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Corsacov group and Leviñța case against the Republic of Moldova

Cases concerning mainly ill-treatment and torture in police custody, lack of effective investigations in this respect and lack of an effective remedy

Summary of the individual measures taken and outstanding issues

Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights

The opinions expressed in this document are binding on neither the Committee of Ministers, nor the European Court.

This document contains an overview of the information provided by the authorities, and in some cases also by the applicants' representatives, on the state of domestic investigations into the applicants' allegations of ill-treatment and assesses the individual measures adopted in the cases supervised by the Committee of Ministers in the *Corsacov* group of cases and the *Leviñța* case against the Republic of Moldova.

1) *Just satisfaction*

1. The awards of just satisfaction have been paid in all cases.

2) *Other measures (domestic investigations)*

2. *Buzilo case*: In March 2014, the police officers responsible for ill-treatment were sentenced to 5 years of imprisonment, dismissed from the police and prohibited from holding public office. In September 2014, the Supreme Court dismissed their appeals and confirmed their convictions which are now final.

3. *Gavriliță and Morgoci cases*: In these two cases, the domestic courts acknowledged the violations of Article 3 on account of ill-treatment and lack of effective investigations but awarded the applicants compensation which is considerably lower than the just satisfaction awarded by the European Court in similar cases.

4. *Buzilo case*: The criminal proceedings resulted in the final conviction of the police officers and their sentencing to imprisonment, dismissal from the police and prohibition from holding public office.

5. Pascari case: Four police officers were charged with ill-treatment and sent for trial (M.P. and N.M. in August 2014, A.M. in December 2015 and E.T. in January 2016). The cases were joined in one single proceedings and are currently pending before the Sîngerei court.

6. Breabin case: Following the Court's judgment, the criminal investigation against the police officers N.T. and S.D. was reopened in December 2009. In November 2014, they were charged with abuse of office entailing violence and ill-treatment. In February 2015, S.D.'s lawyer appealed against the reopening; the investigative judge admitted his appeal and quashed the prosecutor's decision to reopen the criminal investigation because of the flaws committed by the prosecution authority during the reopening procedure. In May 2015, the Court of Appeal dismissed the prosecutor's appeal and confirmed the decision of the investigative judge. The decision is final.

7. Struc case: In May 2016, the Ungheni court found the police officer R.B. guilty of ill-treatment but exempted him from criminal liability on account of the expiration of the prescription period. The court also ordered him to reimburse to the state budget the amount paid to the applicant as just satisfaction for non-pecuniary damage. R.B.'s lawyer contested the court's decision in the part concerning the re-payment of just satisfaction. The appeal is currently pending before the Bălți Court of Appeal.

8. Ipati case: Following the Court's judgment, the prosecution authority continued the criminal investigation into alleged ill-treatment. During the investigation, the prosecutor carried out numerous investigation acts, including the questioning of twelve witnesses, the examination of medical files, the questioning of the forensic medical experts and a radiology doctor. It was established that the files with the radiologic examination performed on the applicant on 23/09/2006 were destroyed by the hospital in 2008. The applicant was repeatedly summonsed to the prosecution office with a view to carrying out investigative measures requiring his participation, but he did not appear. In May 2016, the criminal investigation was suspended as it was not possible to elucidate the circumstances in this case. The applicant could appeal against the suspension to the investigative judge but did not avail himself of this opportunity.

9. Buzilov case: After carrying out a set of further investigation measures (including questioning the applicant, witnesses, police officers, carrying out an identification parade, etc.), the criminal investigation was suspended in May 2015 as it was impossible to identify any suspects. The applicant could appeal against the suspension to the investigative judge but did not avail himself of this opportunity.

10. Gasanov case: Following the Court's judgment, the criminal investigation was reopened in September 2013. In March 2015, the prosecutor, after considering the medical report and the declarations of the applicant, of the police officers, of persons detained together with the applicant and of the medical forensic expert, decided to terminate the criminal investigation because the applicant's allegations could not be confirmed by the evidence gathered. The applicant did not appeal.

11. Eduard Popa case: In September 2016, the criminal investigation against the police officers was transferred for further investigation to the newly created prosecutor's office for special cases and fighting organised crime.

12. Gurgurov and Bisir and Tulus cases: The criminal investigations in these two cases were also transferred to the same specialised prosecutor's office.

13. Ghimp and others case: Following the Court's judgment, in December 2012, the Supreme Court admitted the prosecutor's request for the reopening of criminal proceedings, set aside its previous judgment of 29 May 2012 and sent the case to the Court of Appeal for a new hearing. In order to guarantee an impartial and independent medical forensic opinion, at the prosecutor's request a new

forensic medical expertise was ordered to be conducted in Romania. Subsequently, the Court of Appeal convicted the police officers A.P., I.B. and S.C. of abuse of power and sentenced them to six years of imprisonment with a prohibition to hold an office in the police for two years, but given that the prescription period had expired, the defendants were released. In September 2016, the police officers' lawyers appealed against this decision. The case is currently pending before the Supreme Court.

14. *Mătășaru and Savitchi case*: In June 2011, the criminal investigation was suspended because of the impossibility to identify any suspects. Subsequently, the prosecutor questioned additionally all the witnesses indicated by the first applicant but their testimonies still did not result in the identification of the suspects. Thus, the investigation remained suspended due to the absence of any new facts or information. The first applicant did not appeal.

15. *Pruneanu case*: As concerns the first alleged incident of ill-treatment of 10 May 2001, following the Court's judgment, the prosecutor, in July 2007, initiated a criminal investigation into ill-treatment. During the investigation, it was established that the injuries were inflicted on the applicant not by police officers but by P.A. with whom the applicant had a fight. The criminal investigation against the police officers was terminated in March 2012. The applicant could contest this decision to the investigative judge, but did not avail himself of this possibility.

As concerns the second alleged incident of ill-treatment of July 2002, it is recalled that in December 2002, the prosecutor refused the initiation of a criminal investigation into ill-treatment. This decision was confirmed by the Prosecutor General's Office.

16. *Ipate case*: Following the Court's judgment, the applicant lodged an extraordinary appeal with the Supreme Court against the decision of the investigative judge of 2007 by which he confirmed the prosecutor's refusal to initiate a criminal investigation into the applicant's allegations of ill-treatment. This appeal was dismissed in June 2012 as lodged outside the deadline and not compliant with the statutory form. Subsequently, in 2013 the applicant seized the Supreme Court with a reopening request asking again to quash the decision of the investigative judge of 2007. In April 2013, the Supreme Court dismissed his request on the ground that the applicant had already used the extraordinary appeal against this decision and that the Supreme Court's decision of 2012 in that regard is final and irrevocable.

17. *Pădureț case*: Following the Court's judgment, a new inquiry was initiated in July 2011 into the applicant's alleged ill-treatment by R.B. During the investigation, the prosecutor reviewed the materials of the criminal file against A.P. and A.R. which concerned the same events, questioned R.B. and the applicant to verify R.B.'s involvement in the ill-treatment and ordered a new medical forensic expertise. As a result of this inquiry, the prosecution authority concluded in January 2012 that the applicant's version of events concerning the involvement of R.B. into his ill-treatment could not be confirmed by the evidence gathered. This decision was confirmed by the Prosecutor General's Office. The prosecutor's decision to refuse the initiation of criminal proceedings against R.B. could be appealed to the investigative judge but the applicant did not avail himself of this opportunity.

18. *Popa case*: Following the Court's judgment, the prosecution authority reviewed the materials of the case and established that, given the nature of the shortcomings identified by the Court (in particular, failure to examine the applicant for injuries upon her arrival at the police station and to record any visible injuries) and taking into consideration the passage of time since the events, it does not appear to be practically possible at this stage to remedy the shortcomings and ensure an effective investigation.

19. *Lipencov case*: Following the Court's judgment, the Prosecutor's General Office initiated a new inquiry into the first applicant's allegations of ill-treatment and finally concluded that the evidence

gathered does not allow clarifying the circumstances in which the first applicant was assaulted. The applicants did not submit any complaints.

20. Feodorov case: Following the Court's judgment, the prosecution service reviewed the materials of the case with a view to assessing the possibility of conducting a new investigation. It was established that remedying the shortcomings identified by the Court (such as verification of the extent of the injuries suffered by the applicant) would be impossible since the applicant died in 2010. Also, remedying other shortcomings (such as the identification of any witnesses of the fight in the street between the applicant and three other persons) would not be possible practically given the considerable passage of time since the events in question (some 8 years at the time of the adoption of the Court's judgment). The applicant's next-of-kin did not request a reopening of the investigation.

21. Levința case: In June 2010, the prosecutor's office initiated a criminal investigation into the applicants' allegations of ill-treatment. As a result of this investigation, it was established that the applicants' injuries were inflicted on them before they were taken into police custody, i.e. prior to their extradition to the Republic of Moldova. Thus, in March 2011, the prosecutor decided to discontinue the criminal proceedings. The applicants' appeal against this decision was dismissed by the investigative judge in October 2012. The decision is final.

22. Valeriu and Nicolae Roșca and Pădureț cases: The domestic courts adopted their decisions before the European Court issued its judgments but applied lenient sanctions or exemption from criminal liability because of the expiration of the statute of limitations.

23. Tcaci, Bulgaru and Ciorap (no. 5) cases: Information is still awaited.

Assessment:

No further individual measures seem necessary in the Buzilo case in which those responsible of ill-treatment were convicted by a final court's decision and in the Gavriliță and Morgoci cases in which the domestic courts acknowledged the violations of Article 3 on account of ill-treatment and lack of effective investigations and in which the Court found that the compensation awarded to the applicants at the domestic level is considerably lower than the just satisfaction awarded by the European Court in similar cases.

No further individual measures appear possible in the Ipate case in which the Supreme Court dismissed the applicant's extraordinary appeal as being lodged outside of the deadline and not compliant with the statutory form. This assessment is also valid for the Mătășaru and Savițchi, Gasanov, Ipati, Pruneanu (as concerns the event of 10/05/2001), Buzilov, Pădureț (as concerns the investigation against police officer R.B.), Popa, Lipencov and Feodorov cases in which, after a new investigation, the prosecution authorities found themselves in the impossibility to identify those responsible of ill-treatment, in which the applicants' allegations could not be confirmed by the evidence gathered or in which, following new inquires, the prosecution authorities concluded that the shortcomings identified by the Court could not be remedied anymore given their nature and the passage of time since the events in question. It is noted that, according to domestic legislation, the decisions by the prosecution authority can be appealed against to the investigative judge. Also, the decision of the investigative judge concerning the refusal to initiate criminal proceedings or their discontinuation can be appealed against to a higher court. None of the applicants in these cases made any submissions to the Committee.

Given that the court decisions in the Struc and Ghimp and Others cases are not yet final, information appears necessary on the subsequent developments, if any. Also, information is awaited in the Tcaci,

Bulgaru and Ciorap (no. 5) cases as well as on the outcome of the court proceedings in the Pascari case.

Further individual measures appear necessary in the Eduard Popa, Gurgurov and Bisir and Tulus cases in which the criminal investigations are still pending and were transferred to the newly created specialised prosecutor office for further action. As it has already been noted by the Committee of Ministers during its last examination of this group of cases at its 1208th meeting (September 2014) (DH), given the time which had passed since the events, it is crucial that all necessary actions are carried out with promptness. In this context, it is noted that in his communication to the Committee, the applicant in the Gurgurov case submitted that the investigation is protracted and ineffective. Consequently, the investigations should be completed without further delay and detailed information is awaited on the progress made, including on what investigatory steps were taken to rectify the shortcomings identified by the Court and the results achieved.

Clarifications appear necessary in the Pruneanu case, in particular on whether the review of the Prosecutor General's Office as regards the alleged incident of ill-treatment of 10-11 July 2002 was carried out after the Court's judgment and what was the reasoning for the confirmation of the decision not to initiate a criminal investigation. Also, further clarifications are awaited in the Breabin case in which the prosecutor's decision to reopen the criminal investigation following the Court's judgment was quashed by the Court of Appeal on account of procedural flaws (non-compliance with domestic procedural provisions), i.e. on whether these flaws can be rectified and, if so, whether any steps have been taken by the prosecution authority in this sense.

It is noted that in the Levința case, the applicants complained in their communication to the Committee that the new investigation was not effective and that a new application in this regard was lodged with the Court. In this situation, it would be useful to await the Court's decision on the new application.