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Meeting: 1318<sup>th</sup> meeting (June 2018) (DH)

Item reference: Action report (03/04/2018)

Communication from the Republic of Moldova concerning the case of SARBAN v. the Republic of Moldova (Application No. 3456/05)

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Communication de la République de Moldova concernant l'affaire SARBAN c. République de Moldova (requête n° 3456/05) (**anglais uniquement**)

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SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

**MINISTRY OF JUSTICE OF THE REPUBLIC OF MOLDOVA**  
**GOVERNMENT AGENT**

**REVISED ACTION REPORT**

for the execution of the European Court of Human Rights judgments  
in the group of cases ***Sarban v. the Republic of Moldova*** (no. 3456/05)

Taking into account the issues analysed by the Committee of Ministers of the Council of Europe at its 1294<sup>th</sup> meeting from 19-21 September 2017 following the submission of the Action Report of 23 June 2017 (see [DH-DD\(2017\)736](#)), the Government of the Republic of Moldova (hereinafter “the Government”) submit the information requested by the Committee of Ministers on the outstanding issues regarding the enforcement of the European Court of Human Rights judgments issued in this group of cases.

*The development of judicial practice as regards the provision of relevant and sufficient reasons for detention on remand*

According to paragraph 4 of the Committee of Ministers decision, the Government was invited to submit additional information related to the development of judicial practice, following the legislative amendments of 2016, as regards the provision of relevant and sufficient reasons in court orders for detention on remand.

In this regard, the Government attach to this Action Report examples of rulings and decisions issued after the entering into force of the amendments to the Code of Criminal Procedure, in which the national courts rule on applying or extending detention on remand.

At the same time, the Government draw the Committee of Ministers’ attention to the fact that the national courts take into account all the conditions of form provided by the new legal provisions which determine the necessity of applying or extending detention on remand. Thus, the reasons invoked by the national courts in this regard, including those resulting from the legal control on applying and extending such preventive measure, are sufficient and relevant in the context of respecting the conditions provided for by Article 5 § 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the Convention”).

*The length of appeal proceedings concerning the application or extension of detention on remand*

In the same decision, the Committee of Ministers invited the Government to provide data on the average time for the examination of appeals on detention on remand. In this regard, the Government note that the examination of the appeals on points of law against the investigating judge’s ruling concerning the (application or extension of the) detention on remand, i.e. pre-trial

detention, takes place within maximum 3 days following the day a request of revocation was lodged before the first instance court. It has to be specified for that purpose that it is the first instance court, which (after contacting the appellate court) is responsible for organising the process of setting the date for the examination of the appeal, for summoning the lawyer/accused/defendant and the prosecutor, and for sending the case file to the respective appellate court. To summarize, the first instance court has to make sure that any appeal be examined within maximum 3 days following the day it was lodged, and this period is currently respected.

*Evolution of the judicial practice reflecting the examination of the evidence from the defence, including hearing of witnesses*

Taking into account the fact that the Committee of Ministers requested some examples of decisions of domestic courts that would reflect the way of examining the evidence from the defence, including hearing of witnesses, the Government attach to this Report several rulings in which the courts have examined the evidence submitted by the defence when deciding on a certain criminal case.

*Legislative amendments related to awarding compensations in case of violation of Article 5 of the Convention*

The Committee of Ministers invited the national authorities to provide information on the measures adopted or envisaged to ensure that a possibility to apply for compensation is open to any person detained in breach of Article 5 of the Convention.

The Government note that the national authorities are in the process of drafting several legislative proposals of modifying the Law no. 1545 of 25 February 1998 on redressing the damage caused by illegal actions of the criminal prosecution bodies, prosecution offices and courts that would ensure that every person illegally held in custody have the right to compensations in case of such violations.

*Generalization of practice*

On 5 July 2017 the Prosecutor General's Office approved the Prosecutor's Guide on Applying the Detention on Remand, published in cooperation with the Norwegian Mission Experts of Rule of Law Advisers to Moldova. It describes the means of assessing different legal components regarding the detention on remand and refers to the Court's findings in cases related to this issue that concern not only the Republic of Moldova, but also other states.

This instruction describes the international standards that shall be respected when an application or extension of detention on remand is requested, the national legal framework that regulates the application of detention on remand, and it also includes multiple examples of argued reasoning when requesting application of detention on remand. Moreover, it reiterates the exceptional character of this preventive measure and describes the alternative preventive measures that can be requested in order to remove certain risks that might justify the application of the detention on remand.

### Training

The national authorities continuously carry out training activities for professionals concerned, including on the matters concerning the right to liberty and security. Under the auspices of the National Institute of Justice (hereinafter “the NIJ”), the judges and prosecutors are continuously instructed in terms of the Court’s case-law, including the present judgments. During the period 2014 – 2017, the NIJ organized numerous training activities, including on the Article 5 standards, which involved 1288 professionals, of which over 170 judges and prosecutors attended courses related to Article 5 of the Convention in 2017.

In April-June 2017, Moldovan judges and prosecutors attended the distance learning course organized by the National Institute of Justice in cooperation with the European Program for Human Rights Education for Legal Professionals (HELP) concerning “Pre-trial investigation and the European Convention on Human Rights”. This course drew a special attention to the issues related to ensuring the respect for the right to liberty and security during pre-trial investigation.

A distance-learning course entitled “Introduction to the European Convention on Human Rights and the European Court of Human Rights” was carried out in partnership with the Council of Europe, also addressing the standards imposed by Article 5 of the Convention. Similar training has been provided to candidates for the positions of prosecutors and judges.

Within the framework of the Council of Europe Project “Supporting the Criminal Justice Reform in the Republic of Moldova”, in June 2017 the Supreme Court of Justice and the NIJ elaborated a commentary on the judgments of the European Court against the Republic of Moldova. It aims at facilitating the understanding of the Court’s judgments and decisions, and at improving the implementation of the Convention standards at the national level.

### Conclusion

In conclusion, the Government invite the Committee of Ministers to take note of the measures undertaken in order to solve the outstanding issues referred to in the decision adopted at its 1294<sup>th</sup> meeting and consider that they prevent the occurrence of similar violations in the future. Along with all the individual and general measures previously reported to the Committee of Ministers, they prove that the Government have fulfilled all their obligations that arise under Article 46 of the Convention.

Annexes:

- samples of rulings and decisions issued by national courts related to the application and extension of the detention on remand, and sentences reflecting the examination of evidence from the defence.



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