Id.*
[505] Gavrilovici v. Republic of Moldova, App. No. 25464/05, Eur. Ct. H. R (2009) http://hudoc.echr.coe.int/eng?i=001-96179
[506] Flux (No.2) v. Republic of Moldova, App. No. 31001/03, Eur. Ct. H. R. (2007) http://hudoc.echr.coe.int/eng?i=001-81372
[507] *Id.*

proceedings for having published articles about alleged abuses by high ranking officials.[508] The Moldovan authorities imposed criminal sanctions on Mr Gavrilovici for calling a public official a "fascist" and for using "other insulting words" at a local council meeting. The Strasbourg Court held that the national courts failed to "make a proper evaluation of the nature of the utterance – that it was a value judgment and not a statement of fact, the state of despair and anger of applicant, the minimal effect of the speech and the fact that it was made against a politician, in which case the acceptable limits of criticism are higher than as regards a private individual."[509] The Moldovan Government has not submitted any information regarding the measures to be taken in order to prevent similar violations.

The ECtHR observed that in the *Flux group of cases* the domestic courts failed to "distinguish between value-judgments and statements of facts."[510] Additionally, they refused to consider evidence brought by the applicants to support their factual statements, especially "to distinguish between the statements made by the applicant newspapers themselves and the quotations of third parties or from public documents."[511] The CoM still awaits information from the Moldovan Government. The CoM is interested to see what kind of measures Moldova will implement to "ensure the application by domestic courts of the requirements of Article 10 with respect to high-rank officials."[512]

Furthermore, the case of *Guja v. Republic of Moldova*[513] involved dismissal from the Post of the Head of the Press Department of the Prosecutor General's Office for having disclosed to a national newspaper two letters received by the Prosecutor' General' Office, neither of which bore any sign of being confidential.[514] The European Court noted that reporting of illegal conduct or wrongdoing in the workplace by a civil servant should in certain circumstances be protected[515] and concluded that interference with the applicant's right to freedom of expression was not necessary in a democratic society.[516] The Court held that there is no provision in Moldova's legislation or in the internal regulations prohibiting the employees to report wrongdoings. Also, the information which was disclosed to the public

[508] *See* nine cases concerning freedom of expression violations on the Committee of Ministers, Execution of ECtHR judgments, the case of Flux (No.2) v. Republic of Moldova, App. No. 31001/03.
[509] Committee of Ministers, Execution of Judgments, the case of Gavrilovici v. Republic of Moldova, App. No. 25464/05.
[510] Committee of Ministers, Execution of Judgments, the case of Flux (No.2) v. Republic of Moldova, App. No. 31001/03.
[511] *Id.*
[512] *Id.*
[513] Guja v. Republic of Moldova, App. No. 14277/04, 2008-II 1 Eur. Ct. H. R.
[514] Committee of Ministers, Execution of Judgments, the case of Guja v. Republic of Moldova, App. No. 14277/04.
[515] Guja, s*upra* note 512,¶72.
[516] *Supra* note 513.

was important for the public interest because concerned the "separation of powers, improper conduct by a high-ranking politician and the government's attitude towards police brutality."[517] Furthermore, the information was based on true facts and that the applicant acted in good faith. In addition to all above, the Court held that the sanction imposed by the national courts was the heaviest possible in these circumstances.[518] The Court recommended that the Moldovan authorities to bring remedies to this situation by setting a legal framework concerning signaling by a civil servant of illegal conduct of wrongdoings in the workplace.[519] However, no response has been forthcoming from Moldova.

The last leading case of *Societatea Romana de Televiziune v. Republic of Moldova*[520] involves a complaint from the applicant company that the measures applied to it by the Moldovan authorities breached its right to impart information under Article 10 of the Convention. It further submitted that the impossibility to exercise its right to broadcast in the territory of Moldova in accordance with its license amounted to a breach of its right guaranteed by Article 1 of Protocol No. 1 to the Convention.[521] Moldova agreed to a settlement agreement with the applicant.

vii. Freedom of assembly and association

Article 40 of the Moldovan Constitution states that "all meetings, demonstrations, manifestations, processions or other assemblies are free, and shall be organised and conducted in a peaceful manner and without the use of any kind of weapon." In addition, Article 54 set out the limitations of Article 40.[522] Three cases out of 76 leading cases are concerned with violations of Article 11 of the ECHR and these will be analyzed in the following sections.

1. LGBT demonstrations

[517] *Id.*
[518] *Id.*
[519] Guja, *supra* note 512, ¶81.
[520] Societatea Romana de Televiziune v. Republic of Moldova, App. No. 36398/08, Eur. Ct. H. R. (2013) http://hudoc.echr.coe.int/eng?i=001-128284
[521] *Id.*
[522] The Article No.54 of the Moldova Constitution holds: "Restricting the exercise of certain rights or freedoms (1) Laws prohibiting or undermining exercise of fundamental human and civil rights and freedoms shall not be adopted in the Republic of Moldova. (2) Exercise of rights or freedoms shall not be restricted, except in cases when such restriction is provided by law, complies with the generally accepted principles of international law and is necessary for protection of national security, territorial integrity, public order and economic welfare of the country, and for prevention of mass violation of order and crime, for protection of rights, freedoms, and dignity of others, and to prevent disclosure of confidential information or to ensure judicial authority and impartiality. (3) Nothing in the provisions of the paragraph (2) shall lead to restriction of rights stipulated in the Articles 20-24. (4) Any restriction shall be proportionate to the circumstances that caused it, and shall not affect the existence of the right or liberty.[The wording of the Art.54 amended by the Law N 351-XV of 12.07.2001]

The cases of *Genderdoc-M v. Republic of Moldova*[523], *Christian Democratic People Party (CDPP) v. Republic of Moldova*[524] and *Hyde Park v. Republic of Moldova*[525] concern unjustified interference with the applicants' right to freedom of assembly guaranteed by the Article 11 of the Convention. The Moldovan authorities imposed sanctions for holding a demonstration in the case of CDPP, such as a temporary ban of the political party and arrest of the participants in the *Hyde Park* case. The Court argued, in the case of *Hyde Park*, that the Chisinau Municipal Council infringed the right of the applicants by refusing to allow them to hold demonstrations. Moreover, at the time the case was filed to the Court, the Moldovan legislation, Assemblies Act, was not applied in accordance with the Strasbourg Court's case law. However, the CoM is still waiting information regarding violations of Article 11 of the Convention.

The most discussed case is the *Genderdoc-M* case for which Moldova submitted an Action Plan on 27 March 2014. The Action Plan Moldova resulted in amendment to Law No. 560-XIII so that the right to peaceful assembly was protected.[526] A 'New Assemblies Act' was enacted by the Parliament on 22th February 2008,[527] which provides that no authorization is needed for holding demonstrations with less than fifty participants.[528] The law also protects and secures participants at a demonstration with the help of police and local authorities' assistance. In case of a dispute, the applicant has to be informed by a domestic court before the assembly takes place. Also, the applicant has to have an appropriate amount of time to acknowledge the Court's decision. According to the new law, any judicial examination of a demonstration must not exceed three days in advance of the planned meetings.[529] The Moldovan authorities argued that the New Law on Assemblies provides effective remedy for the applicants. As a result, since the law came into force, there have not been any records of delayed examination of judicial disputes.

Furthermore, the Government enacted the Antidiscrimination Law, Law no. 121 of 25.05.2012 on 1st of January 2013 for non-discrimination in conjunction with the right to

[523] Genderdoc-M v. Republic of Moldova, App. No. 9106/06, Eur. Ct. H. R. (2012) http://hudoc.echr.coe.int/eng?i=001-111394
[524] Christian Democratic People Party (CDPP) v. Republic of Moldova, App. No. 28793/02, 2006-II 97 Eur. Ct. H. R.
[525] Hyde Park v. Republic of Moldova, App. No. 33482/06, Eur. Ct. H. R. (2009) http://hudoc.echr.coe.int/eng?i=001-91936
[526] *Council of Europe*, Committee of Ministers, DD-DH(2014)444, Action Plan for execution of the judgment in the case of Genderdoc-M v. Republic of Moldova (Application No. 9106/06, 2012) ¶10 [hereinafter DD-DH(2014)444].
[527] DD-DH(2014)444, ¶11.
[528] DD-DH(2014)444, ¶7-19.
[529] DD-DH(2014)444, ¶12.

peaceful assembly. The aim of the law is as follows: "to harmonise the primary and secondary legislation of the Antidiscrimination law; to establish permanent annual NGOs Forum for promotion of diversity and equality; to hold events (trainings and seminars, workgroups, conferences, etc.) designed for dissemination of good practices in the field of non-discrimination; to include the topic of combating discrimination in the education curricula of judges, prosecutors, police officers and other public officials; to widely disseminate the information of non-discrimination by means of publication in the official public web resources, mass media, at the public seminars and roundtables, etc)".[530] Additionally, the Government reports local authorities have not had to prohibit any demonstrations since the law was enacted.[531]

The Action Plan sent by the Government raised discussion among LGBT supporters, Genderdoc-M NGO, who sent a joint submission with ILGA-Europe to the Committee on 9th of May 2014. Soon after, the applicant filed a case to the Strasbourg Court against a ban on a demonstration planned to be held in Chisinau aiming to bring awareness on sexual orientation. The demonstration aimed to encourage the Parliament to adopt laws for the protection of sexual minorities from discrimination. The joint submission of the Genderdoc-M and ILGA-Europe NGOs was drafted to inform the CoM about the realities of the implementation of the individual and general measures by the Moldovan authorities. Firstly, they argue that Genderdoc-M is not able to exercise the right to freedom of assembly up to an acceptable degree. [532] Secondly, the legislation does not ensure protection against discrimination on grounds of sexual orientation, especially because "sexual orientation" it is not mentioned in the text of the law.[533] Thirdly, a recent judgment held on 18th of May 2013 concerning Genderdoc-M's march of 19th of May, revealed that the judge was not familiar of the ECtHR judgment.[534] Finally, the "lack of clarity in court's practice and in domestic laws, the homophobic speeches of public officials and in particular the Mayor, disadvantage the applicant on account of the sexual orientation of the community it represents."[535]

The Moldova authorities responded to these complaints within a matter of days. On 20 of May 2014, the Moldovan authorities underlined that since the judgment of the ECtHR was released, Genderdoc-M enjoys a special positive treatment. Moreover, the NGO's

[530] DD-DH(2014)444, ¶18.
[531] DD-DH(2014)444, ¶23.
[532] *Council of Europe,* Committee of Ministers, DD-DH(2014)691, Joint submission by Genderdoc-M and ILGA-Europe to the Committee of Ministers of the Council of Europe in the case of Genderdoc-M v. Moldova no.9109/06, June, 12 2012, at 1.
[533] *Id.*, at 5.
[534] *Id.*
[535] *Id.*, at 6.

demonstrations took place in tight cooperation with Ministry of Internal Affairs aiming to secure the participants.[536] "The authorities have actually treated the applicant organization with a particular diligence by taking into consideration its vulnerability as indeed the Court suggested in its judgment."[537]

Until now, the last case mentioned was the only one to which Moldova reacted and adopted new legislation protecting the right to freedom of assembly, and aimed to develop a legal practice in accordance to the Court's views by training the judges and prosecutors.

viii. Freedom of religion

The lead case of *Masaev v. Republic of Moldova*[538] is one of the most important examples that deals with the reaction of Moldovan authorities to different religions other than the Orthodox Christian Church. The case of *Masaev* concerns an interference with the applicant's right to freedom of religion as a result of fining him under the Code of Administrative Offences for practicing Muslim rituals in private properties. The Court found violations of Article 9 of the Convention and Article 6(1). The applicant's right to appeal the hearing was violated due to lengthy proceedings. The Court recognized that in a democratic society it might be necessary to impose restrictions on the right to freedom of religion for certain purposes, however the ECtHR further "emphasizes the primary importance of the right to freedom of thought, conscience and religion and the fact that a State cannot dictate what a person believes or take coercive steps to make him change his beliefs."[539] In addition, the Strasbourg Court held that State interfered with the applicant' right to freedom of religion. The ECtHR argued that the interference was indeed prescribed by law. However, the ECtHR argued that it should be considered whether the interference was necessary in a democratic society.[540]

The Court decided that it is not compatible with the Convention to sanction individuals from holding prayers or manifesting their religious beliefs. The Court held that Article No. 200 (3) of the Code of Administrative Offences limited the applicant's right to freedom of religion, which "did not correspond to a pressing social need and was therefore not necessary in a democratic society."[541]

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[536] *Council of Europe,* Committee of Ministers, Ref:DG1/OD/VK/TC/lma, Subject: Communication from the applicant in the case of Genderdoc-M v. Republic of Moldova, App. No. 9109/06 (2012).
[537] *Id.*
[538] Masaev v. Republic of Moldova, App. No. 6303/05, Eur. Ct. H. R. http://hudoc.echr.coe.int/eng?i=001-92584
[539] *Id.*, ¶23
[540] *Id.*, ¶25. *See* also Code of Administrative Offences of the Rep. of Moldova, The Gen., Title Administrative Offences Threatening the Course of Justice, Chp. XIV, Article 200 (3), in force from 29 March 1985 http://lex.justice.md/md/327751/ last accessed on February 3, 2016).
[541] *Id.*, ¶26

According to the CoM Ministry website, on 31 May 2009, the Moldovan authorities amended Article 54 of the old Code of Administrative Offences in line with the Court's view. Later on, the national authorities informed the CoM that it intended to amend paragraphs 3 and 4 of Article 54 of the Code of Administrative offences and that a draft law would be soon submitted to Parliament for adoption. However, the CoM of Ministers has not received any Action Plan from the Moldovan authorities concerning this particular case. It seems that the matter of freedom of religion it is still a sensitive subject for the Moldovan Government.

Conclusion

The aim of this chapter was to identify the main structural problems that affect the implementation process in eight problematic areas. In this chapter I firstly draw a general picture of the nature of closed cases and then provide a more comprehensive analysis of the pending cases under the CoM supervision. I focus on the pending leading cases in order to determine the general measures that are more likely to be implemented and the status of those measures yet to be implemented.

In this chapter I identified that the 2009 Events, the so-called 'Twitter Revolution', were a moment of awakening for the Moldovan authorities, which initiated much needed legal reform. However, such legal reforms are still not sufficient and the case-law shows that the justice sector is in desperate need for further reform. The findings show that the role the Supreme Court of Justice is the one of facilitating the applicability of the ECtHR jurisprudence in all, eight, problematic areas earlier identified. Overall, Moldova is responsive to general measures regarding changing of legislation with regards to cases concerning violations of Articles 2 (right to life), 3 (prohibition of torture), 5 (right to liberty and security), 6 (right to a fair trial) Article 1 Protocol 1 (protection of property). On the other hand, changing of legislation occurs not so fast or regularly for cases concerning violations of Articles 8 (right to respect for private and family life), 10 (freedom of expression), 11 (freedom of assembly and association). In contrast, for the cases regarding violations of Articles 8 (right to respect for private and family life), 10 (freedom of expression), 11 (freedom of assembly and association), executive measures are implemented more often than legislative ones, especially instruction or training of the executive, judges, prosecutors, lawyers and police officers with regards to ECtHR case-law. In addition, Moldova is responsive to general measures required by the pilot judgment *Olaru and others v. Republic of Moldova* and Article 46 case *Manole and other v. Republic of Moldova* because the present cases received Action Plans that reported the legislative measures implemented by the

Moldovan Government. In the next chapter I further continue to analyze in detail the outcome of the present chapter and answer my main research question.

CHAPTER V To what extent Moldova has been responsive to the general measures of the judgments of European Court of Human Rights?

Introduction

In the last chapter I focused on the nature of the Moldovan closed cases and the Moldovan authorities' response to 76 lead cases representative of 242 cases pending under the CoM supervision. I also observed the type of general measures that Moldova has had to implement or plans to implement in the future. In this chapter I will interpret the data of the previous chapter by examining the nature of the closed cases that attracted general measures and the current treatment of the general measures in Moldova in relation to the eight problematic areas mentioned above. In addition, I will analyze to what extent legislative, executive and judicial measures have been implemented for the protection of human rights in Moldova.

A. The state of general measures in the Republic of Moldova

Domestic implementation of the ECtHR's rulings varies within the State, across different rights, and even across issues or policy areas. Moldova is involved in cases which can be regarded as reflecting typically Eastern European problems. In other words, the cases concern issues strongly connected to the previous political regime, such as violations of Article 3 (prohibition of torture), 5 (right to liberty and security), 6 (right to a fair trial), 8-11 (right to respect the private and family life, freedom of thought, conscience and religion, freedom of expression, assembly and association) and Article 1 of Protocol No. 1 (protection of property).

From an empirical perspective, Rait Maruste discusses a wide range of problems identified in the Court's case-law brought by Eastern European countries. Most of the cases concern poor prison conditions in violation of Article 3 of the ECHR. Cases concerning Article 5 of the Convention, mostly referring to detention period where issues related to judicial control and the legal grounds for detention are also highly encountered. There are cases where the applicant's unlawful detention is poorly reasoned by the national Courts. In this instance, the presumption of innocence is overlooked, while the judicial authorities bring no relevant and insufficient legal grounds and the length of preliminary detention is very problematic.[542]

[542] Rait Maruste, *The Impact of the Accession of Eastern Block Countries on the Convention Machinery and Its Case-Law."*, *in* LIBER AMICORUM LUZIUS WILDHABER: HUMAN RIGHTS: STRASBOURG VIEWS = DROITS DE L'HOMME: REGARDS DE STRASBOURG 293-306 (Lucius Caflisch and Luzius Wildhaber eds., Kehl am Rhein 2007).

i. The nature of general measures adopted by Moldova in relation to the closed cases

The 63 closed cases by a final resolution attracted mostly legislative measures, while judicial and executive measures were less encountered compared to the legislative ones. The number of cases concerning violations of the right to a fair trial and right to property cases that were closed by a final resolution exceeds considerably the number of cases concerning violations of the right to private and family life, freedom of expression, freedom of movement, and lastly, violations of the Article 3 of the Protocol 1 (right to free elections). This is a tendency also confirmed by the pending cases before the CoM.

For what concerns the general measures taken by Moldova to implement all these 63 cases, these illustrates that the Moldovan Government was more responsive to legislative measures. For example, two cases of the 63 closed cases concerned violations of freedom of expression. The judgments required mainly executive measures such as training for Moldovan judges with respect to the ECtHR jurisprudence on the freedom of expression cases. In addition, the Moldovan authorities translated and disseminated the ECtHR judgments to the relevant authorities and published the cases in the Official Gazette. The cases concerned violations of the right to a fair trial and right to property needed legislative measures to be implemented. The cases concerning infringement of the applicants' right to access to a court were published in the Official Gazette and the judgments were distributed to the relevant domestic institutions. For instance, the *Asito v. Republic of Moldova* judgement demanded enactment of new laws on insurance and laws on compulsory insurance of vehicles. Moldova agreed on a future policy oriented towards the protection and development of competition and limitation of monopolistic activities within the sphere of insurance.[543] Legislative measures together with publication and dissemination of the judgments were necessary for the freedom of religion judgements. The amendments of legislation have to safeguard the freedom of religion for Moldova citizens. Further, the case on freedom of elections required invalidate of the law preventing elected members of the Parliament with multiple nationalities (mainly Romanian and Moldovan) from holding seats in the Parliament.

Overall, as trust worthy Moldovan NGOs noted, the Moldovan national mechanism of execution of judgments was not entirely effective between the 1997 and 2012. With the adoption of the New Law on the GA with clear guidelines on the responsibilities of each implementation actor: the GA, the Legal Commission for Appointments and Immunities, and

[543] Council of Eur. Comm. of Ministers, Appendix to Resolution CM/ResDH(2014)49.

the authorized person within the General Prosecutor Office one can only expect for a better coordination and cooperation with the CoM.

ii. The nature of general measures taken or envisaged for the pending Moldovan judgments

As far as Moldova is concerned, in 2014 there were 242 pending cases from which 76 were leading cases. The time periods for these pending leading cases under enhanced supervision are categorized as follows: three cases were pending for less than two years, six cases between two and five years, and 16 cases were pending for more than five years. In relation to pending leading cases under standard supervision, there are more cases with five cases were pending for less than two years, 17 between two and five years, and 27 for more than five years.[544]

Although Moldovan law guarantees respect for human rights, many of the Convention' rights are frequently violated in practice. The factors that explain this situation are the high level of corrupted public instructions, insufficient training of judges on ECHR jurisprudence, inconsistent judicial practices, and deficient attention from the judiciary body. The PACE Rapporteur Mr. Christos Pourgourides, after his visit in Moldova, said that there is the political will to solve the main issues of concern but there is still a long way to go and Parliament must take a greater role in ensuring that solutions are found.[545] However, the Parliament is a weak public institution in Moldova.[546]

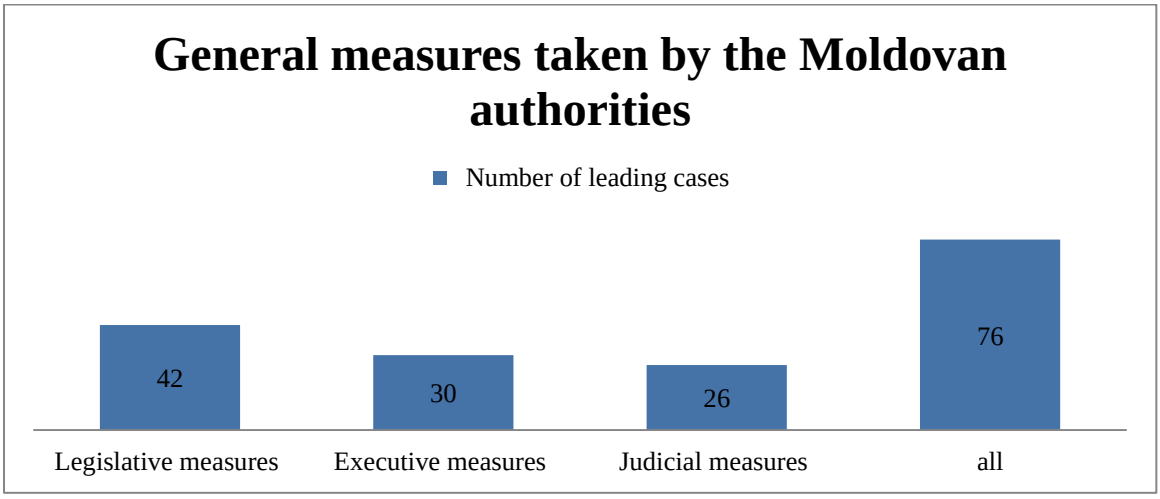

Figure 5: The general measures taken by the Moldovan authorities with regards to 76 lead judgments between 1998 and 2015.

[544] 8th Annual Report of the Committee of Ministers, *supra* note 38.
[545] 7th Report, Mr Christos Pourgourides, *supra* note 261, ¶61.
[546] Adrian Lupusor et al., *Republic of Moldova 2015 State of Country Report* 5 (2015) available at http://crjm.org/wp-content/uploads/2015/07/State_of_Country_Report_2015.pdf

Figure 5 shows clear evidence that the Moldovan legal system is in need of reform in the sector of justice, but more importantly there is a need for appropriate laws. As with regards to implementation of legislative measures, 42 out of the 76 analyzed cases needed amendments or even drafting new laws. In this respect, the Moldovan authorities have seemed willing and motivated to implement legislative measures. There is visible progress on the improvement of legislation as to Convention requirements and ECtHR jurisprudence and it is evident that Moldova is more willing to reform legislation where necessary. However, the lack of funds for implementing some costly general measures, such as the one prescribed for protection of rights in detention, transforms into a financial burden for judicial reform. Furthermore, the great number of judgements is difficult to comply with because of the number of legislative measures required. Yet, in cultural sensitive cases, such as the ones concerning the LGBT community or violations of the freedom of religion, drafting laws that meet the requests of the ECtHR appear to be difficult and require an extended amount of time to be enforced. Overall, there has been only slight progress in the application of the ECtHR jurisprudence, especially after 2009.

As far as the implementation of executive measures is concerned, 30 cases out of 76 analyzed cases have required training for the prosecutors and judges on the correct application of the ECtHR jurisprudence. The National Institute of Justice has trained the judges and prosecutors on the ECtHR remedy regime, the requirements of the ECHR with respect to the right to fair trial, privation of liberty in criminal proceedings, freedom of assembly and association, freedom of expression, torture and ill-treatment, and lastly, on combating domestic violence. Further, the Ministry of Internal Affairs has initiated training on human rights procedures for police officers.

26 out of 76 cases have required judicial measures to be implemented. It is certain that the Moldovan judicial practice has more to adapt to Western standards as it lacks practice and knowledge of the Strasbourg Court's case law. In particular, this is the situation of the cases concerning violations of the right to freedom of expression and information (Article 10). Other areas of implementation, such as the judgments concerning protection of rights in detention took are taking a long time to be partially implemented.[547]

According to a study conducted by C. Hillebrecht, Moldova has a rate of compliance with ECtHR measures of 32%.[548] Moldova has a long way to go concerning an effective compliance as it has failed to enforce legislation and educate key domestic actors on the

[547] Courtney Hillebrecht, *Domestic Politics and the European Court of Human Rights*, *supra* note 43, at 285.
[548] Courtney Hillebrecht, *The Power of Human Rights Tribunals*, *supra* note 19, at 12.

nature of the ECtHR case-law. In order to become more efficient in implementation Moldova has to "strengthen those domestic institutions responsible for implementing the ECtHR's rulings. This means having a better theoretical grasp of government motivation for compliance, building domestic institutions' capacity for pushing through the implementation of reforms, and educating judges, legislators, and civil society members about the role of the ECtHR's rulings."[549]

1. Protection of the right to life and freedom from torture, inhuman and degrading treatment

As regards to protection of the right to life and freedom from torture, inhuman and degrading treatment, I examined 15 cases, from which nine of them are under enhanced supervision and six are under standard supervision. The Moldovan government submitted nine Action Plans for these cases. A reply to the Action Plan has been sent by the Human Rights Embassy NGO. What is clear is that despite unstable politics, Moldova has a more conciliatory approach towards cooperation with the Committee on these issues. However, the implementation of reforms has not been so positive.

Taking into consideration all the information gathered, it is clear that after the 2009 milestone, the national authorities are more careful with cases concerning torture in police custody or by police officers. However, as these cases request substantial changes in judicial, prosecution and police systems, they are difficult to implement and assess in a timely manner. Therefore, there are no noticeable results with regards to these cases. Furthermore, the situation is unacceptable in cases concerning the right to life, as no Action Plans have been submitted despite the gravity of the cases. These judgments have been pending since 2010 and attracted no attention from the authorities. For this instance, up to now, Moldova shows *non-compliance* as to regards the selected lead cases. In the case of domestic violence[550], a prompt answer was received from the State with efficient general measures. Yet, changes in administrative and judicial practice have not been undertaken even though clear steps towards execution are mentioned in the Action Plan. The cases concerning domestic violence have a high chance to be closed by the Committee due to timely and efficient general measures undertaken by the State. In this case, Moldova clearly confirms has the capacity to promptly respond to ECtHR judgements.

2. Protection of rights in detention

[549] Courtney Hillebrecht, *Domestic Politics and the European Court of Human Rights, supra* note 43, at 297.
[550] Eremia, *supra* note 321.

With regards to the protection of rights in detention, 13 cases have been closely studied, whereby 11 of them are under enhanced supervision and two under standard supervision. Moldova submitted three Action Plans; two in 2013, one for a group of cases with 33 cases and one for only one case, and in 2014, for a group of cases of 23 cases.

In respect to poor material conditions of detention facilities and lack of medical care, Moldova has been under Committee's supervision since 2006. New information regarding the progress of the reconstruction and building of new detention facilities was received in 2013 and 2014. The Moldovan authorities argue that it is difficult to implement the judgments because of high financial costs. However, the conditions of prisons were improved and the authorities plan to further improve them with financial loans and assistance from the Council of Europe Development Bank and contributions from domestic authorities.[551] The victims of violations concerning inappropriate medical care in detention also now have access to remedies, according to Moldovan Government Action Plan. National statistics show that the number of the persons imprisoned dropped with 10 per cent as an objective of measures taken to combat overcrowding. The Committee noted that for the past seven years notable progress has been made on the basis of the political will and commitment of national authorities. In this aspect, Moldova has to further improve conditions in prison, namely to raise the number of qualified staff in prisons, and increase the allocated budget for maintenance of prisons for the benefit of detainees.

As to the cases concerning unlawful and arbitrary detention, the Committee has invited the Moldovan authorities to provide information about the general measures on the progress of implementation of legislative measures, development of judicial practice in line with Convention requirements and the Court's case law before 1 October 2015. As well, further information on the impact of legislative amendments concerning this issue is still pending. It is also important to note that these judgments have not been implemented since about ten years.

3. Access to efficient justice

For the problems encountered in cases regarding access to justice, 20 cases were considered. Four of them are under enhanced supervision and 16 under standard supervision. In addition, Moldova submitted eight Action Plans with regards to the right to fair trial judgments between 2013 and 2015.

[551] *Council of Europe,* Committee of Ministers, DH-DD(2013)1168, Communication from the Republic of Moldova concerning the Groups of Becciev, Ciorap and Paladi against the Republic of Moldova (App. Nos. 9190/03, 12066/02 and 39806/05), ¶ 73

The execution of right to fair trial cases is problematic due to incorrect judicial practice. In particular, the domestic courts, especially the lower courts, are inconsistent in their practice and do not take into consideration the Convention's requirements as well the Strasbourg's Court case law. Major changes in the execution system have taken place and a large number of explanatory decisions were adopted by the Supreme Court of Justice in this aspect. However, the Committee still awaits information with regards to measures taken to supervise the accurate application of the law.

4. Protection of private and family life

Ten cases concerning the protection of private and family life where examined for the purpose of this research study. None of these cases are under enhanced supervision. The national authorities presented three Action Plans between 2011 and 2014. On one hand, cases concerning defamation, ethnic identity issues, and lack of adequate diligence to execute domestic judgments concerning children received the attention of the Moldovan authorities. On the other hand, the Moldovan government did not show the interest to undertake general measures concerning phone tapping or right to respect the private life of a lawyer and client-lawyer confidentially, as well disclosure of information. Overall, it is clear that the Moldova is selective in not implementing cases that it regards as sensitive issues.

5. Protection of property rights

Nine cases concerning property rights were studies for the purpose of this research. Only one of them is under enhanced supervision on the Committee's website. In response, the Government has submitted one Action Plan.

The pilot judgment *Olaru and others v. the Republic of Moldova* has not been closed by the Committee but it was praised for the fact that more than 100 cases out of 152 have been settled due to general measures adopted as a result of the ECtHR observations. In other words, Moldova has registered ongoing progress on implementation of the pilot judgment. However, the domestic Moldovan courts received heavy criticisms from the ECtHR in relation to judicial practice. For instance, in cases found to be in violation of the right to peaceful enjoyment of possessions, the judicial practice of the Supreme Court of Justice is inconsistent and it is not aligned with Convention's requirements. Six of these cases did not receive an Action Plan from the Government. While the pilot judgment is successfully progressing, the other cases have not received any attention from the authorities.

6. The right to freedom of expression and access of information

Violations of the right to freedom of expression and access to information were found in six cases. None of the cases are under enhanced supervision. For one of the cases, Moldova established a friendly settlement and for another one submitted an Action Plan in 2011. However, no cases concerning freedom of expression have received an Action Plan.

The *Manole and others case* concern violations of freedom of expression, which occurred due to censorship and political control by the State authorities. After 2009, the nature of cases changed, but primarily it stopped being politically motivated. Therefore, at the present, there are no cases concerning political censorship. Yet, the capacity of Moldovan courts to deal with cases about freedom of expression is reserved. Therefore, there is a pressuring need vis-à-vis jurisprudence and judicial practice of the national courts in this concern. The Committee awaits information on the general measures envisaged to remedy the lack of legal knowledge of judges in this respect.

7. Freedom of assembly and association

In Moldova's case, the freedoms of assembly and association cases are mostly brought before the Court by the LGBT community. Two of the three cases analyzed for this research concerned demonstrations of LBGT community. One of the cases is under enhanced supervision. The Moldovan authorities sent one Action Plan and received a joint submission by LGBT NGOs, as well a communication from the applicant in the case of Genderdoc-M. In this instance, Moldova answered rapidly and adopted legislation protecting the right to freedom of assembly.[552] It also spread awareness within the judicial system and police, especially the Minister of Internal Affairs about the Strasbourg Court's observations in this regard. Yet, the Committee of Ministers is still monitoring the cases concerning the freedom of assembly and association brought against Moldova. In other words, there are still general measures to be adopted and implemented in order to consider the case for resolution.[553]

8. Freedom of religion

Finally, one case was brought against Moldova concerning freedom of religion, which the Committee considered as a lead case. Moldova did not send an Action Plan, but informed the Committee that they are working on amending legislation and drafting a law to protect

[552] AMNESTY INTERNATIONAL, THE REPUBLIC OF MOLDOVA: FREEDOM OF ASSEMBLY (2008), http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/d_md_20081007_05_/D_MD_20081007_05_en.pdf (Amnesty International (AI) declared that Ministry of Justice together with NGOs drafted the new law on assembly, entered into force on April 22 2008. According to AI, the law is a 'significant step of the Moldovan government towards compliance with international standards concerning freedom of assembly in the country.')

[553] The CoM requested information on the measures envisaged to assure effective application of the legislation for all the State institutions involved.

different religions in Moldova. As there is no answer from the Moldovan authorities, it looks like it is a delicate subject for the authorities to tackle at the national level.

Conclusion

In this chapter I summarized the extent to which the Moldovan authorities have implemented the general measures for problematic Moldovan cases. I argue that Moldova, in general, is *a selective partial complier*. This is because Moldova is willing to comply with the ECtHR's ruling and does not meet the judgments of the ECtHR with obdurate resistance. In addition, Moldova has sent Action Plans and Reports with general measures implemented or envisaged to be taken in the future for more than 30 pending cases out of 76. However, for every lead case analyzed, Moldova must still inform the CoM about the implementation of these 76 cases, which is the reason why these cases are still pending to the CoM.

It is important to mention that some of the cases concerning the LGBT community and freedom of assembly, as well, cases concerning freedom of religion violations are facing difficulties in implementation. This is mainly because Moldova is an Eastern Orthodox country and there is less awareness about LGBT rights and pluralism of religion in the Moldovan society, in general. In addition, Moldova follows the pattern of a post-soviet country where the cases reflecting typically Eastern European problems, such as Article 3, 5, 6, 7, 8-11, and Article 1 of Protocol No. 1.

As with regards to closed and pending cases, the difference between them is that a great amount of closed cases did not required general measures, while the pending cases were expected to attract general measures because they are lead cases. Additionally, Moldova is responsive towards the *Olaru and others v. Republic of Moldova* pilot judgment and the *Manole and others v. Republic of Moldova* Article 46 judgment. Both of the later were of a notable significance for the Moldovan Government. Consequently, Moldova confirms that it is responsive to the judgments where the ECtHR expressly mentions the general measures required for eradicating future human rights violations. In addition, Moldova is responsive to repetitive cases concerning challenging areas such as access to efficient justice, property rights and protection of the rights in detention, while is less responsive to the to the cases that do not make the case- law against Moldova.

Conclusion

The aim of this thesis was to determine to what extend Moldova has been responsive to the general measures of ECtHR judgments by assessing the interaction between Moldovan's authorities and the CoM. This study provides a full overview covering rights that have formed the corpus of the case law against Moldova. The study further provides the reader with a general perspective about the responsiveness across different types of demands: legislative, judicial and executive measures.

To understand to what extend Moldova has been willing to implement general measures of the ECtHR judgements I first examined the remedial framework of the ECHR with respect to general measures and observe the degrees of compliance with ECtHR judgments, namely full compliance, partial compliance and non-compliance. Second, I analyzed Moldova's case and described its national mechanism of enforcement of ECtHR judgements: the GA, Parliamentary Control, the Supreme Court of Justice and the General Prosecutor Office. Then, I examined the types of general measures that closed and pending cases concerned and the status of execution of general measures of the Strasbourg Court's judgments in Moldova by classifying the pending case-law on eight challenging areas: 1) right to life and protection against torture, ill-treatment and inhuman and degrading treatment, 2) protection of rights in detention, 3) access to efficient justice, 4) protection of property rights, 5) protection of private and family life, 6) freedom of expression and information, 7) freedom of association and assembly, and lastly, 8) freedom of religion.

Based on the resources used for the thesis, Moldova neither stands as a case of *full compliance* or *non-compliance.* First, Moldova is not a case of *non-compliance*. The CoM closed more than 60 Moldovan cases between 2007 and 2014.[554] Moldova is not a case of full compliance, as well. 242 judgments, including 76 lead cases, are under the CoM supervision waiting for upcoming action from the Moldovan Government.[555] Also, Moldova confirms the conventional wisdom that is *partially complying* with the judgements for different reasons.

Overall, Moldova is a *selective partial complier* of ECtHR judgments. More precisely, the study approves, supported by the analysis of both, closed and pending judgments, that Moldova is more responsive to general measures of ECtHR judgements concerning violations

[554] The analysis was based on the CoM website about Final Resolution http://www.coe.int/hy/web/execution/closed-cases , HUDOC database http://hudoc.echr.coe.int/eng#{"respondent":["MDA"],"documentcollectionid2":["RESOLUTIONS"]}, and Annual Reports of the CoM from 2007 and 2014 http://www.coe.int/en/web/execution/annual-reports .
[555] Council of Europe, *Pending cases: State of execution*, COMMITTEE OF MINISTERS, http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp.

of the right to be free from torture, inhuman and degrading treatment, cases concerning domestic violence, violations of property rights, access to justice, and cases concerning protection of rights in detention. These judgments are pending before the Committee mainly because they are difficult to implement from a financial or institutional perspective as the general measures require. In contrast, the judgments concerning violations of the right to life, the right to private and family life, the right to freedom of expression and access to information, freedom of assembly and association, and finally, freedom of religion, are not a priority for the Moldovan authorities from a political or social perspective. These judgments require fundamental changes in judicial philosophy and practice. There are insignificant differences between the general measures required by the pending judgements under enhanced supervision and the ones under standard supervision. The closed cases and the pending ones present similar patterns of execution: the judgments concerning structural changes are more probable to be implemented, while the others concerning democratic liberties more unlikely to receive an Action Plan from the Moldovan Government. The *Olaru and others v. Republic of Moldova* pilot judgment and the *Manole and others v. Republic of Moldova* Article 46 judgment attracted legislative measures and required special attention from Moldova. Yet, they are still not fully executed.

The similarity of the closed and pending cases is that they constrained the legislative to adopt new laws in the light of the ECHR requirements. However, it was not sufficient to change the legal infrastructure. In the past years, the application of ECtHR jurisprudence in domestic courts by Moldovan judges slowly improved. However, it is not enough, nor for the CoM to close a case that has fulfilled the adoption of legislative measures, nor for the efficient implementation of the judgements. The judgments requiring enactment of new laws, based on the Moldovan case, are not likely to be closed by the CoM because the Committee is interested about the efficient application the laws. Therefore, the judicial practice is essential for the entire execution process. In this respect, the CoM has an essential role in the execution of the ECtHR judgments. With the aim of following the domestic judicial practice, in many Moldova cases the CoM awaits for information about the remedy mechanism established through laws or about the relevancy of certain amendments of law.

On the other hand, Moldova recently developed its national mechanism of implementation of ECtHR judgments. The New Law on the Governmental Agent has the potential to increase the enforcement efficiency if is applied accordingly. The advisory council composed of the representatives of the public authorities, academia and civil society can improve the quality of the Action Plans and Reports sent to the CoM.

The process of compliance requires a joint work of the legislative, judicial and executive sectors. However, domestic politics can speed up the compliance process. There is political support to comply with ECtHR judgments in Moldova.[556] However, even if Moldova is determined to take further steps to ensure timely and appropriate execution of ECtHR judgement by reforming legislation and improving judicial practice, in many cases Moldova lacks economic capacity and practical knowledge of the application ECtHR jurisprudence.[557] As Simmons suggests, the states complying with human rights judgments are more likely to be rewarded through different mechanisms.[558] After the April 2009 Events, with the purpose of saving Moldova's international reputation and keep attracting international funds for the socio-economic development of the country, Moldova shifted its attention vis-à-vis of the implementation of the prohibition of torture case-law. In addition, from 2009 the number of closed cases grew annually indicating that the 'Twitter Revolution' could be one of the reasons why Moldova took action to fully comply with the pending judgments at that time. Moldova conducted more legislative measures after the April 2009 Events.[559] It is worthy to mention that Moldova recorded a slight progress, according to the CoM annual reports, a decrease in the number of the new cases, pending and closed cases.[560]

On the other hand, Moldova confirms Grewal and Voeten's hypothesis and findings that the cases which take longer to implement are politically sensitive.[561] Further, the cases that require general measures such as legislative changes take longer, while the ones requiring only publication and dissemination of judgments, considerable shorter.[562] Similarly, the present research confirms Grewal and Voeten assumption that the judgments concerning violations of the right to freedom of expression and access to information, freedom of assembly and association, freedom of religion are facing a certain opposition from the executive.[563] However, in this aspect, Moldova is slowly making progress.

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[556] 7th Report, Mr Christos Pourgourides, *supra* note 262.
[557] For e.g. the cases that require general measures that need a substantial financial investment are the ones concerning poor conditions of detention. The cases that attract general measures because of Moldovan's courts lack of knowledge about ECtHR jurisprudence are the judgments classified under the access to efficient justice, protection of property rights, and the right to freedom of expression subsections.
[558] Beth Simmons, *International Law and State Behavior: Commitment and Compliance in International Monetary Affairs*, 94 Am. Pol. Sci. Rev. 819 (2000).
[559] The information above is based on the Annex no. 2 of the present study.
[560] *See* 8th Annual Report of the Committee of Ministers, Council of Eur. Also, *Court of Human Rights, All Annual Reports*, COMMITTEE OF MINISTERS, http://www.coe.int/t/dghl/monitoring/execution/Documents/Publications_en.asp.
[561] Grewal and Voeten, *supra* note 100, at 21.
[562] Grewal and Voeten, *supra* note 100, at 27-8.
[563] *Id*.

In addition to these three branches: legislative, judicial and executive, the implication of the civil society is vital to the implementation process.[564] Lately, the Moldovan civil society is actively engaged in monitoring the implementation process of the ECtHR judgements.[565] It is important to mention that Moldova is a high-leverage country for which the CoE can invest financial resources in training and raising awareness with regards to ECtHR jurisprudence and assist with professional advice for the ongoing legal and judicial reforms. In the future, the CoE can encourage the civil society, namely the educational institutions and NGOs to get more involved in bringing awareness with regards to implementation of ECtHR judgments in Moldova.

As a former member of the Soviet Union, with political, economic and justice systems in transition, the level of human rights protection is still weak compared to other member countries of the Council of Europe. Yet, with the ratification of the ECHR, Moldova has made an important step in securing the rights for Moldovan citizens to claim their rights and fundamental freedoms guaranteed by the Convention. Now, the Convention and the Court's case law have a direct effect in the legal system of Moldova.[566] The ECtHR, although without an official role in the implementation of its judgments, through pilot judgment procedure and commentary contribution aided Moldova to increase the human rights protection for its citizens.

Overall, even if the situation of execution of general measures of human rights rulings in Moldova is an ongoing process that requires time, financial implications, political willingness and a fruitful coordination of State institutions responsible for the implementation, is clear that Moldova made notable progress in this aspect. However, the Moldovan society has to support human rights as a central part of their identity, to understand and have human rights based approach to their legal system and aspire towards a democratic society based on the rule of law.

This study showed that, by examining the interaction between the CoM and the Moldovan Government with regards to compliance with the Court's ruling, Moldova is, in general, willing to comply with the ECtHR judgements. Yet, according to study, Moldova is more likely to select which of these judgements will receive an Action Plan. In addition, the study provided a 'bird's eye view' on the responsiveness of Moldova to implement the

[564] Lisa McIntosh Sundstrom, s*upra* note 108.
[565] NGOs monitoring and reporting on the ECtHR ruling are the Legal Resource Center, the Human Rights Embassy, Lawyers for Human Rights, and Promo-Lex. They are engaged in litigation of cases before the ECtHR, as well.
[566] *Council of Europe*, Committee of Ministers, DH-DD(2015)450, Communication from the Republic of Moldova concerning the case of Ceachir Tamara against Republic of Moldova (App. No. 50115/06) at 1.

ECtHR ruling. A second step of this research could be a deep compliance perspective, as this study looks primarily at the interactional approach between CoM and Moldova concerning 63 closed cases by a final resolution and 76 lead cases pending before the CoM.

Annexes

i. Annex 1 The Moldovan authorities response to lead cases (May 2015)

	Case Name/Group of cases Name	Number of cases	Communication from the Moldovan Authorities Action Report/Action Plan	Date of Submission
1	Asito (No 2) v. Republic of Moldova (39818/06)	1	Action Report DD(2013)1191	18.07.2013
2	Avram v. Republic of Moldova (41588/05)	1	Action Plan DD(2012)883	10.08.2012
3	Becciev v. Republic of Moldova (9190/03), Ciorap v. Republic of Moldova (12066/02) and Paladi v. Republic of Moldova (39806/05), Ostrovar v. Republic of Moldova (35207/03), Holomiov v. Republic of Moldova (30649/05)	36	Action Plan DD(2013)1168	21.10.2013
4	Bordeianu v. Republic of Moldova (49868/08)	1	Action Report DD(2014)1170 Action report (general measures) DD(2014)837 Action Plan DD(2011)579	16.09.2014/ 19.06.2014/ 2.09.2011
5	Ceachir Tamara v. Republic of Moldova (50115/06)	1	Action Report DD(2015)450	17.04.2015
6	Ciubotaru v. Republic of Moldova (27138/04)	1	Action Plan DD(2011)561	02.08.2011
7	Corsacov v. Republic of Moldova (18944/02)	28	Action Plan DD(2014)836	19.06.2014
8	Dan v. Republic of Moldova (8999/07)	1	Action Plan DD(2012)881	10.08.2012
9	Eremia v. Republic of Moldova (3564/11)	4	Action Plan DD(2014)522	16.04.2014
10	Fomin v. Republic of Moldova (36755/06)	1	Action Plan DD(2013)1212	18.03.2013
11	G.B. and R.B. v. Republic of Moldova (16761/09)	1	Action Plan DD(2014)447	27.03.2014
12	Genderdoc-M v. Republic of Moldova (9106/06)	1	Communication from NGOs (Genderdoc-M et Ilga Europe) and response from the authorities DD(2014)691 Action plan DD(2014)444	09.05.2014 and 21.05.2014 27.03.2014
13	Ghimp and Others v. Republic of Moldova (32520/09)	1	Action Plan DD(2014)230	11.02.2014
14	Ghirea v. Republic of Moldova (15778/05)	1	Action Report DD(2013)1189	07.10.2013

15	Gorobet v. Republic of Moldova (30951/10)	1	Action Plan DD(2013)1213	18.03.2013
16	I.G. v. Republic of Moldova (53519/07)	1	Action Plan DD(2014)446	27.03.2014
17	Levinta (No.2) v. Republic of Moldova (50717/09)	1	Action Plan DD(2014)232	18.07.2013
18	Luntre v. Republic of Moldova (2916/02)	54	Action Plan DD(2015)48	06.01.2015
19	Manole and others v. Republic of Moldova (13936/02)	1	Action Plan DD(2011)562	02.08.2011
20	Olaru and others v. Republic of Moldova (476/07)	133	Action Plan DD(2011)377	12.05.2011
21	Plotnicova v. Republic of Moldova (38623/05)	1	Action Plan DD(2014)445	27.03.2014
22	Eduard Popa v. Republic of Moldova (17008/07)	1	Action Plan DD(2014)316	24.02.2014
23	Sarban v. Republic of Moldova (3456/05), Boicenco v. Republic of Moldova (41088/05)	27	Action Plan DD(2014)1147	16.09.2014
24	Taraburca v. Republic of Moldova (18919/10)	1	Action Plan DD(2013)450	12.03.2013
25	Timuș and Țăruș v. Republic of Moldova (70077/11)	1	Action Plan DD(2015)451	17.04.2015

ii. Annex 2 The general measures taken or envisaged to be adopted by the Republic of Moldova regarding 76 leading cases (May 2015)*

* The names of the cases written with bold font are cases under enhanced supervision, while the other ones, are cases under standard supervision.

Case Name	Type of general measures taken by Moldovan State			Action Plan/Report Date and No	Status of execution
	Legislative	**Executive**	**Judicial**		
Access to efficient justice					
Dan v the Republic of Moldova no. 8999/07, 05 July 2011, final since 5 October 2011 *Violation of Article 6(1)*	-	- The Government to carry out a study or research to identify what type of practical shortcomings the domestic judiciary is experiencing in these situations; - Action plan intended to be submitted in 2013;	- Continuous dissemination of the ECtHR case law, professional judges; Changes in their professional requirements to meet the ECHR requirements;	YES Action Report received on 10 August 2012 (DH-DD(2012)881	Further information awaited in due time.
Fomin v the Republic of Moldova no. 36755/06, 11 October 2011, final since 11 January 2012 *Violation of Article 6(1)*	- New Code of Contravention Offences adopted in 2008; - New draft law for improving the Code of Contravention of Offences of 2008 with regards to requirements set on Article 6(1) of the ECHR (legal judicial reasoning);	-	- Changes in judicial practice with regards to 'motivation and justification of the Court judgments in respect for minor offences; - The framework of the Strategy for the Reformation of the Justice Sector and the Plan of Actions for implementation of the Reform;	YES Action Plan received on 18 March 2013 (DH-DD(2013)1212)	-
Ghirea v the Republic of Moldova no. 15778/05, 26 June 2012, final since 26 September 2012 *Violation of Article 6(1)*	-	- Training for the candidates, prosecutors and judges incumbent, on correct application of the principles of legal certainty and of equality of arms;	- 24th December 2012, Explanatory Decision no. 12 of Supreme Court on 'explaining some issues concerning the prosecutors' attendance in criminal proceedings' (para 11);	YES Action plan received on 07/10/2013 (DH-DD(2013)1189)	-

G.B. and R. B. v the Republic of Moldova no. 16761/09, 19 December 2012, final since 18 March 2013 *Violation of Article 8* *Insufficient amount for compensation*	-	-National Institute of Justice trains judges in this respect by introducing subjects related to ECtHR remedy regime in 2013 and 2014 curricula;	- Explanatory Decision of the Supreme Court no. 8 of the 24th December 2012 provides that all domestic courts should apply the rationale from *Ciorap no.2* case; - The Supreme Court's Recommendation no. 6 of 1st November 2012 underlying direct application of the ECHR and ECtHR case-law (remedy);	YES Action Plan received on 27 of March 2014 (DH-DD(2014)447)	-
Levinta no. 2 v the Republic of Moldova no 50717/09, 17 January 2012, final since 17 April 2012 *Violations of Article 5(4) and 5(1)*	- The Criminal Code was amended in October 2012 (new provision establish a duty for all the courts to justify any detention order (Article 177(1) of the Criminal Code); - The amendments also establish that the Prosecutor has to present all the copies of his/her arrest request by the defendant(s) and give access to all evidence in that respect in advance;	- The National Institute of Justice and The Supreme Council of Magistracy adopted on 31 January 2012 a plant for professional judges and prosecutors on the ECtHR standards and their application in practice;	- The Supreme Court adopted the Explanatory Decision concerning the judicial practice to be applied in ordering, extension and interpretation of the legal procedural framework on arrest or measures implying depravation of liberty;	YES Action Plan received on 18 July 2013 DH-DD(2014)232	-
Plotnicova v. the Republic of Moldova, no. 38623/05, 15 May	-	- The Judges and prosecutors receive continuous training from National Institute	-	YES Action Plan received on 27 March 2014	-

2012, final since 15 August 2012 *Violations of Articles 6(3) and 3*		of Justice on the right to a fair trial and ECHR requirements in this respect;		(DH-DD(2014)445) - The issue of poor detention conditions, see *Becciev* and *Ciorap* group of cases;	
Popov no 2 v the Republic of Moldova, no 19960/04, 6 December 2005, final since 6 March 2006 *Violation of Article 6(1)*	- Legislative changes introduced to Article 116 of the Code of Civil Procedure in 2006 to extend the procedural limits granted by a judge only if a party has applied for it not later than 30 days from the day when he/she learnt or was supposed to learn that the reasons for missing the procedural time-limits ceased to exist;	-	- Articles 449-453 of the Code of Civil Procedure are compatible with the ECHR but the procedure is misused by the national courts;	NO - Non-enforcement of domestic judicial decisions are examined in *Luntre* group of cases;	Action Plan is awaited on measures to align the practice of the Supreme Court with the precedent law of the European Court and with the principles of the Convention violated in the present case; - Information is awaited on the measures taken in order to ensure that this procedure is used in accordance with the Convention standards. (violation of principle of legal certainty in the revision procedure);
Leva v the Republic of Moldova , no 12444/05, 15 December 2012,	-	-	-	NO - Issue of police abuses are examined in *Corsacov* group of	Action plan is awaited concerning the authorities failure to promptly inform the applicants about

final since 15 March 2013 *Violations of Articles 5(1), 5(2) and 5(4)*				cases;	new charges.
Luntre v the Republic of Moldova, No 2916/02, 15 June 2004, final since 15 September 2004 *Violations of Articles 6(1), Protocol 1 Article 1, and Article 13* *Non-enforcement or delayed enforcement of domestic judicial decisions and lack of effective remedy in this respect*	- In 2010 a new law was enacted on bailiffs (Law no 113 of 17 June 2010 concerning on bailiffs) and the Government amended the Execution Code. -The Government by Law no 575 of 26 December 2002 annulled previous Government and Parliament decisions concerning the mechanism of compensations for depreciated savings; - The Law no 575 of 26 December 2005 established a state-owned Fund for Guaranteeing Banking Savings and the payments of the savings of the applicants;	-	-- The Supreme Court adopted its Explanatory Decision no 10 of 16 December 2013 covering issues of judicial control over the execution proceedings in civil cases. - Explanatory Decision no 9 of 24 December 2010 concerning compensation on pecuniary damages resulting from non-execution or delayed execution of pecuniary obligations. -- The Court Explanatory Decision no. 5 covered how to deal with litigations initiated on the basis of the new legal framework in the field of compensation of depreciating savings and banking relations;	YES Action Plan received on 6 January 2015 for *52 cases.* (DH-DD(2015)48) - Remedy for excessive length on enforcement proceedings has been introduced by the pilot judgment *Olaru and the others* case.	Action Plan is awaited in respect to other measures.

Straisteanu and others v the Republic of Moldova no 4834/06, 7 April 2009, final since 07 July 2009 *Violations of Articles 3, 5(1), 5(3), 6(1), 13 and Article 1 of Protocol no 1 Article 1*	-	-	-	NO - Issues related to Art. 3 and 13 are examined in *Becciev* and *Ciorap* group of cases. - Issues related to article 6(1) and article 1 of the First Optional Protocol is examined in *Dacia SRL* case. (The deputies decided to resume consideration of this item once the ECtHR has rendered judgment on just satisfaction.) - Issues related to Article 5(3) are examined in *Sarban* group of cases.	Action Plan is awaited on measures to prevent new violations of Article 5(1).
Navaloaca v the Republic of Moldova , no 252306/02, 12 December 2008, final on 16 March 2009 *Violation of Article 6(1)*	-	-	-	NO	Information is awaited.
Popovici v the Republic of	-	-	-	NO	Action Plan is awaited for general

Moldova, no 289/04, 27 November 2007, final since 02 June 2008 *Violations of Articles 3, 5(3), 6(1), 6(2), and 13.*				- Issues related to poor conditions of detention are examined in the *Becciev* group of cases; - Issues related to the extension of pre-trial detention without relevant and sufficient grounds are examined in the *Sarban* group of cases;	measures.
Sandu v the Republic of Moldova , no 16463/08, 11 February 2014, final since 11 May 2014 *Violation of Article 6(1)*	-	-	-	NO	Action Plan is awaited.
Tocono and Profesorii Prometeisti v the Republic of Moldova, no 32263/03, 26 June 2007, final since 26 September 2007 *Violation 6(1)*	-	-	-	NO	Action Plan is awaited on publication and dissemination of the ECtHR judgment.
Vetrenko v the	-	- The judgment was	-	NO	Action Plan is

Republic of Moldova, no 36552/02, 18 May 2010, final since 4 October 2010 *Violation of Article 6(1)*		translated, published and disseminated.			awaited.
Asito v the Republic of Moldova no 2 , no 39818/06, 13 March 2012, final since 13 June 2012 *Violations of Article 6(1) and Article 1 Protocol 1*	-	- The National Institute of Justice and the Supreme Council of Magistrates are instructing the national judges during periodical professional improvement.	- The application of the supplementary judgments proceedings in uncommon; -The Supreme Court adopted its Explanatory Decision no 2 on the practices and the application of the extraordinary revision in civil cases. The revision procedure can be used when two or more judgments reveal inconsistency of judicial practices and when the ECtHR requires such revision.	YES Action Plan received on 18 July 2013. DH-DD(2013)1191	-
Bujnita v the Republic of Moldova, no 36492/02, 16 January 2007, final since 16 April 2007 *Violation of Article 6(1)*	- The New Code of Criminal Procedure of 2003, namely Section 453 was almost entirely modified.	-	-	NO	Final Resolution is being drafted. Information is awaited on full dissemination of the ECtHR judgment.

Business si Investitii v the Republic of Moldova, no 39391/04, 13 September 2009, final since 13 January 2010 *Violation of Article 6(1)*	-	-	-	NO	Information is awaited from the national authorities.
Cravcenco v the Republic of Moldova, no 13012/02, 15 January 2008, final since 15 April 2008 *Violations of Articles 6(1) and 13*	- On 07 February 2008 the Parliament adopted the Law No 2-XVI with various amendments to the Code of Civil Procedure for the prevention of the excessive length of proceedings.	-	- The Supreme Court of Justice adopted on 08/11/2006 the recommendation "New objections for the judicial system: the optimal length of the proceedings";	NO - Issues related to domestic remedy in case of excessive length of judicial proceedings are discussed on the *Olaru and others* judgment;	- Information is awaited on the extent the newly adopted legislation remedies the violations found by the European Court;
Ziliberberg v the Republic of Moldova, no 61821/00, 1 February 2005, final since 1 May 2005 *Violations of Article 6(1)*	- The new Codes of Administrative Offences and of Criminal Procedure provide that summons must be served on the person concerned not later than 5 days before a hearing.	- The judgments have been published, translated and disseminated.	-	NO	The new legislation does not contain provisions detailing the procedure nor the body responsible for ensuring that an accused receives the summons. Information is awaited.
Clionov v the Republic of Moldova, no	- The Civil Procedure Code was modified on 17 April 2008. The	-	-	NO - Issues related to the	

13229/04, 9 October 2007, final since 9 January 2008 *Violation of Articles 6(1) and 6(1 and Art. 1 of the Prot. 1*	Code provides the possibility to request exemption from, or deferred payment of court fees. - On 4 June 2010, the legislative amendments were further complemented by changes to Article 85(4) of the Civil procedure Code to that effect that legal entities were also entitled to request exemption from court fees. - Article 86 was also modified providing that legal entities subject to bankruptcy proceedings to pay the court fee after the consideration of the case, but no later than 6 months from the date of the court decision.			non-enforcement or lengthy enforcement of judicial decisions are examined in *Luntre* group of cases.	
Godorozea v the Republic of Moldova, no 17023/05, 6 October 2009, final since 6 January 2010 *Violation of article 6(1)*	- The Article 105 of the new Code of Civil Procedure provides that the person should only be considered as lawfully summonsed only if she or he had been personally served with the summons and had countersigned the	-	- The Supreme Court of Justice adopted on 12 December 2005 a decision regarding the application of the rules of the Civil Procedure Code to the examination of cases by first instance courts. - The Supreme Court of Justice adopted several	NO	Action Plan is awaited. Information is awaited on measures taken or planned to ensure compliance by domestic courts with the rules on summonsing and on

Violation of the right to a fair hearing in civil proceedings due to inadequate notification procedure	receipt.		decisions confirming the question in matter.		publication and dissemination of the judgement.
Protection of private and family life					
Mancevschi v the Republic of Moldova, no 33066/04, 7 October 2008, final since 7 January 2009 *Violation of Article 8*	- The new Code of Criminal Procedure was amended in 2006;	-	-	NO	An action plan is awaited;
Ciubotaru v the Republic of Moldova, no 27138/04, 27 April 2010, final since 27 July 2010 *Violation of Article 8*	- Amended the Law of the Republic of Moldova on civil status documents (No.100-XV from 26 April 2001). - The article 68, referring to ethnicity, was excluded from the legal framework.	-	-	YES Action Plan received 2 August 2011. DH-DD(2011)561E	Updated information was requested on 08 February 2012.
Bordeianu v the Republic of Moldova, no 49868/08, 11 January 2011, final since 11 April	- In 2010, the national enforcement system was reformed following the entry into force of a new Law on Bailiffs and amendments to the	-	-	YES Action plan was received on 16 September 2014	

2011 *Violation of Article 8*	Execution Code. The bailiffs have the necessary procedural powers and the right to apply injunctive and preventive measures for securing enforcement. A bailiff' actions or inactions are subject to judicial control. In cases related to custody rights over children, the bailiff can request the assistance of the social services.			DH-DD(2014)837 - Issues related to compensatory remedy regarding the excessive length of enforcement proceedings of domestic courts are discussed in *Olaru* group of cases.	
Avram and others v the Republic of Moldova, no 41588/05, 5 July 2011, final since 5 October 2011 *Violation of Article 8*	-	-	- Changing of judicial practice in respect of awards for compensation in so-called 'libel' cases; - Initiate a research in 2013 to determine whether the national defamation laws are compatible with ECHR requirements; - Introduction of particular educational course for enhancing lawyers and judges competencies in examining libel cases.	YES Action Plan received on 10 August 2012 DH-DD(2012)883	Action Report is awaited.
Radu v the Republic of Moldova, no 50073/07, 15 April 2014, final since 15 July 2014	-	-	-	NO	An action plan is awaited.

Violation of Article 8					
Petrenco v the Republic of Moldova, no 20928/05, 30 March 2010, final since 4 October 2010 *Violation of Article 8*	-	-	-	NO	An action plan is awaited on general measures to secure the right to protection of applicant's reputation
Iordachi and others v the Republic of Moldova, no 25198/02, 10 February 2009, final since 14 September 2009 *Violation of Article 8*	-	-	-	NO	Action Plan is awaited.
Protection of rights in detention					
Holomiov v the Republic of Moldova no. 30649/05, 07 November 2006, final since 07 February 2007 *Violation of Articles 3, 5(1),*	-	-	- Explanatory Decision of the Supreme Court No. 8 of 24th December 2012 explains how to apply Ciorap no. 2 case rationale, the applicable law and the procedure by which a person can claim compensation for a breach of Article 3, 5 or 8 of the	YES Information about the cases was provided on 21 October 2013. (DH-DD(2013)1168	Information is awaited on questions related to access to medical care.

and 6(1)			ECHR. - As regards the issue of excessive length of criminal proceedings, the remedy adopted for the *Olaru and others* pilot judgment is applicable in respect for such complains.		
Meriakri v the Republic of Moldova, no 53487/99, 1 March 2005, final since 6 July 2005 *Violation of Article 8*	-	-	-	The applicant was released on November 2004.	
Ostrovar v the Republic of Moldova, no 35207/03, 13 September 2005, final since 2 February 2006 *Violation of Articles 3, 8 and 13 taken together with article 3, and 8 taken together with article 13* *Part of Ciorap group of cases*	-	-- As to conditions for meeting with family members (Article 8), the glass partition at the Centre against Economic Crime and Corruption was dismantled.	-	Yes The same Action Plan as for Ciorap group of cases. DHDD(2013)1168 - Irregularities surrounding detention on remand: *Sarban* group - Ill-treatment by police and lack of effective investigations: *Corsacov* group; -Failure to provide	-

				reasons for convictions in criminal proceedings: *Vetrenko* group; -Failure to examine appeals for lack of payment of court fees; *Clionov* group	
Becciev v the Republic of Moldova, no 9190/03, 04 October2005, final since 04 January 2006 ***Paladi v the Republic of Moldova, no 39806/05, 10 March 2009*** *Violations of Article 3, 5(1), and 34* ***Ciorap v the Republic of Moldova, no 12066/02, 19 June 2007, final since 19 September 2007***	- The Execution Code was amended in March 2012. The arrest and detentions can be enforced by the remand centres, but only up to 72 hours (Article 175/1(1) of the Execution Code. - Strategies for reducing of prison population, enhancing probation services and increasing application of preventive measures: in December 2008 the Criminal Code was amended to reduce minimum and maximum penalties, redefined penalties and reoffending, and provided for alternatives for detention. - Medical care while in detention- Article 175/1	- The living conditions in Prison no. 13 (Ciorap case), Taraclia Prison no 1, Rusca Prision no.7, Rezina Prison no. 17 were improved by continuum investment to increase the quality of food, material conditions and by setting new independent heating systems. - The remand center of Chisinau Police (Becciev case) was renovated and improved with administrative facilities, place for outdoor exercise, new lavatories, sanitary and furniture. - The remand center of the Police center for combating organized crime (Popovici and Stepuleac cases) was	-	YES Action Plan received on 29 October 2013. DH-DD(2013)1168 - A wide range of measures are proposed to be pursued between 2013-2015 as a part of the Strategy for justice sector reform (2011-2015).	-

Violations of Article 3 and 8, as well violation of Article 6 *Paladi, Becciev and Ciorap group of cases*	(2) of the Execution Code prescribed obligatory medical examinations immediately before a person is in custody, during detention and after 72 hours, before escorting the detainee to a prison or house arrest. - Article 232 of the Execution code was amended; it provides a wide regulatory framework for medical assistance within and outside the penitentiary system and the medical services in the remand centres.	closed. - The regional and sectorial police stations – 6 were closed, some partially suspended and one was ceased until reconstruction of the police building.			
Conev v the Republic of Moldova, no 28431/08, 7 October 2014, final since 7 October 2014 *Violation of Articles 3 and 13*	-	-	-	NO	Friendly settlement with special undertakings. Action plan is awaited.
David v the Republic of Moldova, no 41578/05, 27 November 2007,	-	-	-	NO	An action plan is awaited on measures envisaged to prevent unlawful and arbitrary detention of

final since 27 February 2008 *Violations of Article 5(1)*					individuals.
Gorobet v the Republic of Moldova, no 30951/10, 11 October 2011, final since 11 January 2012 *Violations of Articles 3 and 5(1)*	- No special general or legislative measures or legislative amendments are particularly required.	-	- The Government undertakes to perform a research accompanied by analysis of statistical data concerning the detention of persons in unsound mind and those who require compulsory medical and psychological treatment by the end of 2013.	YES Action Plan received on 18 March 2013. DH-DD(2013)1213	-

Musuc v the Republic of Moldova, no 42440/06, 6 November 2007, final since 6 February 2008 *Violations of Articles 5(1), 5(3) and 5 (4)* ***Cebotari v the Republic of Moldova, no 35615/06, 13 November 20007, final since 13 February 2008*** *Violations of Articles 5(1), Art. 18 in conjunction with Art. 5(1)*	-	-	-	NO - All issues related to the police abuses are examined in the *Corsacov* group of cases. - Issues related to excessive length of pre-trial detention and lack of judicial review of the detention and denial of access to the materials of the case to a defence lawyer are examined in the *Sarban* group of cases. - Issues related to poor conditions of detention centers under the Ministry of the Interior and the lack of medical care is examined in the *Becciev* group of cases.	Action Plan awaited clarifying arrests without reasonable suspicion and refusing to release a prisoner because of his failure to pay the amount set for bail.

Gutu v the Republic of Moldova no 20289/02, 7 June 2007, final since 7 September 2009 *Violation of articles 3 and 11* ***Brega v the Republic of Moldova, no 52100/08,*** *Violation of Articles 5(1), 6(1), 8, and Art. 5 and 8 taken together with 13*	-	-	-	NO - All issues related to police abuses are examined in *Corsacov* group of cases. - All issues related to poor conditions of detention are examined in *Becciev* group of cases. - All issues related to lack of summonses to a hearing in administrative proceedings are examined in *Ziliberberg* group of cases.	Action Plan is awaited regarding abusive apprehensions of persons under the Code of Administrative offences, police entry onto private premises and lack of effective remedies in this respect.
Property rights					
Megadat.com SRL v the Republic of Moldova, no 21151/04, 8 April 2008, final since July 2008 *Violation of Article 1 of the Protocol No 1*	-	-	-	NO	Action Plan is awaited
Oferta Plus SRL v the Republic of Moldova, no 14385/04, 12	- Legislative measure: Law no 294-XIII on the Prosecutors Office was adopted on 25	- Methodological guidelines on the provisions of Article 22 of the Code of Criminal	-	NO – Issues related to non-enforcement of	- Information is awaited on measures to align the practice of Supreme Court

February 2008, 7 July 2008 *Violation of Articles 6(1) and Article 1 of the Protocol no.1, double violation Article 34*	December 2008.	Procedure. - Instruction to prosecutors to take account of recommendations ensuing from the jurisprudence of the ECtHR relating to privation of liberty in criminal proceedings; - Instruction on application of the law on criminal procedure related to the reopening of criminal proceedings; - Instruction on procedures of arrest and of extension of remand in criminal proceedings;		domestic judicial decisions are examined in *Luntre* group of cases; -Issues related to use of revision procedure are examined in *Popov no. 2* case.	with the precedent law of the ECtHR and with the principles of the ECHR (principle of legal certainty); - Information is awaited on the adoption of the contribution of the new law on prevention of similar violations. - Information is awaited on the legal status of the adopted documents and on how compliance is ensured in practice.
Olaru and others v the Republic of Moldova, no 476/07, 28 July 2009, final since 28 October 2009 *Violations of Articles 6 and 1 of the Protocol no 1*	- The Law 87, enforce since 2011, aims at providing compensatory remedy in cases of excessive length of judicial and enforcement proceedings.	-	-	YES Action Plan received on 12 May 2011. DH-DD(2011)377E	- Information is awaited on the necessary measures taken or envisaged to ensure that the remaining judicial decisions granting social housing are enforced in order to prevent a new influx of repetitive applications to the courts.
Balan v the Republic of Moldova, no	-	- The National Institute of Justice organized regular training	- Inconsistent application of the Copyright and Related Rights Act (1994);	NO	An action Plan is awaited on other measures to ensure

19247/03, 29 January 2008, final since 29 April 2008 *Violations of Article 1 of the Protocol no. 1*		seminars for judges and prosecutors in this regard.	- The Supreme Court of Justice recalled its adopted decision on domestic courts' practice in applying certain legal provisions concerning copyright.		that domestic courts' practice is in compliance with ECHR requirements; more information with regards to NIJ's trainings.
Bimer SA v the Republic of Moldova, no 150834, 10 July 2007, final since 10 October 2007 *Violation of Article 1 of the Optional Protocol no 1*	-	-	-	NO	Action plan is awaited on measures taken or envisaged bring the Customs' department's regulations concerning duty-free trading into line with section 43 of the Law on Foreign Investments and the ECHR requirements; dissemination at Customs authorities.
Cazacu v the Republic of Moldova, no 40117/02, 23 October 2007, final since 23 January 2008 *Violations of Article 1 of the Optional Protocol no 1*	-	-	-	NO	Action Plan is awaited.

Dacia SRL v the Republic of Moldova, no 3052/04, 18 March 2008, final since 18 June 2008 *Violations of Article 1 of the Optional Protocol no 1, and Art. 6(1)*	- Under the 2002 Civil Code the possibility for state to organizations to lodge a lawsuit concerning restitution of property without time limit was abolished.	-	-	NO	Action Plan is awaited on general measures to prevent new similar violations of Art. 1 of the Prot. 1.
Dolneanu v the Republic of Moldova, no 17211/03, 13 November 2007, final since 13 February 2008 *Violations of article 1 of the Op protocol 1 and violation of article 13 taken in conjunction with Art 1 of the OP 1*	-	-	-	NO	-
Freedom of assembly and association					
Genderdoc-M v the Republic of Moldova, no 9106/06, 12 June 2012, final since 12 September 2012	- Law no. 560-XIII of 21 July 1995 on establishment and conduct of assemblies was abolished in full. - On 22 February 2008, the Law no. 26 on	- As a result of the Law no. 121 of 25 May 2013 on securing equality (the Antidiscrimination Law) was set up the Antidiscrimination Committee. The	-	YES Action Plan received on 27 March 2014 DH-DD(2014)444	-

Violations of Article 11, Article 13 in conjunction with Article 11, Article 14 in conjunction with 11.	assemblies amended the entire domestic legal framework on assemblies: no authorization is needed for holding demonstrations with less than 50 participants. Any assembly looking for safety will be provided by the local authorities and police. The new law institutes clear deadlines for judicial examination that must not exceed three days in advance of meetings.	Committee has quasi-judicial and investigative powers and can initiate an investigation. - The local authorities have never prohibited demonstrations after the adoption of the new law. - The prosecutors and judges are continuously instructed in the field of the Court's case-law by the National Institute of Justice; organizing conferences in partnership with UNDP;		A joint submission of an NGO and the applicant organization received on 9 May 2014;	
Christian Democratic People Party v the Republic of Moldova, no 28793/02, 14 February 2006, final since 14 May 2006 *Violation of Article 11*	-	-	- Translation and publication.	NO	Action plan is awaited.
Hyde Park v the Republic of Moldova, no 33482/06, 31 March 2009, final	-	-	-	NO - Issues related to unlawful detention by police (Article 5 (1))	- Action plan is awaited on violations related to freedom of assembly (Article 11).

since 30 June 2009 *Violation of Articles 11 and 5(1)*				are examined *Musuc* group of cases;	
Freedom of expression and information					
Kommersant Moldovy v the Republic of Moldova, no 41827/02, 9 January 2007, final since April 2007	-	- Translation of the judgment was published in the official journal and the internet site of the Ministry of Justice.	-	NO	- Action plan is awaited regarding change in domestic courts' practice in giving sufficient reasons for their decision that would be necessary to interfere with the freedom of expression. - Amendments to the legislation or change of case-law to guarantee that the mechanism provided by the Article 450-g of the Code of Civil Procedure complies with the Convention.
Guja v the Republic of Moldova, no 14277/04, 12 February 2008, final since 12 February 2008	-	-	-	NO	- Action Plan is awaited on measures taken or envisaged with a view to remedying to this legal lacuna regarding the signaling by a civil servant of illegal

Violation of Article 10					conduct of wrongdoings in the workplace.
Manole and others v the Republic of Moldova, no 13936/02, 17 September 2009, final since 17 December 2009 *Violation of Article 10*	- The Government planned to draft a legislative framework to ensure that the public were provided with a balanced and pluralistic audio-visual service.	-	-	YES Action plan was received on 2 August 2011. DD-DH(2011)562E	- Further information was requested on 29 February 2012. Manole and the others, (just satisfaction), no 13936/02, 13 July 2010
Societatea Romana de Televiziune v the Republic of Moldova, no 36398/08, 15 October 2013, final since 15 October 2013 *Violation of Article 10 and Article 1 of the Protocol no. 1*	-	-	-	NO	Friendly settlement.
Flux no.2 v the Republic of Moldova, no 31001/03, 03 July 2007, final since 03 October 2007 *Violations of Article 10*	-	-	-	NO	- Information is awaited on measures taken or envisaged, in particular by the Supreme Court of Justice, to ensure application by domestic courts of the requirements of

9 cases concerning freedom of expression					Article 10 with respect to high-ranking officials.
Gavrilovici v the Republic of Moldova, no 25464/05, 15 December 2009, final since 15 March 2010 *Violations of Articles 3 and 10*	-	-	-	NO - Issues related to poor conditions of detention at police stations: in 2008 the police station was closed. - Further general measures to improve conditions of detention at police stations are being examined in context of the *Becciev* group of cases.	An action plan is awaited on violation of Article 10.
The right to life and protection against torture					
Timus and Tarus v the Republic of Moldova, no 70077/11, 15 October 2013, 15 January 2014 *Violations of Article 2 and Article 13 in conjunction with Article 2.*	- The Ministry of Justice is drafting a law on rehabilitation of victims of criminal acts. The law was proposed to be examined in Parliament in 2015. - The law proposed to create a new mechanism for compensation and psychological, social and other assistance to the victims of crimes,	-	-	YES Action Plan received on 17 April 2015. DH-DD(2015)451 - Issues concerning irregularities of police operations and investigation – *Corsacov* and *Taraburca* group of	

	regardless the success of the criminal investigation.			cases.	
Taraburca v the Republic of Moldova, no 18919/10, 06 December 2011, final since 6 March 2012 *Violations of Article 3*	- 27 October 2012 the Parliament enacted a new law on certain amendments of Criminal Procedure Code: "any investigative measure that requires judicial authorisation should be undertaken only after an official commencement of such criminal investigation." - The detention period allowed for identification of a person taken into custody was decreased from 72 to 6 hours. - New provisions that define revision procedures and a reopening of criminal proceedings as a result of the Court's judgments or as a result of a pending case with the Court." - 12 October 2012, the Criminal Code was amended. These amendments clarify the legal concept and procedures in cases of torture, ill-treatment,	-	- These remedy law are to be implemented by the domestic court with assistance of special litigation division within the Ministry of Justice. That division will be held responsible, along with the domestic courts, for improving and instituting of good judicial practices and amounts for compensations in line with the European Court's case-law. - Changes in judicial practice will be observed by the Government;	YES Action plan was received 12 March 2013. DH-DD(2013)450	Information is awaited from national authorities.

	degrading and inhuman treatment by establishing clear definition of each of these concepts. - Another draft Law that will declare torture crimes as imprescriptible is pending before the legislature, setting compensation for illegal detention and unjustified criminal accusations (Law no. 1545).				

Corsacov v the Republic of Moldova, no 18944/02, 04 April 2006, final since *04 July 2006* *Violations of Articles 3 and 13; Article 2* ***Colibaba v the Republic of Moldova, no 29089/06, 23 October 2007, final since 23 January 2008*** *Violations Articles 3 and 34* ***Eduard Popa v the Republic of Moldova, no 17008/07, 12 February 2013, final since 12 May 2013*** *Violations of Articles 2 and 3* ***Ghimp and others v the Republic of***	- Amendments of the Criminal Procedure Code, Article 143 and 147 impose forensic examinations and complex medical and psychological expertise for cases regarding ill-treatment or torture. - Article 60 (8) of the Criminal Code was amended with the scope to avoid impunity. - Articles 175/1 (1), 175/1 (2), and 232 of the Execution Code were amended to set up a 72 hours limited detention time in a regional or sectorial police remand center; an immediately medication examination after taken a person in custody and when the person requires one; and to provide a wide regulatory framework for medical assistance within and outside the penitentiary system and medical services in the remand centers.	-The NIJ uses the present cases in the curricula as a mandatory element of judicial and prosecution discipline; - Ministry of Internal Affairs has included training on human rights for the police; - The investigative officers were instructed to open an investigation immediately when there are clues or suspicions of ill-treatment and torture. - The General Inspectorate of the Police, by Order no. 8 of January 2014, required that municipal and local police officers must be instructed in the field of HR protection; -The National Human Rights plan for 2011-2014 has an objective of protecting against and combating ill-treatment and torture, and its investigation. - Zero tolerance' policy; Effectiveness of investigations	-	YES - Action Plan was received on 19 June 2014 for Corsacov group of cases DH-DD(2014)836 - Action Plan was received for Ghimp and others on 11 February 2014 DH-DD(2014) 230 - Action Plan was received Eduard Popa 24 February 2014 DH-DD(2014)316 - All issues related to poor conditions of detention are examined in *Ciorap* group of cases; - Irregularities related to Detention on remand: *Sarban* group and *Musuc* group; - Irregularities related to the right to individual petition: *Colibaba* case - Irregularities related to home search: *Mancevschi* case.	

Moldova, no 32520/09, 30 October 2012, final since 3 January 2013 *Violations of substantive and procedural limb of Article 2*		Safeguards against ill-treatment; Training and awareness–raising measures;			

Petru Rosca v the Republic of Moldova, no 2683/05, 6 October 2009, final since 1 January 2010 *Violations of Articles 3, and Article 6(1) in conjunction with Art 6(3)*	-	-	-	NO	Action Plan is awaited.
Anusca v the Republic of Moldova, no 24034/07, 18 May 2010, final since 18 August 2010 *Violations of Article 2*	-	-	-	NO	-
Ceahir v the Republic of Moldova, no 50115/06, 10 December 2013, final since 10 March 2014 *Violation of Article 3*	-	-	- Changes of investigation practices – no general measures taken as the present case is an isolated incidence and does not reveal a wide spread issue of delayed prosecutions in this type of cases.	YES Action Plan received on 17 April 2015 DH-DD(2015)450	-

Ciorap no. 4 v the Republic of Moldova, no 14092/06, 8 July 2014, final since October 2014 *Violations of Article 3*	-	-	-	NO	-
Railean v the Republic of Moldova, no 230401/04, 5 January 2010, final since 28 June 2010 *Violations of Article 2*	-	-	-	NO	-
Eremia v the Republic of Moldova, no 3564/11, 28 May 2013, final since 28 August 2013 *Violations of Article 3*	- Legislative amendments as in Genderdoc-M case;	- By its Decision no. 72 of February 2012 the Government instituted the Coordination Inter-ministerial Committee for fighting against domestic violence. The Committee's main task is to coordinate the activities between the authorities involved in dealing with cases concerning domestic violence. - UNFPA and Ministry of Interiors instructed	- The Supreme Court adopted its Explanatory Decision of 28 May 2012 aiming to deal with application of the Law on domestic violence and the relevant civil and criminal provisions applicable in this respect. - The judges were instructed to apply directly the ECtHR case-law, namely *Opuz v Turkey* case. - In 2013, 30 judges and 30 prosecutors were instructed in the field of the Court's	YES Action Plan received on 16 April 2014 DD-DH(2014)522	-

		police officers and police students on the application of legislation on combating the domestic violence.	case law, and subjected to additional courses on investigation and adjudication of the domestic violence cases.		
I.G. v the Republic of Moldova, no 53519/07, 15 May 2012, final since 15 August 2012 *Violations of Article 3*	- In 2012, the Code of Criminal Procedure was amended. The decisions adopted by the prosecutor are subject to supervision by any hierarchic prosecutor. Unlawful and unjustified decisions taken in the course of investigation could be annulled by the hierarchic prosecutor.	-	- The case does not require changing of judicial practice.	YES Action Plan received on 27 March 2014 DH-DD(2014)446	Action Plan is awaited on individual measures.
Boicenco v the Republic of Moldova, no 41088/05, 11 July 2006, final since 11 October 2011 *Violation of Articles 3, 5(1), 5(3) and 34* *Part of Sarban group of cases*	- Article 191 of the Code of Criminal Procedure was amended on 28/07/2006 and 21/12/2006. In particular, the provision which excluded the possibility of release under judicial control for a particular category of persons was removed (see Memorandum CM/Inf/DH(2009)42rev (*Sarban* group of cases).	-	-	YES Action plan received on 16 September 2014. DH-DD(2014)1147 - Issues related to the ill-treatment in police custody and investigation thereof (Art. 3) are examined in the *Corsacov* group of cases. -Issues related to	An action plan/action report is awaited on Art. 34.

				provision of medical assistance while in police detention facilities (Art. 3) are examined in the *Becciev* group of cases. - Issues related to the unlawful detention and lack of relevant and sufficient grounds for its extension (Art.5) are examined in the *Sarban* group of cases.	
Sarban v the Republic of Moldova, no 3456/05, 4 October 2005, final since 4 January 2006 *Violations of Article 5(3), 5(4), and 3*	- November 2006, the Code of Criminal Procedure was amended; the Article 186 of new Code of Criminal Procedure provides that the public prosecutors are under obligation to request the prolongation of detention pending trial after submitting the case file to a trial court. - April 2012, amendments to the Code of Criminal Procedure, Article 117 writes that the courts are under obligation to	-The National Institute of Justice is organising continuous training activities for judges and prosecutors, including on the standards pertinent to Article 5 and their practical application. - In January 2013, Guidelines for practitioners on detention pending trial were elaborated and published by the Soros Foundation-Moldova in co-operation with the Superior Council of Magistrates, the	- On 15 April 2013, the Supreme Court adopted its Explanatory No 1 Decision on detention on remand and house arrest. The Supreme Court reiterated the direct applicability of the European Convention and the Court's case-law in the domestic legal order. - The Supreme Court referred to the four basic grounds for which detention pending trial can be justified (i.e. the danger of absconding as well as the risk that the accused, if released, will prejudice the	- YES Action Plan received on 16 September 2014. DH-DD(2014)1147 - General measures concerning the violations of Article 3 are examined in the context of the *Ciorap*, *Becciev* and *Paladi* groups of cases and the violation of Article 34 separately under the *Boicenco* case.	

	provide detailed grounds for their decisions ordering or prolonging detention pending trial, mentioning concrete reasons for taking this measures and take into consideration the arguments of the defense and the reasons for their acceptation or rejection. - Article 307 and 308 were amended with the same purpose as above one. -Article 191 of the CCP was amended to lift the prohibition on releasing a person accused of a crime punishable by more than 10 years of imprisonment. - Article 312 of the CCP was amended to impose clear deadlines in proceedings to challenge the lawfulness of a deprivation of liberty. After the amendment, the CCP now provides a 3-day period for the appeal instance to take a	Supreme Court of Justice and the National Institute of Justice.	administration of justice, commit further offences or cause public disorder). - The Supreme Court highlighted that court decisions on detention pending trial should be in neither standard nor summary form and should refer in detail to the applicant's personal situation. - The reasoning in decisions ordering detention pending trial should be based on evidence submitted by the prosecution and that courts should consider the requests by the defence to hear evidence on the continuing lawfulness of the detention. - The procedure for examining requests for detention pending trial and their extension during investigation and pending trial as well as for examining requests to revoke detention pending trial in favour of other preventative measures.		

	decision concerning the lawfulness of detention. - Articles 307/308 of the CCP were amended to prevent violations on account of an unjustified refusal by a domestic court to give access to a case file. - A draft law was elaborated to amend the CCP. The draft amendments seek to reinforce the existing limitation of the use of restraint measures involving deprivation of liberty, to require the judge to consider applying alternative measures and to strengthen the ability of the detainee to challenge the legality of such restraint measures. - Upon request of the Moldovan authorities, a legal expertise on the draft amendments to the CCP relating to detention on remand has been prepared by CoE experts in October 2014 in the framework of the co-operation project				

	"*Support to a coherent national implementation of the European Convention on Human Rights in the Republic of Moldova*", supported by the Human Rights Trust Fund.				
Freedom of religion					
Masaev v the Republic of Moldova, no 6303/05, 12 May 2009, final since 12 August 2009 *Violations of Article 6(1), 9*	- On 31 May 2009 the Code of Administrative offences was replaced by a new one which contains similar provisions in its Article 54. - Draft law on amending the § 3 and 4 of article 54 from the Code of Administrative Offences was prepared by the Government and will be soon submitted to Parliament for adoption.	-	-	NO - Issues related to belated summonsing in administrative proceedings are examined in the Ziliberberg group of cases.	An action plan/action report is awaited.

iii. Annex 3 The list of cases

Abbasov v. Azerbaidjan, App. No. 24271/05, Eur. Ct. H. R. (2008)
http://hudoc.echr.coe.int/eng?i=001-84475

Anusca v. Republic of Moldova, App. No. 24034/07, Eur. Ct. H. R. (2010)
http://hudoc.echr.coe.int/eng?i=001-98517

Arseniev v. Republic of Moldova, App. No.10614/06+, Eur. Ct. H. R. (2012),
http://hudoc.echr.coe.int/eng?i=001-109729

Asito (No.2) v. Republic of Moldova, App. No. 39818/06, Eur. Ct. H. R. (2012)
http://hudoc.echr.coe.int/eng?i=001-70839

Avram and the others v. Republic of Moldova, App. No. 41588/06, Eur. Ct. H. R. (2013)
http://hudoc.echr.coe.int/eng?i=001-105468

B. v. Moldova, App. No. 61382/09, Eur. Ct. H. R. (2013)
http://hudoc.echr.coe.int/eng?i=001-122372

Balan v. Republic of Moldova, App. No. 19247/03, Eur. Ct. H. R.
http://hudoc.echr.coe.int/eng?i=001-84720

Becciev v. Republic of Moldova, App. No. 9190/03, Eur. Ct. H. R. (2006)
http://hudoc.echr.coe.int/eng?i=001-70434

Belilos v. Switzerland, App. No. 10328/83, 132 Eur. Ct. H.R. (ser. A) (1988)

Bimer v. Republic of Moldova, App. No. 15084/03, Eur. Ct. H. R. (2007)
http://hudoc.echr.coe.int/eng?i=001-81505

Boicenco v. Republic of Moldova, App. No. 41088/05, Eur. Ct. H. R. (2006)
http://hudoc.echr.coe.int/eng?i=001-76295

Bordeianu v. Republic of Moldova, App. No. 49868/08 , Eur. Ct. H. R. (2011)
http://hudoc.echr.coe.int/eng?i=001-102723

Breabin v. Republic of Moldova, App. No. 12544/08, Eur. Ct. H. R. (2009)
http://hudoc.echr.coe.int/eng?i=001-92096

Brega v. Republic of Moldova, App. No. 61485/08, Eur. Ct. H. R.
http://hudoc.echr.coe.int/eng?i=001-108787

Broniowski v Poland [GC], App. No. 31443/96, 2004-V Eur. Ct. H.R.

Burdov v. Russia, App. No. 59498/00, 2002-III Eur. Ct. H. R.

Buzilov v. Republic of Moldova, App. No. 28653/05, Eur. Ct. H. R. (2009)
http://hudoc.echr.coe.int/eng?i=001-93086

Cazacu v. Republic of Moldova, App. No. 40117/02, Eur. Ct. H. R. (2007)
http://hudoc.echr.coe.int/eng?i=001-82867
Ceachir v. Republic of Moldova, App. No. 50115/06, Eur. Ct. H. R. (2014)
http://hudoc.echr.coe.int/eng?i=001-138889
Cebotari v. Republic of Moldova, App. No. 35615/06, Eur. Ct. H. R. (2007)
http://hudoc.echr.coe.int/eng?i=001-83247
Christian Democratic People Party (CDPP) v. Republic of Moldova, App. No. 28793/02, 2006-II 97 Eur. Ct. H. R.
Ciorap (No.2) v. Republic of Moldova, App No. 7481/06, Eur. Ct. H. R. (2010)
http://hudoc.echr.coe.int/eng?i=001-99996
Ciorap (No.3) v. Republic of Moldova, App. No. 32896/07, Eur. Ct. H. R. (2012),
http://hudoc.echr.coe.int/eng?i=001-115006
Ciorap (No.4) v. Republic of Moldova, App. No.14092/06, Eur. Ct. H. R. (2014)
http://hudoc.echr.coe.int/eng?i=001-145649
Ciorap v. Republic of Moldova, App. No. 12066/02, Eur. Ct. H. R. (2007),
http://hudoc.echr.coe.int/eng?i=001-81136
Ciubotaru v. Republic of Moldova, App. No. 27138/04, Eur. Ct. H. R. (2011)
http://hudoc.echr.coe.int/eng?i=001-98445
Colibaba v. Republic of Moldova, App. No. 29089/06, Eur. Ct. H. R. (2007)
http://hudoc.echr.coe.int/eng?i=001-82877
Conev v. Republic of Moldova, App. No. 28431/08, Eur. Ct. H. R. (2014)
http://hudoc.echr.coe.int/eng?i=001-148063
Constantin Modarca v. Republic of Moldova, App. No. 37829/08, Eur. Ct. H. R. (2012),
http://hudoc.echr.coe.int/eng?i=001-114519
Corsacov v. Republic of Moldova, App. No. 11944/02, Eur. Ct. H. R. (2006)
http://hudoc.echr.coe.int/eng?i=001-73012
Culev v. Republic of Moldova, App. No. 60179/09, Eur. Ct. H. R. (2012)
http://hudoc.echr.coe.int/eng?i=001-110393
D. v. Republic of Moldova, App. No. 47203/06, Eur. Ct. H. R. (2010)
http://hudoc.echr.coe.int/eng?i=001-101985
Dan v. Republic of Moldova, App. No. 8999/07, Eur. Ct. H. R. (2012)
http://hudoc.echr.coe.int/eng?i=001-105507
David v. Republic of Moldova, App. No. 41583/05, Eur. Ct. H. R.
http://hudoc.echr.coe.int/eng?i=001-83466

Dimitrov v. Bulgaria, App. No.48059/06 2708/09, Eur. Ct. H. R. (2011)
http://hudoc.echr.coe.int/eng?i=001-104700
Dolneanu v. Republic of Moldova, App. No. 17211/03, Eur. Ct. H. R. (2007)
http://hudoc.echr.coe.int/eng?i=001-83251
Eduard Popa v. Republic of Moldova, App. No. 17008/07, Eur. Ct. H. R. (2013)
http://hudoc.echr.coe.int/eng?i=001-116408
Eremia v. Moldova, App. No. 3564/11, Eur. Ct. H. R. (2013)
http://hudoc.echr.coe.int/eng?i=001-119968
Flux (No.2) v. Republic of Moldova, App. No. 31001/03, Eur. Ct. H. R. (2007)
http://hudoc.echr.coe.int/eng?i=001-81372
Fomin v. Republic of Moldova, App. No. 36755/06, Eur. Ct. H. R.
http://hudoc.echr.coe.int/eng?i=001-106789
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http://hudoc.echr.coe.int/eng?i=001-96179
Genderdoc-M v. Republic of Moldova, App. No. 9106/06, Eur. Ct. H. R. (2012)
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Ghirea v. Republic of Moldova, App. No.15778/05, Eur. Ct. H. R. (2013)
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Gorobet v. Republic of Moldova, App. No. 30951/10, Eur. Ct. H. R.
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Gurgurov v. Republic of Moldova, App. No. 7045/08, Eur. Ct. H. R. (2009)
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http://hudoc.echr.coe.int/eng?i=001-80910
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http://hudoc.echr.coe.int/eng?i=001-109066
Haritonov v. Republic of Moldova, App. No. 15868/07, Eur. Ct. H. R. (2011)
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Levinţa v. Republic of Moldova, App. No. 17332/03, Eur. Ct. H. R. (2009), http://hudoc.echr.coe.int/eng?i=001-90304
Luntre and others v. Republic of Moldova, App. No. 2916/02, Eur. Ct. H. R. (2004) http://hudoc.echr.coe.int/eng?i=001-61820
Malai v. Republic of Moldova, App. No. 7101/06, Eur. Ct. H. R. (2008) http://hudoc.echr.coe.int/eng?i=001-89577
Mancevschi v. Republic of Moldova, App. No. 33066/04, Eur. Ct. H. R. (2008) http://hudoc.echr.coe.int/eng?i=001-88719
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Maria Atanasiu v. Romania, App. No. 30767/05 and 33800/06, Eur. Ct. H. R. (2010) http://hudoc.echr.coe.int/eng?i=001-100989
Masaev v. Republic of Moldova, App. No. 6303/05, Eur. Ct. H. R. http://hudoc.echr.coe.int/eng?i=001-92584
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