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Communication from the Republic of Moldova concerning the case of TARABURCA v. Republic of Moldova (Taraburca group) (Application No. 18919/10).

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Communication de la République de Moldova concernant l'affaire TARABURCA c. République de Moldova (groupe Taraburca) (Requête n° 18919/10) (**anglais uniquement**)

DGI

19 OCT. 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



MINISTRY OF JUSTICE OF THE REPUBLIC OF MOLDOVA
GOVERNMENT AGENT

UPDATED ACTION REPORT
for the execution of judgments
in the **Taraburca v. the Republic of Moldova**
group of cases (no. 18919/10)

This Action Report comes to complete the information submitted in the Action Report of 06 April 2016 (see [DH-DD\(2016\)460](#)) and to answer the outstanding questions addressed by the Committee of Ministers to the Government of the Republic of Moldova in their decision adopted at the 1259th meeting of 7-8 June 2016 (see [CM/Del/Dec\(2016\)1259/H46-20](#)).

I. DESCRIPTION OF CASES

1. This group of cases mainly concerns substantive and procedural violations of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter "the Convention"), caused by ill-treatment on the applicants, including on a 15-year old minor in the *Iurcu* case, by the police, in connection with the violent demonstrations in Chisinau in April 2009 following the parliamentary elections, as well as the ineffective investigations in this respect. The European Court for Human Rights (hereafter "the Court") held that the Government did not give plausible explanations as to how the applicants' injuries were caused and that the investigations did not comply with a number of procedural requirements. The Court further noted that, "unlike previous cases which it has examined in respect of the Republic of Moldova concerning individual cases of alleged ill-treatment, cases in this group appear to be part of a large number of similar allegations of ill-treatment committed during a relatively short period of time".

2. In the case of *Taraburca* the Court also expressed concerns about the independence and quality of work of legal-aid lawyers during the relevant events, the summary manner in which judges examined cases inside police stations, as well as the lack of resolute action against ill-treatment by investigating judges and prosecutors during the events.

3. The case of *Iurcu* also concerns a violation of Article 13 of the Convention, due to the lack of effective civil remedies enabling the applicant to claim compensation for the ill-treatment suffered at the hands of the police.

II. LIST OF CASES

Application	Case	Judgment of	Final on
18919/10	Taraburca	06/12/2011	06/03/2012
33759/10	Iurcu	09/04/2013	09/07/2013
56074/10	Buhaniuc	28/01/2014	28/04/2014

III. INDIVIDUAL MEASURES

4. In their decision referred to above, the Committee of Ministers noted the fresh investigatory steps taken by the prosecution bodies following the Court's judgments in order to remedy the shortcomings identified in the initial investigations into the applicants' ill-treatment and considered that no further individual measures are necessary in any of these cases.

IV. GENERAL MEASURES

Relevant legal provisions on public assemblies and on police intervention

5. The legal basis for organising a public assembly and for police intervention in cases of public disturbances are provided by the Law on public assemblies no. 26 of 22 February 2008 and the Law on the way of using physical force, special means and firearms by law enforcement no. 218 of 19 October 2012, the latter being adopted after the events concerned.

6. The Law on public assemblies provides that the local public authority and the organiser of an event should nominate coordinators for that event and communicate their names to each other and to the police. This allows efficient communication between all parties involved in the event and joint decision making.

7. According to Article 21 of the Law on public assemblies, if some demonstrators violate the public order, the organiser, and in case of necessity with the police assistance, shall remove them. The law provides that a demonstration should not incite to war, national, racial, ethnic or religious hatred, public discrimination or violence, undermine the national security or the territorial integrity of the State, instigate to commission of crimes, violation of public order or organization of mass disturbances, violation of public morality or others' rights and freedoms, endanger the others' lives and health. In case the

demonstrators take serious actions contrary to these limitations, the representative of the local public administration shall request the organiser to immediately cease the assembly. This is an exceptional measure which can be used only if other measures were not efficient to stop illegal actions.

8. If after the de-escalating steps taken by the authorities, the demonstrators do not stop their illegal actions and the organiser of an assembly does not comply with the request to cease the assembly or if the demonstrators do not leave the place of the assembly following the request of the representative of the local public administration, the police shall warn the participants about the possibility of using special means and about the forced dispersal of the assembly, offering them a reasonable term to comply with the request. The warning and the requirement to disperse and comply with the law is made by means of sound and/or light signals and by addressing demonstrators with the help of sound amplification equipment. If the demonstrators do not comply, the police shall repeat the request on the participants' dispersal. If after the second request the participants do not leave the place of the assembly, the police shall take legal measures in order to disperse participants at the non-peaceful assembly.

9. The dispersion of participants shall be performed under Article 16 of the Law no. 218, according to which force shall be used only as a last instance measure, when the demonstrators in the meeting refuse to disperse and to respect the legal provisions. Article 14 of the same Law lists the situations in which physical force and special means can be applied for the purpose of restoring public order, in particular:

- for the separation of an aggressive group from the participants to a peaceful assembly. In this case the aim is to permit the pursuit of lawful actions while dealing with groups acting illegally.
- for the separation of two groups that show an aggressive attitude towards one another;
- in cases in which the demonstrators to a gathering illegally enter with an aggressive behaviour into the premises of public institutions or buildings, diplomatic missions;
- as necessary for the apprehension of demonstrators who put in danger lives and health of others, destroy public or private property;
- as necessary for the apprehension of demonstrators holding guns and other arms, wearing masks or hiding their faces in some other way, and who have not respected the legal request of uncovering their faces.

10. In any of these cases, the Law no. 218 provides that the force shall be applied gradually and according to the proportionality principle. Their use shall not exceed the real necessity for immobilizing the turbulent or aggressive persons or for neutralizing the illegal actions and shall end once the purpose of the mission is achieved.

Practical aspects of managing mass demonstrations and other major events

11. Following the April 2009 events, the Ministry Internal Affairs and its subordinated structures revised their capacity to efficiently handle demonstrations, be them planned or spontaneous, and quickly respond to unexpected events. As a result, the General Police Inspectorate, by the Order no. 144 of 22 September 2014, adopted the Instructions on the tactics of police intervention in ensuring and restoring the public order (hereafter “the Instruction”). This is the first regulation of this kind adopted at national level, inspired by the police practice of European Union States, such as France, Romania and the United Kingdom.

12. The Instruction provides that every decision of using force shall go through three stages: the analysis of the tactical situation, the establishment of the way of intervening and the creation of an action plan. The process of planning starts when the official notification about a public event is received and ends with the assessment and taking over of the mission by the commander. At these stages the planning team is appointed, the risk of the event is assessed, an action plan and the order of its implementation are issued, the police officers involved in the mission are instructed, after which the results of the mission are assessed.

13. For those events that are planned or anticipated well in advance, the police develops detailed operational and standing plans. In particular, it holds meetings with the event organisers as early as possible before the event; identifies potential protest groups; specify equipment and uniform necessary to handle a given demonstration; studies the place/route of demonstration and the ways of access; determines the chain of command and control; reviews the possible responses to a hostile behaviour; and liaises with other agencies who can offer necessary support, such as road traffic police, ambulance service, firemen and local public administration. The planning contemplates on contingency, takes into considerations different risks, studies a variety of potential scenarios and is flexible in the face of rapidly changing circumstances.

14. Planning a potential response by police is not limited to demonstrations announced in advance. It is also done is spontaneous demonstrations, such as those associated with elections and other important political and social changes, sporting events etc.

15. Before any intervention, the police assess the necessity, proportionality and reasonability for each case that requires use of force. According to the Instruction, when assessing the necessity and deciding on the intervention the commander shall consider *inter alia* the structure of the demonstration, the proportion of activists, the number of violent demonstrators, their intentions and tactics, the nature of their actions and the means employed by them, the place they concentrate in and the ways of access.

16. Each case of forced dispersal of a demonstration shall be reported and recorded in the minutes, which will explain the reasons and the grounds for intervention. According to the Law no. 218, the prosecution bodies shall control the legality of using physical force, special means and firearms by police officers. In case of excess or abuse of authority, they shall be subjected to disciplinary, civil, administrative or criminal liability.

17. Following the demonstration, the police conduct a post-event debriefing and reviews standing and contingency plans in light of their effectiveness during the event.

18. Every year police officers are trained in the field of ensuring and restoring public order during public events, both within police departments and in the “Ștefan cel Mare” Police Academy, by national and international experts. The issues related to necessity, proportionality and gradual application of force are carefully examined during these trainings.

19. The assemblies organized in the past years, including political demonstrations, protests, meetings, pride marches, most of which are accompanied by counter-demonstrations, prove that the legal provisions described above are effectively applied in practice in a Convention-compliant way.

20. The events reported by the authorities in its recent Action Report in the case *Genderdoc-M v. Moldova* (No. 9106/06) can serve as an example for an early and effective planning of a public event which attracted violent counter-demonstrators. A thorough and careful planning process of the event in close cooperation with the organisers laid the foundation for informed and competent decision making, which allowed the event to be organised as planned and avoid any victims on the part of demonstrators and counter-demonstrators.

Improving the quality of the services provided by legal aid lawyers

21. Given that in the *Taraburca* case the Court expressed its concern in respect of the independence and quality of the work provided by legal aid lawyers and in order to ensure a higher quality of their services, during 2015-2017 the National Legal Aid Council issued quality standards of the legal aid lawyers’ activity in civil, contravention and criminal cases.

22. On 25 June 2015 the National Legal Aid Council adopted the mechanism on internal and external monitoring of the quality of legal aid provided by lawyers for the period 2015-2018.

23. At the same time, the lawyers who provide legal aid are continuously trained, both by the National Legal Aid Council and by the National Institute of Justice, on a variety of topics and different types of cases, in order to improve their skills and knowledge.

Sanctioning judges and prosecutors responsible for the violations of the Convention

24. As it has been previously noted by the Court in its judgment in the *Taraburca* case (§ 31), on 12 January 2010 the Supreme Council of Magistracy refused to extend the appointment of judge M.D. of the Buiucani District Court, following which he was dismissed from his position as a judge by the acting President of Moldova. The reason for the Council’s decision was that the judge had examined a number of cases concerning the events of 7 April 2009 outside the courtroom and at the premises of the General Police Inspectorate, which was “a grave violation of the Constitution and of the Code of Criminal Procedure”.

25. Following the events of 7-8 April 2009, the prosecution bodies focused both on sanctioning the persons responsible for mass disorders and the police officers who allegedly ill-treated the persons held in custody. Thus, the General Prosecution Office evaluated the work of the prosecutors who examined the cases related to these events. As a result, about 20 disciplinary proceedings have been initiated. Some of these proceedings ended with disciplinary sanctions applied in respect of the responsible prosecutors, while the other cases have been closed due to the expiration of the limitation period in this respect.

Other measures aimed at preventing cases of ill-treatment

26. On 1 April 2018 the Guide on professional intervention in exercising the function entered into force. The Guide includes general relevant provisions that establish the correct practice, procedures and techniques of using physical force, special means and firearms by law-enforcement. The Guide was issued taking into account all the relevant national legislation as well as the provisions of the European Convention and of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

27. It establishes guiding principles on the use of physical force, special means and firearms and, in particular, states that the main goal is to diffuse the crises and get control of a situation by means of verbal communication and other non-violent means. The use of force is permitted only under specific circumstances, should be used only as necessary to mitigate an incident and the amount of force and means applied should be proportional to the threat.

Amendments in the legislation and their implementation

28. The Government note that the Republic of Moldova has made considerable progress in implementing Law no. 26 of 26 February 2008 on assemblies, in particular Article 14 (5) "Changing conditions of and banning meetings". It shall be noted that the courts of law examine complaints and deliver decisions to either ban or modify the location and time of an assembly, or to uphold the unfolding of an assembly within the three days, as provided for by law. In any event, in the recent years, i.e. 2015 onwards, there have been no cases when a final decision in this respect was delivered, including before the appellate court, after the preliminary date of a planned event

29. Furthermore, the General Police Inspectorate launched a new service called "DIALOG", which is a new and additional way of communication between the police and participants at demonstrations, and ensures transparency of the police activity and contributes to the participants' safety.² The "DIALOG" teams consist of professionals within the Ministry of Internal Affairs, who are present at any public demonstration. Those police officers wear blues vests with the inscription "DIALOG POLICE", and are equipped with radio stations and video cameras enabling them to carry out video and audio recordings for more transparency. Their role is to inform any interested participant

at a manifestation of the rules to follow, but also to offer guidance and help for a better understanding and unfolding of a manifestation.

V. CONCLUSIONS

30. Taking into account the general measures described above, the Government conclude that the national authorities took all the necessary measures in order to ensure the respect for public order during assemblies and to avoid public disturbances similar to those of April 2009.

31. At the same time, the Government invite the Committee of Ministers to take note of the measures adopted in response to the Court's findings concerning lawyers that provide legal aid, judges and prosecutors that have been involved in these events, which are aimed at preventing similar violations from happening in the future.

32. Given that no additional individual measures are necessary in these cases and after assessing all the general measures that have been undertaken in this respect, the Government conclude that the Republic of Moldova has complied with its obligations under Article 46 § 1 of the Convention and therefore invite the Committee of Ministers to end the supervision in these cases.



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