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Contact: Zoe Bryanston-Cross
Tel: 03.90.21.59.62

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Communication from the Republic of Moldova concerning the group of cases LEVINTA v. the Republic of Moldova (Application No. 17332/03)

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Réunion :	1411e réunion (septembre 2021) (DH)
Référence du point :	Bilan d'action (16/07/2021)

Communication de la République de Moldova concernant le groupe d'affaires LEVINTA c. République de Moldova (requête n° 17332/03) ***(anglais uniquement)***

No. 06/5321 Chisinau, 16 July 2021

ACTION REPORT
for the execution of the judgments
in the group of cases *Levința v. the Republic of Moldova* (no. 17332/03)

I. CASES DESCRIPTION

1. The present group of cases concerns substantial and procedural violations of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the Convention"), mainly caused by ill-treatment or torture applied on applicants when being in police custody between 2000 and 2009, including with a view to extracting confessions, and lack of effective investigations in this regard. It also concerns violations of Article 13 of the Convention, caused by lack of an effective national remedy.

2. The *Eduard Popa* and *Cantaragiu* cases also concern substantial and procedural violations of the applicants' right to life while in police custody and ineffective investigation in this respect, contrary to Article 2 of the Convention.

3. The *Levința* case also concerns the authorities' refusal to provide the applicants with adequate medical assistance for security reasons while in police custody, which resulted in a substantive violation of Article 3 of the Convention, and the applicants' conviction based on their confessions obtained by means of torture, which caused a violation of Article 6 § 1 of the Convention.

4. In the *D.* case, the European Court of Human Rights (hereinafter "the Court") also found a violation of Article 5 § 1 of the Convention, on account of the applicant's unacknowledged detention during the violent demonstrations following the parliamentary elections from April 2009. The *Muradu* case also concerns violations of Article 5 §§ 3, 4 and 5 of the Convention, caused by lack of relevant and sufficient reasons for ordering the applicant's pre-trial detention, the applicant's lack of access to the case-file concerning his detention and to a lawyer of his own choosing and, respectively, the applicant's impossibility to obtain compensations in respect of violations of Article 5 of the Convention at national level. These violations are examined within the *Șarban* group of cases (no. 3456/05).

II. LIST OF CASES

Application	Case	Judgment of	Final on

no.			
17332/03	Levința	16/12/2008	16/03/2009
12544/08	Breabin	07/04/2009	07/07/2009
7045/08	Gurgurov	16/06/2009	16/09/2009
53710/09	Pascari	20/12/2011	20/03/2012
17008/07	Eduard Popa	12/02/2013	12/05/2013
3473/06	Tcaci	15/07/2014	15/10/2014
35840/09	Bulgaru	30/09/2014	30/12/2014
7232/07	Ciorap (no. 5)	15/03/2016	15/06/2016
24129/11	O.R. and L.R.	30/10/2018	30/01/2019
13013/11	Cantaragiu	24/03/2020	24/07/2020
25397/09	D.	08/12/2020	08/12/2020
26947/09	Muradu	19/01/2021	19/01/2021

III. INDIVIDUAL MEASURES

Payment of just satisfaction

5. The just satisfaction awarded by the Court has been paid in all cases in full and without delay, including the new cases in which the Court rendered its judgments in 2018-2021, where applicable.

Reopening of national proceedings

Levința case

6. On 8 January 2019 the Court communicated the new application (no. 57574/13) in the *Levința* case, concerning the applicants' re-trial following the Court's judgment of 16 December 2008, which again resulted in their conviction. The applicants complained before the Court that their conviction by the Chisinau Court of Appeal's decision of 7 November 2012 and the Supreme Court of Justice's decision of 2 May 2013 was based on self-incriminating confessions obtained from them by means of torture.

7. By the decision of 8 September 2020, the Court declared that application inadmissible as manifestly ill-founded. The Court noted that, while the Court of Appeal based its decision of convicting the applicants on self-incriminating statements made by them during a period when they were under the control of the officers who had ill-treated them earlier, that mistake was corrected by the Supreme Court of Justice, who eliminated those statements from the mass of evidence. The Court found that the Supreme Court based the applicants' conviction on other evidence, such as statements given by other co-accused. Although the applicants held before the Court that those submissions too had been obtained by means of ill-treatment, the Court found that complaint to be unsubstantiated. Therefore, the Court concluded that the applicants had not been convicted on the basis of evidence obtained as a result of ill-treatment and that the trial as a whole could not be considered to have been unfair.

8. In light of the Court's findings, the Government conclude that no other individual measures are necessary in this case.

Breabin case

9. The Government recall that on 11 January 2017 a criminal investigation was initiated on excess of power involving violence and torture. The two accused police officers challenged that order before the investigating judge, who annulled the prosecutor's order, finding that the new criminal case concerned the same actions and persons as the criminal case started on 7 December 2009, whereas the initiation of new criminal proceedings violated the right to a fair trial and the *non bis in idem* principle. As a result, the prosecution office closed the criminal investigation. That solution was also sustained by the Prosecutor General on 20 August 2018, who found that the circumstances of this case excluded any criminal investigation of the two police officers.

10. In regard to the provision of alternative forms of redress to the applicant, it should be noted that the applicant, who benefited from qualified legal assistance at national level and before the Court, is entitled to request monetary compensations in accordance with Section 4 of the Law no. 137 of 29 July 2016 on the rehabilitation of victims of criminal offences. Since such an action cannot be initiated by the Government, the latter consider that they offered sufficient redress for the applicant, as well as a clear prospect of to obtain any type of compensation he considered necessary.

Gurgurov case

11. Following the Court's judgment, on 17 July 2009 the Chisinau Prosecutor's Office started a criminal investigation into the applicant's complaints regarding alleged acts of torture he had been subjected to while in police custody during October-November 2005.

12. Numerous and complex investigative actions were carried out within that investigation. Three police officers were recognized as suspects. However, given the lack of sufficient evidence for bringing formal charges against them and due to the expiration of the procedural time-limits for maintaining their status as suspects, the prosecutors discontinued the criminal investigation against the three officers.

13. The applicant, who was acknowledged as an injured party, was additionally heard. A forensic psychiatric-psychological examination of the applicant, which is a mandatory requirement provided by the Code of Criminal Procedure, was initially scheduled for 8 August 2018. However, the prosecutors postponed that examination to be conducted on 2 January 2019, since they were informed that the applicant had no longer resided in the Republic of Moldova since 21 June 2018. It should be noted that such examination can only be conducted in the applicant's presence, the latter being informed about that requirement and about his duty to appear before the expert commission. On 10 August 2018 the Prosecutor's Office received a letter from the applicant's legal counsel, informing the prosecutors that the applicant was abroad and had no intention of returning to Moldova, at least in the foreseeable future. The prosecutors conducted all reasonable investigatory measures possible in the applicant's absence and rectified the shortcomings identified by the Court, where possible.

14. The prosecutors are of the opinion that additional procedural actions cannot be performed in the circumstances of this case, given the applicant's absence from the country, his refusal to appear before the experts, his lack of interest in the investigation, and the overall lengthy period of time that passed since the events concerned in the present case (almost 16 years).

15. Given those findings, on 29 September 2018 the criminal investigation was suspended due to the inability to have identified other individuals to be indicted. The applicant and his representative have been informed about that decision. However, they have not availed themselves of their right to challenge it. The prosecutors found no new circumstances that would determine the resumption of the criminal investigation so far.

Pascari case

16. On 18 June 2007 a criminal case was initiated in regard to medium bodily harm caused to the applicant at the premises of the Singerei City Hall on 22 April 2006. The conduct of the criminal investigation was assigned to the Balti Military Prosecutor's Office. On 24 July 2009 the latter initiated a criminal investigation for excess of power by public officials with the use of violence against the applicant. On 29 April 2014, basing of the Court's findings in the present case, the Singerei Prosecutor's Office cancelled the prosecutor orders of 2008 on the discontinuation of the criminal investigation against the four police officers and resumed it. Within that investigation, the prosecutors collected sufficient evidence for sending the case to trial. Before the court of law, the prosecutors changed the charges brought against the four police officers to torture committed by two or more persons.

17. On 3 February 2017 the Singerei Office of the Balti District Court discontinued the criminal proceedings against the four police officers. In deciding so, the court noted that the prosecutor's orders on terminating the criminal investigation against the four police officers, adopted in 2008, had not been cancelled. Moreover, those orders had been subsequently sustained by the investigation judge's ruling of 27 March 2009, which was in force as well. The court also referred to the Constitutional Court's Decision no. 12 of 14 May 2015 on the unconstitutionality of Article 287 § 1 of the Code of Criminal Procedure, finding that the resumption of the criminal proceedings against a person who had previously been released from criminal prosecution, in case of collection of sufficient evidence in this regard, was contrary to the *non bis in idem* principle.

18. Although the Balti Court of Appeal admitted on 19 December 2018 the prosecutor's appeal, quashed the first court's judgment, found the four police officers to be guilty as charged and sanctioned each of them to five years' imprisonment, with the deprivation of the right to hold public positions for five years, by the final decision of 5 November 2019[1], the Supreme Court of Justice quashed the appellate court's decision and sustained the criminal sentence issued by the Singerei Office of the Balti District Court. In doing so, the Supreme Court noted that the *non bis in idem* principle also referred to the repeated criminal prosecution of the same person for the same deed.

[1] http://jurisprudenta.csj.md/search_col_penal.php?id=14628

The Supreme Court also sustained the first court's finding that the time-limit for cancelling the prosecutor's orders on terminating the criminal investigation, provided by Article 287 § 4 of the Code of Criminal Procedure, in force at the relevant time, had been exceeded.

19. In light of the above, no other individual measures are possible to be undertaken in the present case.

Eduard Popa case

20. On 22 February 2010 a criminal investigation into torture committed by two or more persons was initiated in regard to the alleged illegal actions committed by the police officers in respect of the applicant. On 7 September 2016 the conduct of the criminal investigation was assigned to the Prosecutor's Office for Combating Organized Crime and Special Cases.

21. Due to the applicant's repeated refusals to appear before the experts, the complex forensic and psychological expertise, which is a mandatory procedural action provided by Article 143 § 1 pt. 3^1 of the Code of Criminal Procedure, was conducted only on 19 September 2018. According to the expert report of 13 November 2018, the applicant does not suffer from any illnesses that would deprive him from the possibility of being aware of his actions, in spite of him being previously diagnosed with organic personality disorder.

22. Within the criminal investigation, the prosecutors repeatedly and thoroughly heard the applicant, as well as numerous witnesses, including employees of Prison no. 10. The three accused police officers were also heard. As a result of those interviews, the prosecutors found police officer M.S., i.e. the head of the Ialoveni Police Department, to be responsible for the applicant's ill-treatment. Thus, on 19 June 2020 he was indicted in contumacy for the offence provided by Article 309^1 § 3 c) of the Criminal Code, in force at the relevant time. The accused is currently wanted by the authorities, which opened a search file in this regard. On 30 June 2020 the criminal investigation against M.S. was suspended, given that all the possible investigative measures had been performed, whereas the accused evaded the criminal investigation body and his whereabouts remain unknown.

23. It has to be noted that the prosecutors have also examined the version concerning the involvement of other two police officers, R.M. and A.B., in the applicant's ill-treatment. The prosecutors collected information about the phone calls made by the two suspects on 19 November 2005 and corroborated it with the applicant's statements that it was not later than 11:00 when he was hit by the police officers, thus finding that when the criminal offence against the applicant had been committed, the two police officers made and answered phone calls. That information was also corroborated with the statements submitted by the applicant's mother, N.P., who declared that around 9:00 his son escaped through the window, and 30 minutes later two police officers came to her home, one of them being A.B. Moreover, on 18 June 2020 the prosecutors conducted a photo recognition action, as a result of which the applicant did not recognize police officers A.B. and R.M. as being the persons who had ill-treated him on 19 November 2005. Therefore, it was impossible to collect any conclusive and pertinent

evidence that would prove the involvement of the two police officers in the criminal offence under investigation.

24. After the Constitutional Court rendered its Decision no. 31 of 29 November 2018 on the exception of unconstitutionality of certain provisions from the Criminal Code and the Code of Criminal Procedure, ruling that victims of torture should be actively involved in the criminal investigation and should be allowed a certain degree of control in criminal cases concerning ill-treatment and torture, the applicant and his legal counsel have been provided full access to the materials of the case-file.

25. In light of the above-mentioned measures, the Government conclude that no other individual measures are possible to be undertaken at the moment.

Tcaci case

26. Following the Court's judgment in this case, on 16 May 2016 a new investigation was initiated by the Prosecutor's Office for Combating Organized Crime and Special Cases, in regard to the alleged ill-treatment committed against the applicant. The object of that investigation referred to both the police officers' actions when apprehending the applicant and P.B. on 30 March 2005, as well as the applicant's alleged ill-treatment during his detention in the temporary detention facility of the General Police Inspectorate. Within that investigation, the prosecutors assessed the evidence concerning the applicant's apprehension, detention and medical assistance and corroborated them with the available information on the applicant's physical and psychological condition. The purpose of the new investigation was to solve the issues found by the Court in its judgment. The prosecutors conducted the investigation in full compliance with the principles of presumption of innocence and equality of arms. However, the investigation was a rather difficult one, since the full and objective elucidation of all the relevant circumstances of the case implied the investigation of events having happened more than 10 years prior to that. The prosecutors involved experts and specialists in various fields in the investigation, who provided explanations and answers to different issues.

27. In its judgment (§ 67), the Court found that the national authorities failed to consider the statements submitted by one of the applicant's co-detainees, K.P., who confirmed the applicant's allegations that he had been ill-treated by police officers. The prosecutors undertook all the possible measures in order to clarify the credibility of those statements. However, the circumstances established by the prosecutors did not provide solid support to that piece of evidence. In addition to that, K.P., who is an Indian citizen, left the country in 2007, which rendered his re-hearing by the prosecutors and the removal of all the doubts within the new investigation rather impossible.

28. As for the deficiencies related to the (i) celerity of opening an investigation in this case, (ii) the applicant's hearing by the prosecutors after 9 months from the initiation of that inquiry, (iii) the conduct of the forensic examination after one year and four months, (iv) the adoption of five orders refusing the initiation of a criminal investigation (four of them being subsequently quashed by the superior courts), the Prosecutor General's Office noted that they can no longer be remedied, given that more than 10 years passed since the events concerned in this case. The deficiency related to

the applicant's forensic examination in the prosecutor's presence can no longer be remedied, since it is an accomplished fact that cannot be remedied by certain post-factum individual measures.

29. However, within the new investigation, an additional forensic expert examination has been conducted, in order to reveal the manner in which the applicant's body injuries had been caused and their age. The expert report of 22 October 2016, based on the assessment of the applicant's medical documents, found an occipital scar that could have been caused through the action of a blunt hard object or when hit by it, amounting to insignificant bodily harm. Considering the uniform morphologic aspect of that scar, it was impossible for the experts to make a clear link between the circumstances described and the applicant's scar. The report stated that the bone spur mentioned in the medical documents was a pathology of the bone system and it was not possible to appear as a result of a certain trauma.

30. In its judgment the Court also noted that the applicant had not effectively participated at all the stages of the investigation, and that he had not had the possibility of challenging the prosecutor's order of 12 May 2008 before the investigating judge, since no copy of that order had been sent to him. That deficiency can no longer be remedied, since it is an accomplished fact. In any case, within the newly conducted investigation, the prosecutors attempted to redress their omission at least partially, by fully involving the victim in that investigation.

31. It should be noted that during the entire investigation the prosecutors attempted to explain the origin and the age of the applicant's bodily injuries, as well as the manner in which they had been caused. As a result of all the investigating actions conducted, on 30 August 2017 the prosecutors dismissed the criminal case under Article 275 § 3 of the Code of Criminal Procedure, finding that the police officers had acted in compliance with the law during the applicant's apprehension, and thus, their actions did not contain the elements of an offence. As for the other allegations about ill-treatment, they have not been confirmed by sufficient evidence. Therefore, the prosecutor made direct reference to the Court's findings in the present case and described the actions undertaken by the investigation body in order to redress those omissions, as well as their results. That solution was sustained by both the Centru Office of the Chisinau District Court and the Chisinau Court of Appeal.

32. In light of the above-mentioned measures, the Government conclude that the investigation bodies made all the possible efforts in order to remedy the deficiencies found by the Court in its judgment. Therefore, no further individual measures are necessary in this case.

Bulgaru case

33. On 22 October 2015, following the Court's judgment, the Supreme Court of Justice accepted the revision request lodged by the Deputy Prosecutor General and quashed the investigating judge's ruling of 31 July 2009, ordering a fresh hearing of the case. On 26 January 2016 the prosecutors' orders on refusing the initiation of a criminal investigation were quashed. As a result thereof, on 9 March 2016 the Chisinau

Prosecutor's Office started a new criminal investigation for torture committed by two or more persons.

34. Within that investigation, the prosecutors conducted investigative actions in order to establish the circumstances complained of by the applicant. According to the applicant's statements submitted on 12 July 2016 before the prosecutors, he was not sure whether he could identify the police officers responsible for his ill-treatment and could not remember about complaining to the doctors who had examined him about the torture acts he had been subjected to.

35. The criminal case-file includes a visit certificate of 23 January 2009, which proves that the applicant was examined at the Emergency Hospital. The doctors did not find any bodily injuries that could have been caused by multiple beatings, except a cut on his right forearm.

36. The prosecutors attempted to identify and hear the officers having escorted the applicant. However, by the General Police Inspectorate's letter of 15 May 2016, the prosecutors were informed that all the detention registries and documents of 2008-2009 from the Chisinau Temporary Detention Facility had been destroyed ever since 9 July 2012, i.e. after the expiration of the legal term of three years for keeping them.

37. The prosecutor in charge of the investigation of the murder in Prison no. 15 has been also questioned. He declared that he was not aware of any circumstances regarding the alleged violent acts the applicant had been subjected to.

38. The national case-file does not include any other medical documents that can imply certain bodily injuries other than those mentioned above. The other evidence and the statements submitted by the interrogated persons do not lead to the conclusion that the applicant had had other lesions at the relevant time.

39. Given that more than nine years passed since the events concerned, certain pieces of evidence have been destroyed and all the possible actions aimed at collecting evidence and identifying the responsible persons have been undertaken, the prosecutors could not advance within the investigation. Consequently, on 30 September 2016 the criminal investigation was suspended on the ground of impossibility to identify the person to be indicted. The applicant has not challenged that order, although he was entitled to do so. No new circumstances or evidence that would determine the resumption of the investigation have been established so far.

40. In light of the above, the Government conclude that all the possible actions have been undertaken in order to reveal all the relevant circumstances of the case and to identify the responsible persons. Therefore, they are of the opinion that no other individual measures are possible or necessary in this case.

Ciorap (no. 5) case

41. On 8 December 2006 the Chisinau Prosecutor's Office initiated a criminal investigation for excess of power. On 26 March 2007 the conduct of the criminal case was assigned to the Military Prosecution Office, according to its competence. On 17 April 2008 the defendants were discharged and the criminal investigation terminated, because the act complained of did not contain the elements of a crime. The

investigating judge upheld that order and considered the investigation as being complete and objective, and all the relevant aspects elucidated.

42. Following the amendments of the Code of Criminal Procedure from 5 April 2012, in force as of 27 October 2012, the rulings of the investigating judge concerning the complaint related to alleged illegal actions of the criminal investigation bodies or of the bodies conducting special investigative measures are not open to appeal in cassation.

43. As for the possibility of applying Articles 454 and/or 464^1 of the Code of Criminal Procedure, which provide the reopening of national proceedings following a Court's judgment, it should be noted that the events concerned in this case happened in 2006, whereas the Court's judgment was issued on 15 June 2016 and became final on 15 September 2016. Therefore, the procedural time-limits provided by the Code of Criminal Procedure, of 6 months and 1 year, respectively, for requesting the reopening of the national criminal proceedings, have expired.

44. Thus, all the national means of challenging the order on terminating the criminal investigation have been exhausted. Therefore, this solution is final and determines the impossibility of continuing the criminal proceedings. No other individual measures are possible in this case.

O.R. and L.R. case

45. On 2 February 2010 a criminal investigation concerning alleged torture acts committed in regard to the applicants was initiated. The suspicion against police officer A.C. was based only on the applicants' statements, claiming that he had threatened them without using physical violence. On 16 April 2010 the prosecutor decided to discontinue the criminal investigation against A.C., since his actions could not have been classified as torture under Article 309^1 § 3 c) of the Criminal Code, in force at that time, since that criminal offence did not comprise such actions as inhuman or degrading treatment, or the admission of such actions with the express or tacit consent of a public official. Neither could those actions be classified under Article 328 of the Criminal Code, because that offence provided as a mandatory requirement the presence of a material or personal interest, which was not fulfilled in the investigated case. The only solution was for A.C.'s deeds to be classified as excess of power, under Article 174^{28} of the Code of Minor Offences, in force at the relevant time. Taking into consideration the expiration of the limitation period of 3 months, which was applicable when the offence had been committed and when the criminal investigation ended, it was impossible for the criminal investigation body to institute any contravention proceedings against A.C., in order for him to be held liable by the courts of law.

46. In any case, the applicants were entitled to file civil actions against A.C., in order to recover any pecuniary and non-pecuniary damage caused to them, given the establishment of the contravention deed and his non-rehabilitation in this regard.

47. The other two police officers suspected, V.D. and M.T, have been eventually found guilty of ill-treating the applicants, by the Chisinau Court of Appeal's decision of 13 March 2013, which convicted and sanctioned both of them to five years' imprisonment, by conditionally suspending the execution of both sentences for a

probation period of five years. The officers were also prohibited from holding positions in the police for five years and were sentenced to 240 hours' community service. The prosecutor's, the applicants' and the defendants' appeals on points of law against that judgment were dismissed as inadmissible by the Supreme Court of Justice's decision of 11 September 2013.

48. In light of these circumstances, in particular the fact that in previous proceedings final decisions have been adopted in respect of the police officers concerned, no other individual measures are possible to be undertaken in this case.

Cantaragiu case

49. Following the Court's judgment, on 5 August 2020 the Chisinau Prosecutor's Office resumed the criminal investigation concerning the death of the applicant's brother in detention on 3 November 2005, which was started on 29 November 2005 under Article 213 b) of the Criminal Code. On 5 August 2020 another investigation under Article 151 § 4 of the Criminal Code was started, for serious bodily harm committed by two or more persons, which caused the applicant's brother's death while being in the State's custody. On the same day, the two criminal cases were merged.

50. The former co-detainees of the applicant's deceased brother, T.G., B.M., M.S., A.B. and C.N. were heard. They declared that they shared the same cell with the applicant's brother, and that he had felt very bad, he had been complaining about eating certain food, which caused him headaches and abdominal pain. The co-detainees stated that the applicant's brother had an athletic body and participated in international sport competitions. Thus, nobody interacted with him and, in any case, he had been held in that cell for a short time, being taken by an ambulance. The prosecutors attempted to identify the whereabouts of witnesses A.C., M.N., B.S. and G.C., in order to be interviewed, but to no avail.

51. The prosecutors did not manage to hear the applicant and his father in regard to the relevant circumstances of the case, given that they left the country in 2018 and 2017, respectively, and have not returned ever since.

52. In these circumstances, on 30 March 2021 the criminal investigation was suspended, since the prosecutors have not identified the persons to be indicted. On 25 May 2021 the Prosecutor General's Office annulled that order and ordered the resumption of the criminal investigation into the applicant's brother's death, which is currently pending.

53. As for the investigation concerning the applicant's ill-treatment in detention, the prosecutors found that its resumption is not reasonable, since more than 15 years passed since the events concerned, which makes the collection of new evidence impossible. The absence of the applicant and his father hinders even more any possible positive evolution of that investigation. Moreover, it is recalled that the relevant verification file had been destroyed in 2013. Therefore, no other individual measures are possible with regard to the investigation on the applicant's ill-treatment during detention.

D. case

54. It is recalled that the criminal case was started on 22 July 2009 under Article 328 § 2 a) of the Criminal Code, in force at that time. Some 200 members of the Fulger special forces battalion had been questioned, victims and witnesses had been interviewed and numerous video recordings, public and private, had been examined. Despite all these actions, it was impossible to determine specifically which officer had applied physical force to which victim and whether such use of force had been required under the circumstances. On 15 January 2013 the Prosecutor General's Office suspended that investigation, since the prosecutors could not find the persons to be indicted.

55. Following the Court's judgment, the prosecutor's office examined the possibility of reopening the investigation. After a detailed examination of all the materials in the file, it was concluded that the defects in the initial investigation could not be rectified at this stage given their nature (the initial delay in starting the criminal proceedings, their overall length, the failure to sufficiently involve the applicant, the impossibility to identify the roles of the masked special forces officers). Taking into consideration these barriers and the time lapse since the events in 2009, the prosecutor concluded that the reopening of the investigation has no prospects for success and no further individual measures are possible in such circumstances. No new circumstances determining the resumption of the criminal investigation have been established. Neither has the applicant requested the resumption of that investigation following the Court's judgment.

Muradu case

56. It is recalled that the criminal case was started on 21 December 2011 under Article 309^1 § 3 c) of the Criminal Code, in force at that time. The applicant was summoned twice before the prosecutor, but he did not appear as he left the country. The prosecutor interviewed a number of police officers from Centru police station and ordered a medical examination to be conducted based on previous medical reports of 2009. On 29 March 2019 the investigation was suspended, since the prosecutors could not find the persons to be indicted.

57. Following the Court's judgment, the prosecutor's office examined the possibility of reopening the investigation. After a detailed examination of all the materials in the file and taking into consideration the circumstances in the case, the nature of the shortcomings identified by the European Court, the time passed since the events in 2009 and the applicant's absence from the country, the prosecutor concluded that the reopening of the investigation is not opportune because, given the factual barriers in gathering evidence, no prospects for successful investigation exist. No new circumstances determining the resumption of the criminal investigation have been established. Neither has the applicant requested the resumption of that investigation following the Court's judgment.

IV. GENERAL MEASURES

Statistical data

58. The number of notifications concerning alleged torture and ill-treatment received and examined by the prosecutors increased in 2019, however decreased in 2020.

59. In 2019 the prosecution bodies registered a total of 876 complaints, most of them referring to alleged torture and inhuman and degrading treatment (846 complaints). In 2020, on the other hand, a total of 563 complaints were registered, 542 of which concerned allegations on torture and inhuman and degrading treatment.

60. Following an examination of those notifications, in 2019 the prosecution bodies initiated criminal investigations in 86 (or 9,81%) of the cases involving 96 victims or injured parties and 97 officials accused. In 2020, 47 criminal investigations were initiated (in 8,3% of cases), involving 76 victims and injured parties (including 4 minors) and 75 officials accused.

61. In the last two years, from the total number of 199 criminal cases concerning torture and inhuman or degrading treatment under investigation, the prosecutors sent 22 cases for trial. The cases sent for examination by the courts of law concerned 27 defendants, 2 of them being militaries, 11 police officers, 9 security guards, 3 teachers, 1 nurse and 1 public official. All of them have been accused of committing a total of 32 criminal offences involving 37 victims.

62. In 2019 the first instance courts issued 18 sentences concerning torture (Article 166^1 of the Criminal Code) in regard to 30 persons. In 8 of those judgments, the national courts convicted a total of 15 persons (including 3 police officers). Two persons have been sentenced to imprisonment, with the execution of that punishment. Nine persons were sentenced to imprisonment and released on probation (including 3 police officers), and 3 persons were sanctioned with fines. The courts issued 5 acquittal sentences in regard to 8 persons, and ordered the termination of the criminal proceedings in 5 judgments concerning 7 persons. In regard to 3 police officers and 4 other convicts, the courts of law applied the deprivation of the right to hold the positions previously occupied during the commission of the crimes as a mandatory complementary punishment. On 31 December 2019 other 47 cases concerning torture and degrading or inhuman treatment, involving 96 defendants, were pending before the first instance courts.

63. In 2019, under Article 309^1 of the Criminal Code, the first instance courts rendered one conviction sentence in regard to one person, ordering his release on probation, and ended the proceedings in another criminal case involving 6 persons, finding special circumstances excluding or conditioning the criminal liability.

64. Also in 2019, under Article 328 §§ 2 and 3 of the Criminal Code, regulating the abuse or excess of power, the first instance court sentenced one person to imprisonment, with the execution of the punishment, also ordering the deprivation of the right to hold certain positions. Another sentence terminating the criminal proceedings was issued in regard to two persons, whereas three persons were acquitted in two other judgments. On 31 December 2019, eight criminal cases concerning eight defendants were pending before the first instance courts, related to Article 328 §§ 2 and 3 of the Criminal Code.

65. During 2019, under Article 368 of the Criminal Code (acts of violence against a serviceperson), the first instance courts rendered six judgments concerning six militaries, four of which were conviction sentences conditionally suspending the execution thereof in regard to four militaries, one sentence convicting a military to community work and one sentence terminating the criminal proceedings against one military. On 31 December 2019, seven criminal cases under Article 368 of the Criminal Code, involving seven defendants were still pending before the first instance courts.

66. To sum up, in 2019 the first instance courts adopted 30 criminal sentences concerning 49 persons, half of which were conviction sentences. It should be noted that all the criminal sentences concerning the termination of the criminal proceedings or the defendants' acquittal have been challenged by the prosecutors before the higher courts. Several such appeals have been admitted by the appellate courts. For example, on 12 December 2019 the appellate court accepted the prosecutor's appeal against the first-court's judgment on the termination of the criminal proceedings against the defendant on the ground that his deeds had constituted a minor offence. The appellate court found the defendant to be guilty of abuse of power and sanctioned him to two years' imprisonment, with the deprivation of the right to hold public positions for one year. The defendant was released on probation for a period of two years.

67. By another decision of the appellate court, following the examination of the prosecutor's appeals, three defendants have been convicted under Article 328 § 2 letters (a) and (c) of the Criminal Code and sanctioned to 3 years' imprisonment each, with the deprivation of the right to hold certain positions for 3 years. In doing so, the appellate court cancelled the defendants' conviction by the first instance court under Article 166^1 § 2 letters b), c) and e) of the Criminal Code, as well as the suspended criminal punishment of 5 years' imprisonment and 5 years' deprivation of the right to hold certain positions.

68. As for 2020, under Article 166^1 of the Criminal Code, the first instance courts issued 12 judgments concerning 17 persons, eight of which were conviction sentences involving 10 defendants. In those judgments, the first courts sanctioned two persons to imprisonment, one person was convicted to imprisonment and released on probation, and seven persons were sanctioned with fines (including one police officer, who was sanctioned with a fine of 1150 conventional units). Seven other persons were acquitted. On 31 December 2020 there were other 50 cases under Article 166^1 of the Criminal Code pending before the first instance courts, involving 89 persons.

69. In 2020 the first instance court decided to terminate the criminal proceedings in regard to one person accused under Article 309^1 of the Criminal Code. Another conviction sentence was issued under Article 328 §§ 2 and 3 of the Criminal Code, the defendant being released on probation. The criminal proceedings were terminated in respect of five persons, whereas two persons were acquitted by the first instance courts. On 31 December 2020 there were 13 criminal cases under Article 328 §§ 2 and 3 of the Criminal Code waiting to be examined by the first instance courts, involving 18 defendants.

70. In 2020, under Article 368 of the Criminal Code, the courts of law issued six conviction sentences in regard to six defendants, five of whom were released on

probation, and convicted one person to community work. On 31 December 2020 there were eight criminal cases concerning eight defendants accused under Article 368 of the Criminal Code pending before the first instance courts.

71. To sum up, in 2020 the national courts of first instance issued 15 conviction sentences from the total number of 25 judgments related to alleged actions of ill-treatment.

Legislative, institutional and practical changes regarding prohibition of ill-treatment and effectiveness of investigations

72. The national authorities continuously undertake measures promoting the principle of "Zero tolerance to torture". The actions and policies implemented by the national authorities in the last years, and their general activity in the field of combating the phenomenon of torture and ill-treatment continue to have positive results.

73. In the first semester of 2019 the national authorities came up with a draft of law proposing the audio and video recording of the hearing of suspects, defendants, injured parties, victims and witnesses during the entire criminal proceedings. The implementation of that draft would simplify the submission of evidence before the courts of law and would determine the effective examination of appeals against the investigation bodies' acts and actions, as well as the quick and objective examination of allegations of ill-treatment or coercion to submit certain statements. The video and audio records would be attached to the electronic case-file, similar to the written statements.

74. On 31 August 2020 the General Police Inspectorate adopted the mandatory minimum requirements concerning the arrangement in the territorial units of the Police of special rooms for hearings, for conducting identity parades, for confidential meetings between suspects and lawyers, and waiting zones.

75. By Order no. 380 of 21 October 2019, the General Police Inspectorate adopted the Instructions concerning the organization and functioning of temporary detention facilities subordinated to the General Police Inspectorate, as well as the measures necessary for their safety.

76. By another Order of 21 June 2019, the General Police Inspectorate adopted the Instructions of the detention and escort services of the Police during the escort and transportation of persons held in police custody. It represents an exhaustive systematization of the requirements that must be fulfilled in order to ensure the safety of detained persons when being escorted by the Police.

77. In the context of implementing the Action Plan on reducing ill-treatment, abuse and discrimination towards individuals held in Police custody for 2017-2020, on 27 April 2020 the General Police Inspectorate issued Order no. 129 on the Standard Operating Procedures concerning apprehension, escort, transportation and placement of apprehended persons in the temporary detention facility of the Police. These procedures establish the activities that must be performed by the police in order to ensure the protection of human rights and provide all the chronological phases of the procedural actions performed by the police ever since the moment a person is stopped,

taken to the police station, inquired and released or further apprehended, depending on the outcome of the investigation.

78. The Law on Free Legal Aid no. 198 of 26 July 2007 has also been amended, so as to include the possibility for victims of torture, inhuman and degrading treatment to benefit from free legal aid, irrespective of their income.

79. The national authorities are in the process of assessing the need to adopt instructions on the correct implementation of the Regulation on the procedure of identification, record and report of cases on alleged torture, inhuman and degrading treatment, adopted on 31 December 2013, in force as of 7 July 2014.

80. The national authorities are also currently drafting the programme on the implementation of the national mechanism of referral for the protection and assistance of victims of criminal offences for the period 2020-2030.

81. Representatives of the prosecution bodies actively participated at the round table organized by the Rehabilitation Centre for Victims of Torture "Memoria" on 26 June 2019 on the "Implementation of the United Nations Convention against Torture and the Optional Protocol thereto in the Republic of Moldova". That event aimed at updating the level of implementation of the national and international commitments in the field of combating and preventing ill-treatment and of rehabilitating the victims of such offences.

82. In 2020 a Study on the General Prosecutor's Office's capacities of applying protection mechanisms in regard to victims and witnesses, including children, was adopted. Its purpose is to improve the quality of justice in a human rights compliant manner, through the adoption and implementation of instructions, public policies and internal regulations ensuring the protection of victims' and witnesses' rights.

83. In order to promote a message of no tolerance to torture and ill-treatment, during 25-30 June 2020 the National Police and its subordinated structures involved themselves in the campaign "I do not apply 166[1] – I respect human dignity", organized by the Ombudsman Office in partnership with the General Police Inspectorate, the National Administration of Penitentiaries, the Ministry of Health, Labour and Social Protection, the National Social Assistance Agency, on the occasion of the International Day in Support of Victims of Torture. In this regard, all the subordinated units of the police promoted that message online, on social media[2], in order to promote their support to victims of torture and the authorities' intolerance towards such deeds. Moreover, informative panels sharing the message "zero tolerance to torture" were displayed near territorial and specialized prosecution offices, which proved to have a positive social impact.

[2] A few of such examples can be found on the following pages:
https://www.facebook.com/permalink.php?story_fbid=147439486947067&id=108174594206890
https://www.facebook.com/107493740941527/posts/147469896943911/
https://www.facebook.com/482726801911817/posts/1424614107723077/
https://www.facebook.com/1891577200895115/posts/3470361019683384/?sfnsn=mo
https://m.facebook.com/story.php?story_fbid=1443916595800651&id=502239336635053
https://www.facebook.com/ip.taraclia/posts/942088242899447

Reporting cases on alleged torture, inhuman and degrading treatment

84. In order to successfully combat the phenomenon of ill-treatment, the Prosecutor General's Order of 25 May 2020 instituted a hotline on cases of torture and inhuman or degrading treatment. It includes a mechanism of reception, by the Prosecutor General's Office, the specialized and the territorial prosecution offices, of notifications and information about cases on ill-treatment by mobile and fixed telephony, as well as by e-mail. Therefore, the national authorities introduced a direct method of communication with the prosecutors responsible of investigating ill-treatment cases.

85. In reply to the communication submitted on 11 November 2020 by the Promo-Lex Association in this group of cases, the Government note that the mechanism of reporting cases of torture, inhuman and degrading treatment by persons in detention, provided for by Article 262 § 4^1 of the Code of Criminal Procedure, is constantly brought to the knowledge of the employees from the penitentiary field, who report all the possible cases to territorial prosecution offices. Moreover, in the last years, the Prosecutor General's Office has not been notified about possible dangers in regard to the medical staff in prisons or in other detention facilities that would result from their reporting of cases about ill-treatment to the competent authorities.

The involvement of victims of torture in the criminal proceedings

86. By the Decision no. 31 of 29 November 2018 on the exception of unconstitutionality of certain provisions of the Criminal Code and of the Code of Criminal Procedure[3], in the part related to the access of the injured party and its representative to the materials of the criminal investigation, the Constitutional Court ruled, as a general rule, that the victims of torture and their representatives shall be awarded access to all the materials of the case file during the entire criminal investigation. As an exception, such access can be restricted by the prosecutor, based on a reasoned order, when that restriction is applied for a reasonable period of time, when it refers to certain procedural acts only and when the full access to the materials of the case-file risks to hinder the unfolding of that investigation. As a result of that decision, all the victims of torture and ill-treatment were offered full access to the materials of the investigation, being allowed to challenge or request the conduct of certain investigative measures.

Measures concerning medical examination while in police custody

87. On 15 November 2019 the General Police Inspectorate adopted Standard Operational Procedures on ensuring medical assistance to persons temporarily held in detention. These procedures describe the modality and conditions of providing medical assistance to persons apprehended and held in the temporary detention facilities of the Police, in order to ensure the protection of their fundamental rights, the organization and compliance with the conditions compatible with the respect for human dignity of persons held in Police custody, so that the manner and method of executing the preventive measure do not subject them to stress or difficulties that exceed the

[3] https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=679&l=ro#top

unavoidable level of suffering inherent to detention, and medical assistance is adequately provided, in accordance with each person's individual health needs and in conditions of full confidentiality.

88. In this regard, 14 temporary detention facilities have been renovated and modernized in accordance with international standards in the field of protection of human rights and fundamental freedoms of persons held in custody. Each of the 14 renovated facilities has a medical office equipped with all the necessary conditions ensuring confidentiality and intimacy during medical examinations.

Monetary compensations for violations of Article 3 of the Convention

89. The Government attach to this Action Report several examples, in Romanian, of court decisions adopted in the last two years by the national courts, awarding compensations for non-pecuniary damage in cases of ill-treatment.

90. For example, by the decision of 4 December 2019, the Chisinau Court of Appeal awarded a victim of ill-treatment a total amount of MDL 80000 for non-pecuniary damage, after finding a violation of Article 3 of the Convention in his regard. By another judgment of 25 June 2019, after having convicted the defendants as charged under Article 166^1 of the Criminal Code, the Anenii Noi District Court awarded the victim MDL 50000 for non-pecuniary damage. Similarly, by the Chisinau Court of Appeal's decision of 20 March 2019, the victim was awarded a total amount of MDL 45000 for non-pecuniary damage. By the decision of 23 October 2018, the Chisinau Court of Appeal awarded another victim of ill-treatment MDL 60000 for non-pecuniary damage, after finding the defendants guilty as charged for having ill-treated the victim.

91. The Government find these amounts to be compliant with both the Court's case-law on Article 3 of the Convention and with the Supreme Court of Justice's Recommendation on awarding adequate monetary compensations for violations of Article 3 of the Convention.

Training of relevant professionals

92. In 2019 the National Institute of Justice trained 125 specialists in the field of prohibition of ill-treatment and torture, including 27 judges and 35 prosecutors. In 2019 a new study curriculum for future judges and prosecutors was issued, which strengthens the quality of studies by means of unifying the forensic investigation tactics and methods, the implementation of simulated trials, including the examination of cases related to ill-treatment and torture.

93. In order to ensure the practical implementation of the recommendations of improving the mechanisms of investigating complaints about torture and inhuman or degrading treatment in accordance with the international standards, on 23-24 January 2020, within the Council of Europe Programme "Promoting a human rights compliant criminal justice system in the Republic of Moldova", a workshop concerning the apprehension, arrest, medical examination and detention of persons with mental health

problems was organized[4]. The workshop brought together around 40 participants representing the relevant national authorities, such as criminal investigation officers, prosecutors, judges, psychiatrists, forensic doctors, penitentiary and probation officers, and representatives of mental health facilities.

94. On 18 February and 7 September 2020, respectively, the National Institute of Justice organized two training courses on topic "International standards in the field of combating torture, inhuman and degrading treatment", attended by 27 prosecutors of 5 judges. The participants analysed the notions of torture, inhuman and degrading treatment, the peculiarities of prevention of torture and ill-treatment in accordance with Article 3 of the Convention, the revision of the legal instruments ensuring the prompt and complete investigation of such cases.

95. In March 2020 the prosecutors of the Anti-torture Section of the Prosecutor General's Office held a lecture concerning "The legislation in the field of prohibition of torture, inhuman and degrading treatment" within the International Police Cooperation Centre of the General Police Inspectorate.

96. In order to improve the police officers' professional skills, in 2019 the "Stefan cel Mare" Police Academy of the Ministry of Interior organized 23 trainings on topics related to criminal investigation activity and the protection of human rights, which were attended by 530 police officers. Inservice training activities related to tracking, localizing and apprehending persons suspected of having committed illegal acts were also organized for the Police in the relevant period.

97. In order to strengthen the capacities of intervention by the Police and to optimize the public services provided when protecting and escorting the persons held in police custody, as well as to eliminate any forms of ill-treatment, abuse and non-discrimination by the police, trainings related to non-discrimination and prevention of violence among detainees have been organized for the police.

98. More than 80 police officers from the detention and escort services have been trained during four activities organized in 2020, on topics related to promoting an activity based on human rights, prevention of torture and inhuman and degrading treatment.

99. On 13 November 2020, medical staff from the detention and escort services of the police were trained on the provision of medical assistance to persons held in police custody, in the spirit of protecting the fundamental human rights.

Publication and dissemination

100.The four judgments recently issued by the Court in this group of cases were translated, published on the Government Agent's official website[5] and disseminated to the relevant authorities (the Ministry of Interior, the Prosecutor General's Office, the

[4] https://www.coe.int/en/web/chisinau/-/workshop-on-apprehension-arrest-medical-examination-and-detention-of-persons-with-mental-health-problems

[5] http://agent.gov.md/wp-content/uploads/2019/02/O.R.-AND-L.R.-v.-MDA-ROM.pdf
http://agent.gov.md/wp-content/uploads/2020/06/CANTARAGIU-v.-MDA-ROM.pdf
http://agent.gov.md/wp-content/uploads/2021/03/D.-v.-MDA-ROM.pdf
http://agent.gov.md/wp-content/uploads/2021/05/Muradu-v.-MDA-ROM.pdf

Superior Council of Magistracy, the National Institute of Justice). The Supreme Court of Justice also published summaries thereof on its website, thus making the judgments even more accessible to judges and other specialists concerned.

Other general measures

101. As for the general measures concerning the ill-treatment of and injuries caused to the applicants in the context of police actions taken in response to violent demonstrations following the parliamentary elections in 2009, referred to in the *O.R. and L.R., D.* and *Muradu* cases, the Government note that they have previously reported all the general measures adopted in this regard at national level in the context of the *Taraburca* group of cases (no. 18919/10). By the Resolution adopted on 6 December 2018, the Committee of Ministers decided to end the supervision of that group of cases, finding that the Government had fully executed their obligations under the Convention in that regard. Therefore, the Government consider that no other general measures are necessary in the context of these cases.

CONCLUSION

102. As concerns the *Levința, Breabin, Gurgurov, Pascari, Eduard Popa, Tcaci, Bulgaru, Ciorap (no. 5), O.R. and L.R., D., Muradu* cases, the Government consider that all the individual measures were fulfilled in order to redress, as far as possible, the violations found by the Court in its judgments. Therefore, they invite the Committee of Ministers to end the supervision thereof.

103. With respect to the *Cantaragiu* case, the Government commit to keep the Committee of Ministers informed on the evolution and the outcome of the reopened, and currently pending, criminal proceedings.

104. As for the general measures, the Government conclude that the prevention and combating of torture and ill-treatment continue to be a priority for the Republic of Moldova. These are key points in the national policies and in all the international commitments, based on which continuous efforts are made in order to discourage such deeds. The Government note the positive impact of the measures adopted in the past years and their progress in improving the national legislation, the public policies, the national practices and case-law. The Government invite the Committee of Ministers to take note of the progress and the outcome of the measures undertaken by the national authorities in order to stop ill-treatment.

Oleg ROTARI
Government Agent