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Communication from the Republic of Moldova concerning the case of CORSACOV v. Republic of Moldova (Application No. 18944/02)

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Communication de la République de Moldova concernant l'affaire CORSACOV c. République de Moldova (requête n° 18944/02) (**anglais uniquement**)

DGI

03 JUL. 2017

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



MINISTRY OF JUSTICE OF THE REPUBLIC OF MOLDOVA

AGENT FOR THE GOVERNMENT

ACTION REPORT

on the execution of the European Court of Human Rights judgments
delivered in **Corsacov** group of cases (no. 18944/02)

Considering the matters analysed by the Committee of Ministers of the Council of Europe in the decision adopted at the 1273rd meeting from 6-8 December 2016 as a result of examining the action report submitted on 30 September 2016, the Government of the Republic of Moldova (hereafter “the Government”) hereby submit updated information regarding the execution of the European Court of Human Rights judgments delivered in *Corsacov* group of cases.

I. DESCRIPTION OF CASES

1. This group of cases concerns mainly substantial 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 and torture applied on applicants when being in police custody, 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 remedy at national level.

2. Cases *Ghimp and others* and *Eduard Popa* also concern substantial and procedural violations of Article 2 of the Convention, as a result of infringing the right to life while in police custody and ineffective investigation in this respect.

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

4. The European Court of Human Rights also found violations of Article 3 of the Convention, in regard with the improper conditions of detention, including lack of proper medical assistance while in police custody (*Lipencov*, *Valeriu și Nicolae Roșca*, *Pascari*, *Struc*, *Ipati*, *Morgoci* cases); violation of Article 5 § 1 of the Convention, as a consequence of unlawful detention following the applicant’s detention for a period longer than authorised by law (*Lipencov* case) and on account of arrest and detention several days before the official beginning of police custody (*Gavriliță* case); violation of Article 8 of the Convention, following a home search that was not in accordance with the law (*Bișir și Tuluș* case) and censorship of correspondence (*Ipati* case).

II. LIST OF CASES

Application	Case	Judgment of	Final on
18944/02	Corsacov	04/04/2006	04/07/2006
6888/03	Pruneanu	16/01/2007	23/05/2007
12544/08	Breabin	07/04/2009	07/07/2009
7045/08	Gurgurov	16/06/2009	16/09/2009
28653/05	Buzilov	23/06/2009	23/09/2009
41704/02	Roșca Valeriu și Roșca Nicolae	20/10/2009	20/01/2010
33134/03	Pădureț	05/01/2010	05/04/2010
29772/05	Popa	21/09/2010	21/12/2010
38281/08	Matasaru și Savițchi	02/11/2010	02/02/2011
53710/09	Pascari	20/12/2011	20/03/2011
27763/05	Lipencov	25/01/2011	25/04/2011
42973/05	Bișir și Tuluș	17/05/2011	17/08/2011
23750/07	Ipate	21/06/2011	21/09/2011
52643/07	Buzilo	21/02/2012	21/05/2012
32520/09	Ghimp și alții	30/10/2012	03/01/2013
40131/09	Struc	04/12/2012	04/03/2013
39441/09	Gasarov	18/12/2012	18/03/2013
55408/07	Ipate	05/02/2013	05/05/2013
17008/07	Eduard Popa	12/02/2013	12/05/2013
42434/06	Feodorov	29/10/2013	29/01/2014
22741/06	Gavriliță	22/04/2014	22/07/2014
3473/06	Tcaci	15/07/2014	15/10/2014
35840/09	Bulgaru	30/09/2014	30/12/2014
13421/06	Morgoci	12/01/2016	12/04/2016
7232/07	Ciorap nr. 5	15/03/2016	15/06/2016
17332/03	Levința	16/12/2008	16/03/2009

III. INDIVIDUAL MEASURES

5. The updated information regarding individual measures corresponds to the requests addressed to the national authorities, included in the Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights [H/Exec\(2016\)8](#) from 28 October 2016.

Eduard Popa case

6. The criminal investigation is ongoing in this case. On 28 October 2016 a complex forensic and psychological expertise was appointed. As the victim did not show up to the psychological examination, the expertise was impossible to be conducted. On 17 February 2017 all the materials were sent to the Combating Organized Crime and Special Cases Prosecution Office.

7. All the measures are currently being undertaken in order to identify the police workers who were implied in apprehending the applicant. Two of them were given the status of suspect and the third one is sought after, as he tries to escape from executing the criminal punishment after he has previously been convicted to six years of imprisonment in another criminal case.

Gurgurov case

8. The criminal investigation is ongoing in this case. A new psychiatric psychological expertise of the applicant was appointed, which requires his evaluation in inpatient conditions. However, the applicant refuses to show up to the prosecutors and to be hospitalized for the necessary special evaluation to be performed.

Bişir şi Tuluş case

9. The criminal investigation in this case is pending. The criminal case is under the proceedings of the Chişinău Prosecution Office.

Tcaci case

10. On 19 May 2015 the Supreme Court of Justice quashed the ruling of the investigative judge on maintaining the prosecutor's order of refusing the initiation of a criminal investigation and ordered a fresh hearing of the case. As a result, according to the Rîşcani Court ruling of 18 January 2016, the order of refusing the initiation of the criminal investigation was cancelled. On 16 May 2016 the Combating Organized Crime and Special Cases Prosecution Office initiated a new criminal case. By now the victims, their relatives, several police officers were heard and the relevant expertise were appointed.

Bulgaru case

11. The Supreme Court of Justice decided on quashing the investigative judge ruling and ordered a new hearing of the case. As a result, the order of refusing the initiation of criminal investigation was cancelled. On 9 March 2016 the criminal investigation on the applicant's ill-treatment was resumed, based on Article 166¹ line (4) letter c) Criminal code (torture committed by several persons).

12. On 10 August 2016 the case was transmitted to the Combating Organized Crime and Special Cases Prosecution Office, according to its competence. Because more than seven years passed since the events occurred, all the possibilities of managing the evidence were exhausted. Thus, on 30 September 2016 the criminal investigation was suspended on ground of impossibility to identify the person which can be indicted.

Ciorap no. 5 case

13. On 8 December 2006 Chişinău Prosecution Office initiated criminal investigation on excess of power. On 17 April 2008 the defendants were discharged and the criminal investigation terminated because the act did not contain the elements of the crime. The investigative judge maintained this order and considered the investigation as being complete and objective, elucidating all the aspects. All the national means of challenging the order on terminating the criminal investigation have been exhausted. Thus, this decision remained into force, which conditions the impossibility of continuing the proceedings.

Breabin case

14. On 20 April 2016 the Supreme Court of Justice decided on the inadmissibility of the cassation for annulment lodged by the Deputy General Prosecutor.

15. On 20 October 2016 the Torture Combating Department within the Criminal Investigation and Forensics Department of the General Prosecution Office decided to return the criminal case to Chişinău Prosecution Office, in order to continue the investigations on this case.

16. On 11 January 2017 Chişinău Prosecution Office opened a new criminal file on excess of power, involving violence and torture, under Article 328 line (2) letters a) and c) Criminal Code. Thus, the victim and the witnesses have been heard, for the circumstances of the applicant's ill-treatment to be established. The police officers T.N. and D.S. were summoned in order to be acknowledged as suspects.

Pruneanu case

17. Regarding the incident from 10-11 July 2002, the forensic expertise established that the wounds found on the applicant's body could have been caused as a result of a fall from the third floor height. According to the eyewitnesses' declarations, the applicant jumped from the third floor of a block of flats where he was captured in a flagrant crime. These findings led to the adoption of an order of refusing the initiation of criminal investigation, solution which was subsequently checked at higher-level. Thus, the General Prosecution Office found no grounds for intervention.

18. On 4 December 2007, following the European Court of Human Rights judgment on this case, the Supreme Court of Justice decided to reduce the previous criminal punishment of the applicant, from 4 years of imprisonment to 2 years and 4 months of imprisonment. Following this, the applicant was immediately released from the courtroom.

Struc case

19. On 23 November 2016 Bălţi Court of Appeal maintained the first court judgment, according to which the criminal proceedings were terminated on ground of expiration of limitation period and decided on collecting damages in the applicant's benefit.

20. On 7 June 2017 the Supreme Court of Justice decided on the inadmissibility of the ordinary cassation lodged by the applicant's lawyer, as being ill-founded. The motivated ruling follows to be pronounced on 7 July 2017.

Ghimp and others case

21. On 29 March 2016 the Supreme Court of Justice decided on the inadmissibility of the ordinary cassations lodged by the convicted police officers' lawyers.

22. On 21 March 2017 the Supreme Court of Justice decided on the inadmissibility of the cassation for annulment lodged by the convicted against the decision of 29 March 2016, as being ill-founded.

23. Thus, the decision of Chişinău Court of Appeal became final. It convicts the police officers to six years of imprisonment, with deprivation of right to occupy certain functions or to perform a certain activity in the Ministry of Internal Affairs bodies for two years. The police officers are sought after, in order to execute these punishments.

Pascari case

24. On 3 February 2017 Sîngerei Court decided on terminating the criminal proceedings initiated in regard to the four police officers, arguing with the existence of certain circumstances that eliminate or condition the initiation of criminal investigation and their subjecting to criminal liability. This decision was challenged by Sîngerei Prosecution Office. On 31 May 2017 Bălţi Court of Appeal decided to interrupt the court hearing, in order for the victim and defendants to be heard. The next hearing was appointed for 2 November 2017.

Levința case

25. As requested by the Committee in its decision adopted at 1273rd meeting (December 2016) (DH), the authorities submit herein the copies of the court decisions adopted in the *Levința* case following the reopening of criminal proceedings against the applicants (see the Annex, in original language not translated). Thus, following the reopening of the proceedings the criminal case was re-examined by the Court of Appeal. In its decision of 7 November 2012 the Court of Appeal noted that the self-incriminating statements made by the applicants should be excluded from the list of evidence, with the exception of statements made by Pavel Levința on 16 November 2000 which were given by him in the presence of his lawyer. Thus, the Court of Appeal examined other evidence gathered during the investigation and found the applicants guilty in commission of several instances of murder, attempt to murder and membership in a criminal organisation. At the same time, it terminated the criminal proceedings against the applicants as concerns illegal possession of weapons and illegal confinement on the ground of expiration of the statute of limitations. The Court of Appeal noted at the same time that given that the applicants' rights have been violated, according to the Code of Criminal Procedure this can serve as a reason for the application of a lighter sentence. As a result, the court sentenced Vitalie Levința to 16 years of imprisonment and Pavel Levința to 15 years of imprisonment.

26. This decision was appealed to the Supreme Court by the prosecutor and the defence. On 2 May 2013, the Supreme Court rejected the prosecutor's appeal, admitted in part the appeal of the defence and quashed in part the decision of the Court of Appeal. In particular, the Supreme Court found that self-incriminating statements of 16 November 2000 were made by the applicant Pavel Levința under duress and thus should be also excluded from the list of evidence. However, the Supreme Court found further that this evidence was not a decisive one and thus its exclusion does not change the overall conclusion of the Court of Appeal as concerns the guilt of the applicants. It noted that the other evidence examined by the court are pertinent, conclusive, veridical and are consonant with each other. Finally, the Supreme Court maintained the conviction of the applicants but further reduced their sentences by 2 months for each given the violations of their rights. Thus, Vitalie Levința was sentenced to 15 years and 10 months of imprisonment and Pavel Levința to 14 years and 10 months of imprisonment.

IV. GENERAL MEASURES

Institutional aspects

27. On 4 May 2010 a new specialized subdivision was created within General Prosecution Office – Torture Combating Department. Its objective was to develop the national capacities of efficiently investigating complaints related to ill-treatments in police custody, through organizing and verifying the compliance with legal provisions of prosecutors who perform controls prior criminal investigation and criminal investigations on ill-treatment cases.

28. Following the General Prosecutor Order no. 90/8 of 2 November 2010, prosecutors responsible for investigating ill-treatment and torture cases were appointed in all the territorial and specialized prosecution offices. They must not have been involved in activities that include cooperation with Ministry of Internal Affairs, Penitentiary Institutions Department, Security and Intelligence Service.

29. On 1 August 2016, once the new Law no. 3 of 25 February 2016 on Prosecution Service entered into force, a special unit was created - Combating Organized Crime and Special Cases Prosecution Office. Its competence includes conducting criminal investigation in cases directly related to torture. Anti-torture

Office was created within this special unit, which comprises five properly trained prosecutors, who are specialized in investigating torture-related cases.

30. Conduct of criminal investigations in cases related to inhuman or degrading treatment continues to be in the competence of territorial prosecutions offices, where prosecutors responsible for such type of investigations continue to be appointed.

31. According to the new structure of the General Prosecution Office, Torture Combating Department is a special subdivision, included in the Criminal Investigation and Forensics Department. Its activity includes unitary implementation of policies related to registering and investigating cases of torture, inhuman and degrading treatment and acts of violence committed on servicepersons.

32. The prosecutors of this Department provide professional assistance to prosecutors in territorial and specialized prosecution offices when investigating complaints of torture, inhuman and degrading treatment. They also elaborate methodological instructions on research standards and are involved in training judges, prosecutors, employees of institutions empowered to use physical force. Moreover, they conduct criminal investigations in resounding or extremely complex cases that are distributed by the General Prosecutor or his deputies. In every monitored case, the Section's prosecutors verify if the investigation respects the efficiency standards, intervene with methodical help and coordinate the adoption of decisions.

33. In order to ensure the national strict monitoring of investigations conducted in cases that refer to ill-treatment, territorial and specialized prosecution offices shall inform the Torture Combating Department within 24 hours from the moment a complaint related to torture or ill-treatment that involve police officers or other public servants was registered. They have to make up a special report in this regard.

34. According to the General Prosecutor Order no. 5/08 of 28 January 2014, the head prosecutors of territorial and specialized prosecution offices were asked to complete a Report on the activity of the prosecution office related to investigation of torture, inhuman and degrading treatment cases every month, which is sent to the Torture Combating Department.

35. In every territorial and specialized prosecution office a phone number for receiving information and complaints on commission of torture, inhuman or degrading treatment or punishments was created.

Legislative amendments

36. Certain amendments were included in the Execution Code. They establish that the apprehended person has to immediately pass a medical examination when entering and leaving the detention place, as well as at his request, including by his own means, during the whole period of his detention. The medical examination shall take place in conditions of confidentiality.

37. Methodological recommendations on efficient investigation of torture, inhuman or degrading treatment were elaborated and adopted by a General Prosecutor Order. They include methodical instructions related both to conduct of criminal investigation and judicial inquiry in such type of cases.

38. Moreover, a Regulation on the procedure of identification, registration and report of alleged cases of torture, inhuman or degrading treatment was adopted. It improves the existent mechanism in this area, by including the necessity of a quick reaction of prosecutors to such deeds.

39. Methodological recommendations were adopted regarding the efficient investigation of torture, inhuman and degrading treatment that imply persons with psycho-social and intellectual disabilities as well. They consolidate the national capacities of investigating cases of ill-treatment committed in psychiatric institutions.

Statistics

40. Regarding the complaints of torture and ill-treatment, in 2016 the Prosecution bodies registered 622 complaints, with 11 less than in 2015. It is the smallest number in the last seven years. This diminution is due to the decrease of the number of cases that imply coercion to testify and violent acts committed in regard of servicepersons. The number of complains referring to inhuman and degrading treatment and torture raised with 8 and, respectively, 11, compared to 2015. These numbers can be explained by the increase of number of cases in which the prosecutors acted *ex officio*, which means with 31 more than in 2015.

41. As a result of examining the complaints, criminal investigations were initiated in 107 cases, meaning 17.2% of the total amount of cases. Although the numbers of complaints decreased, the percentage of the cases in which criminal investigation was started remains relatively stable (17.85% in 2015, 17.34% in 2014). These numbers prove that the national authorities initiated criminal investigations every time a reasonable doubt that a crime has been committed existed, which corresponds to the European Court's findings in its judgments *Corsacov v. the Republic of Moldova* (§§ 68-69) and *Levința v. the Republic of Moldova* (§§ 81, 83).

42. At the same time, in 2016 no cases in which classic and extremely harsh methods of torture by officials (such as *falaka*, Palestinian hanging, usage of electric shock, sexual abuse) were reported. There were no records of complaints in which ill-treatment led to serious bodily harm either. One case registered in 2016 had as consequence the death of the person, but it ended with a decision of refusing the initiation of criminal investigation, on the ground that the death was caused by an illness.

43. At judicial stage, the following table shows the numbers and types of sentences issued by the domestic first courts in cases related to ill-treatment committed by police workers as well as other categories of persons in 2016. All the acquittal sentences were challenged with appeal by public prosecutors.

Article from Criminal Code	Total sentences / persons	Conviction sentences / persons			Termination sentences / persons	Acquittal sentences / persons
		real punishment	suspension of executing the punishment	fine		
Torture (art. 166 ¹)	16 25	 	1 1	5 7	5 9	5 8
Torture (art. 309 ¹)	5 11	1 2	1 4	 	1 1	2 4
Excess of power or excess of official authority (art. 328 (2), (3))	3 4	 	1 1	 	 	2 3

Acts of violence against a serviceperson (art. 368)	11 11	1 1	9 9		1 1	
TOTAL	35 51	2 3	12 15	5 7	7 11	9 15

44. At the same time, in the last years, there has been a numerical decrease of the requests addressed to the Torture Combating Department by the Agent of the Government. Eight request for information were addressed in 2016, in comparison to 2013, 2012, 2011, when the Agent of the Government sent 14, 13 and, respectively, 9 requests for information. All the letters addressed in 2016 referred only to cases monitored by the Committee of Ministers and did not refer to new cases communicated to the Government by the European Court.

45. The number of admitted petitions also reduced. From the total amount of 96 petitions examined directly by the prosecutors of the Torture Combating Department in 2016, eight of them were founded, which amounts to 8.33% from the total number of examined petitions. This is the smallest percentage of admitted petitions in the last six years (20% in 2015, 16.1% in 2016 and 17% in 2013).

Professional training

46. Professional training of judges, prosecutors, police officers, employees from the penitentiary system continues to be a priority for the national authorities, in order to eradicate the cases of ill-treatments of detainees.

47. Thus, in 2016 the prosecutors of Torture Combating Department attended 33 conferences and round tables, including participation of international experts.

48. On 14-15 April 2016 the National Institute of Justice organized seminars of training prosecutors and judges in the field of practical application of the standards that arise from Article 3 of the European Convention on Human Rights.

49. On 26 April 2016 a round table on topic “National framework and European standards on documenting and reporting signs of ill-treatment” was organized. Its main objective was to promote and highlight the importance of international standards on documenting and reporting allegations and signs of ill-treatment.

50. On 21-22 November 2016 judges and prosecutors were trained in a seminary on topic “Standards of effective investigation of torture, inhuman and degrading treatment”. It contributed to rising the quality of the investigations that are conducted in these cases, exclusion of impunity, unifying the practice of examining and judging such cases, promoting international standards and positive practices in this area, consolidating the concept of zero tolerance towards ill-treatments applied by public workers, establishing the necessary measures for remedying the situation in this domain.

51. On 28 November 2016 General Prosecution Office organized a round table on topic “Persons with disabilities closer to justice”. It had the purpose of raising awareness and involving policymakers from public institutions in order to diminish the cases of ill-treatment in psychiatric and psycho-neurological institutions.

52. On 13 December 2016 the head of the Torture Combating Department attended a professional training of 20 young employees from the penitentiary system. They were trained in the field of legality of applying physical force in police custody, prohibitions of ill-treatment of detainees, standards related to investigating allegations of torture, inhuman and degrading treatment.

53. In the first half of 2017 the prosecutors of the Torture Combating Department conducted 15 seminars for workers who have the right to use physical force in their activity and for those involved in documenting cases regarding ill-treatments, as well as for the prosecutor candidates of the National Institute of Justice.

54. On 24 May 2017, at the request of the Training Center of the Penitentiary Institutions Department, the People's Advocate (Ombudsman) conducted a public lesson on topic "Jurisprudence of the European Court on ill-treatment and effective remedies". It involved 13 workers from penitentiary institutions, who were trained in relation with notions, standards and Court's jurisprudence regarding prohibition of torture. The trainers also referred to those cases in which the Court found violations of Articles 3 and 13 of the European Convention on Human Rights by the Republic of Moldova and other states.

V. CONCLUSIONS

55. As concerns *Bulgaru, Ciorap no. 5, Pruneanu, Struc, Ghimp and others* cases, the Government consider that all the possible individual measures were fulfilled in order to redress the violations established by the European Court and invites the Committee of Ministers of the Council of Europe to end the supervision in these cases.

56. At the same time, the Government commit to keep the Committee of Ministers informed on the progress of execution of those judgments in which the proceedings are ongoing and on the final solutions adopted in this regard.

57. As concerns the general measures, the Government conclude that prevention and combating torture and ill-treatments continue to be a priority for the Republic of Moldova. These are key points in national policies and in all the commitments taken in respect with international standards, based on which continuous efforts are made in order to discourage such phenomena. Thus, the Government invite the Committee of Minister to take note of the obvious progress indicators that were recorded and the statistical data that were presented, as well as of the general measures undertaken by national authorities in order to stop ill-treatments.

Appendices

58. Following §5 from the Committee of Minister Decision, the decisions of the domestic courts adopted during the re-hearing of the criminal case against the applicants in the *Levința* case are attached to this Report.



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