Project "Strengthening the human rights compliant criminal justice system in the Republic of Moldova"

Assessment

of Law No. 1545 of the Republic of Moldova "On compensation for damage caused by illegal acts by the criminal investigation authorities, prosecution and courts" and draft amendments prepared by the national authorities

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A. INTRODUCTION

1. The assessment is concerned with the Law No. 1545 of 25/02/1998 of the Republic of Moldova "On compensation for damage caused by illegal acts by the criminal investigation authorities, prosecution and courts" ("the Law") and amendments proposed by the national authorities ("the Draft amendments").

2. The review has been prepared by the international consultant Mr. Erik Svanidze[1] under the framework of the Council of Europe Project "Strengthening the human rights compliant criminal justice system in the Republic of Moldova".

3. It contains the relevant analysis of the Law and Draft amendments under consideration in terms of their compatibility with the European Convention on Human Rights ("the Convention"), the European Court of Human Rights' case-law ("the European Court"), the practices of the Committee of Ministers of the Council of Europe on supervision of the execution of the European Court's judgments, and other Council of Europe's and international standards, as well as relevant best practices.

4. The analysis concerns the compensation-related provisions and measures of redress to be made available in line with Articles 13 and 5 (5) of the Convention and Article 3 of Protocol No. 7 to the Convention for damage caused by miscarriages attributable to the domestic justice system. Due to the nature of the Law and the measures in question, the analysis does not address preventive remedies.[2] In the context under consideration, these remedies are primarily comprised of the inbuilt measures corresponding to the judicial review, procedural and other guarantees provided by Articles 5 and 6, and other provisions of the Convention, as interpreted by the European Court in its case-law[3].

5. The review is based on the English unofficial translation of the Law and the Draft amendments provided by the Project, further analysis of the relevant norms of the Criminal Code ("CC"), Criminal Procedure Code ("CPC") and other legal acts consulted on the official web-site www.legis.md and interviews with the

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[2]See *Sukachov v. Ukraine,* ECtHR Judgment of 30.01.2020, application No.14057/17, § 113.
[3]See *Sürmeli v. Germany*, ECtHR [GC] Judgment of 08.06.2006, application No.75529/01, §§ 99-101.

representatives of the national authorities held online on 14 December 2023 and 22 January 2024.

6. Apart from the overall assessment of the Law, comments are provided exclusively on general and provision-specific concerns or issues that necessitate attention or improvements, along with recommendations for further elaboration in secondary legislation and other regulations. While the key issues addressed in the text are underlined, related recommendations or key comments are **highlighted in bold.**

B. Analysis of the Law

Scope of the Law

7. The Law, as provided by Article 1, concerns the compensation of damages resulting from 'illegal acts committed in criminal and contraventional proceedings by criminal investigation bodies, prosecution and courts'. At the same time, its Article 3 limits the scope of the Law to damages resulting from key procedural decisions and some procedural actions related thereto. With the non-exhaustive clause (incorporated in § 1, letter c) of Article 3) that refers to 'other procedural actions that restrict the rights of natural or legal persons', in fact, it applies to almost all decisions of investigation bodies, prosecution, investigative judges and courts adopted by at the pre-trial stage of criminal proceedings (hereinafter called "the interventions covered by the Law").

8. In particular, as far as preventive and investigative (collecting evidence) -related interventions are concerned, it applies to:

- arrest (apprehension);
- two preventive measures in the form of remand detention[4] and undertaking not to leave locality or country;
- holding a person criminally responsible;
- search, seizure of goods and property, release or suspension from work (office), as well as other procedural actions that restrict the rights of natural or legal persons;
- special investigative measures;

[4]This Assessment also uses other terms, such as 'pre-trial detention', 'remand in custody' and 'detention on remand', following the terminology used by the European Court or other documents.

– seizure of accounting and other documents, money, stamps, as well as blocking of bank accounts.

9. The exhaustive clause(s) and wording in issue provide some grounds for its interpretation as being inapplicable (as far as deprivation of liberty is concerned) to other forms of police custody, (forceful) delivery, envisaged by Article 199 of the CPC, other similar interventions (when a person is not free to leave) not concerned with a suspicion in committing a crime or (e.g., delivery to the police for identification reasons). This kind of situations might occur regardless of the regulatory basis and, therefore, formally also fall outside the scope of the Law.

10. Moreover, the Law could expressly mention the house arrest,[5] which falls under the notion of deprivation of liberty and Article 5 of the Convention accordingly[6]. Furthermore, it does not clearly apply to preventive measures provided for by the CPC (Article 175, etc.).

11. The same issue arises with regard to release under judicial supervision or bail, with additional (duties) measures applied (Articles 191, 192, etc.). It would be advisable to suggest some indications in this regard in the Law.

12. Given the comprehensive wording of the current Law regarding special investigative activities, searches, and other specific actions falling under this category, there are no concerns as to its applicability in this respect. However, there remains some doubt as to applicability of the Law to the entire range of procedural actions (interviewing, verification of statements etc.). While the Law does not expressly mention these actions as those that 'restrict the rights of natural or legal persons', they could lead to violations and resultant consequences[7].

13. Furthermore, the Law does not explicitly mention operative (special search) activities, as it was the case in the similar Law of Ukraine[8]. At the same time, even if the CPC provides for a possibility to challenge them, i.e. actions performed on the basis

[5]Article 3(1)(a) employs a broader term, "preventive measures in the form of arrest," which, according to Article 175(3) of the CPC, typically encompasses both detention on remand and house arrest. However, to prevent any misinterpretation in the application of the Law, a more precise provision may be warranted.
[6]*Buzadji v. the Republic of Moldova*, ECtHR [GC] judgement of 5 July 2016, application No. 23755/07, § 104.
[7]See, for example, *Jager v. the Netherlands*, ECtHR judgement of 14 March 2000, application No. 39195/98; *Pishchalnikov v. Russia*, No. 7025/04, ECtHR Judgement, 24 September 2009, §§ 9, 75, etc.
[8]Law of Ukraine "On the Procedure for the Compensation of Damage caused to Citizens by the Unlawful Actions of Bodies in charge of Operational Enquiries, Pre-trial Investigation Authorities, Prosecutors or Courts", available at: https://zakon.rada.gov.ua/laws/show/266/94-%D0%B2%D1%80#Text, see also *Nechiporuk and Yonkalo v. Ukraine,* Judgment of 21 April 2011, application No. 42310/04, §§ 140-141.

of the Law No. 59/2012 'On Special Search Activities', before an investigating judge (para 2 (3) of Article 313, as affecting constitutional rights and freedoms), similar considerations, in terms of clear reference to these activities, would be pertinent in this context as well.

14. With regard to the entire criminal procedure, including trial and (final) verdicts,[9] the Law concerns:

- conviction;
- confiscation of property;
- illegal subjection to unpaid community service.

15. In terms of the adverse final decisions and punishment (sanctions), Article 3 of the Law omits to involve compulsory medical measures, placement in psychiatric hospitals, other security measures envisaged by (Chapter X of) the CC, which do not fall under the term, conviction.

16. Moreover, although it could be implied by the clause referring to a 'conviction', in view of its evident inconsistency by specifying just two of punishments (measures), it provides grounds for questioning its applicability with regard to potential violations and damages concerned with suspended sentences, parole. It is only further norms available in the Chapter IV concerned with execution of decisions that refer to deprivation military rank, confiscation, and some other punishments, relevant measures applicable following a conviction (not specified in the Law) and envisaged by the Chapters VII and IX CC (of the driving license etc.).

17. The (administrative) contraventions-specific segment of the interventions covered by the Law encompasses:

- administrative arrest;
- administrative detention (as a punishment);
- imposition of a contraventional fine by the judiciary.

18. This limb of the Law, the term referring to judiciary, is excluding fines applied for the contraventions by non-judicial authorities, which however, somewhat

[9]As amended in 2017.

inconsistently is envisaged in its Article 13 (para.1 concerned with the budgetary considerations).

19. In general terms, the Law is part of a set of primary legislative acts specifically addressing reparations, redress and, in particular, compensation for violation of some rights and domestic norms in the course of administration of justice and related areas, including its pre-trial limb (criminal prosecution and administrative contraventions-related procedure). In addition to the targeted Constitutional provision (Article 53), CPC (Article 23), and general tort-related and other overall principles and norms, the Moldovan legal framework has so far opted for a fragmented approach regarding the issues concerned[10].

20. In view of the difficulties with listing the entire range of possible violations of the domestic legal framework, including relevant constitutional provisions, and/or the Convention and relevant human rights, some jurisdictions have opted for proceeding with legislation (special norms) providing for compensation for damages caused by malfunction of state institutions in general[11] or human rights violations attributable to them. A holistic solution specifically aims at meeting the Article 13 of the Convention requirements in this regard.[12]

21. If a holistic solution is not chosen, the Moldovan authorities are invited to **consider remedying the outlined conceptual and substantial shortcomings and deficiencies as to the scope of the Law and specifically over the damages resulting from wrongful decisions and interventions (including special investigative measures / special search) related to criminal (including contraventional) justice procedures.**

22. In addition to expanding and fine-tuning its scope, there is **merit in improving legislative and other related techniques used** (with regard to the range of procedural activities fines applied by judicial and non-judicial authorities etc.).

Compensation grounds and other parameters

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[10]There are other primary laws specifically providing for the preventive and, specifically, compensatory remedies addressing the length of procedures and conditions of detention, which, however, are not covered by the current review.

[11]Act No. 82/1998 Coll. of the Czech Republic, on liability for damage caused in the exercise of public authority by decision or incorrect official procedure.

[12] See DH-DD(2016)382, Committee of Ministers, 1259 meeting (7-9 June 2016) (DH) Action report (23/03/2016), Communication from Armenia concerning the cases of *Poghosyan and Baghdasaryan, Khachatryan and Others and Sahakyan against Armeni*a (Applications No. 22999/06, 23978/06, 66256/11). https://hudoc.exec.coe.int/eng?i=DH-DD(2016)382E

23. According to the title of the Law and its Article 1, the overall ground for compensating the damages caused to the physical or legal persons by the interventions covered by the Law is constituted by their illegality that is denoted by the notion of 'illegal acts'.

24. The key clauses and criteria suggested in Part 1 of Article 2 of the Law excessively limit (as argued in the subsequent paragraphs) its applicability to illegal acts that comprise:

- erroneous violations of the overall 'principle that no innocent person can be held liable and cannot be convicted';
- crimes involving an intentional (malice) violation of procedural and material norms in the course of criminal or contraventional proceedings.

25. It is to be noted that 'errors' are attributed to the bodies empowered to examine cases regarding contraventions, criminal investigation agencies or courts (reinforced by the clause as to 'exclusion of their guilt'). As to malice violations, they are to be established with regard to acts of their officials. At the same time, the need in proving the intention/malice, which could be difficult, if not undermine the efficiency of the remedy,[13] is partially neutralised by Part 2 of Article 3 envisaging that the damage caused shall be fully compensated, regardless of the fault of the responsible persons of the criminal investigation bodies, prosecution, and courts. This, however, requires adjustment of the general definition.

26. Articles 3[14] and 6 of the Law are to be read as suggesting that for the compensation purposes an erroneous conviction is to be corroborated by a subsequent:

- 'final and irrevocable acquittal' sentence, or
- discharge of the person from criminal investigation or the termination of the criminal investigation on grounds of rehabilitation.

27. With regard to contraventions, an erroneous conviction[15] is to be established by a judgment (decision) as to cancellation of the contraventional arrest due to exoneration

[13]See *Keenan v. the United Kingdom*, ECtHR judgment of 18.07.2006, application No. 42310/04, §§ 41-43.
[14]See the preceding Section of this Review.
[15]Although the autonomous meaning applied with regard to criminal charges and crime under Articles 5 and 6 of the Convention covers the contraventions (minor offences) and related framework maintained by some jurisdictions and, accordingly, they could be considered as covered by the provisions in issue, it appears that the domestic stakeholders would prefer to spell out relevant grounds accordingly. See the Section on the Proposed amendments below.

of a physical person. In addition to the procedural technicalities,[16] this basic (definitive) clause evidently limits this ground to arrests only. Taking into account the consequences and nature of the procedures and other punishments applicable,[17] it would be **necessary to extend the applicability of the Law in terms of claiming compensation for sanctions, including fines, envisaged by the controventional framework**.

28. As far as malice violations (of procedural and material norms) are concerned, apart from the discussed exonerating decisions, which can include relevant findings, they could also be established by an investigating judge's conclusion / declaration of 'invalidity of acts or actions of the criminal investigation body or the body performing special investigative activity, made under Article 313 para. (5) of the CPC, in respect of *the person acquitted or discharged from criminal investigation*'[18]. This provision raises concerns and there would be a need to **remedy the clause(s) in issue as to the limited range of interventions appealable under Article 313 of the CPC** (by excluding a reference to the CPC specific provision). Moreover, apart from **removing the requirement for overall exoneration**, the **legal relevance (status) of rulings of the investigative judges must be addressed**. These in the current version cannot be regarded *as final* for the ensued criminal procedures concerned with relevant violations attributable to the officials[19]. This would be required including for verifying, where applicable, whether the person has self-slandered, self-denounced himself/herself, as a result of violent treatment, the application of threats and of other illegal actions, as envisaged by Part 3 of Article 4 of the Law. Findings and final decisions in this regard are made within further investigations or ensued procedures and not immediate challenging of the actions/decisions within the scope of Article 313 of the CPC, i.e., the same criminal procedures.

29. These considerations lead to a need for **reconciling the Law with the standards and domestic system of effective investigation of serious human rights violations encompassing the malice infringements and relevant crimes concerned**, as required by the relevant Convention standards summarised in the Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious

[16]The Law somewhat inconsistently provides for compensation of fines in further execution-related and budgetary provisions.
[17]See *inter alia Canady v. Slovakia*, ECtHR judgment of 16.11.2004, application No. 53371/99, §§ 31-32.
[18]Emphasis added. Article 313 of the CPC provides for rulings following consideration of complaints against specific decisions and actions of criminal prosecution and operative-search bodies.
[19]The comment remains relevant regardless of § 2 of Article 4 of the Law. See § 23 of this Review.

human rights violations[20]. Apart from the requirements concerned with (effective) investigation and further eventual procedures, this should include grounds for claiming relevant damages resulting from a failure to comply with the duty in issue. It would be appropriate to specify that the Law applies to situations when the competent authorities do not perform effective investigation and that the (alleged) victims can claim relevant damages in this regard.

30. The condition of overall acquittal (exoneration) maintained in the Law narrows the scope of grounds in issue and contradicts the standards of Article 13 of the Convention (expanding it beyond Article 5 (5) and Article 3 of Protocol 7). It does not guarantee availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order[21]. The European Court has clearly established, including in cases against the Republic of Moldova, that the availability of a remedy should not be limited solely to instances where a person has been acquitted or where a criminal investigation has been discontinued. Instead, remedies should be available regardless of the outcome of the criminal proceedings. In the same vein, a conviction does not serve as a presumption that no human rights violations occurred during the proceedings. The Law is to be **amended (legal framework enhanced) so that it provides for compensation for violations concerned with isolated procedural decisions, actions, other intervention(s) regardless of final acquittal (exoneration).**

31. The poor structuring of the Law, even of its basic provisions, including as to correlation of the individual interventions (listed in its Article 3.1) with further grounds for compensation, fail to suggest which of the grounds exhaustively listed in its Article 6 apply to the (illegal) remand in custody. It is to be noted in this regard, that Article 313 of the CPC referred to in s/para 'd' of Article 6 of the Law does not apply to the preventive measures, which are to be challenged under special norms (Article 196 of the CPC etc.). Furthermore, the Supreme Court of Justice of the Republic of Moldova has found that a person could claim damages on the basis of Law No. 1545/1998 only

[20]Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies, available at: https://rm.coe.int/1680695d6e

[21]See *T.P. and K.M. v. the United Kingdom*, ECtHR [GC] Judgment of 10.05.2001, application No. 28945/95, § 107. *Shulgin v. Ukraine,* ECtHR Judgment of 08.12.2011, application No. 29912/05, §§ 64-65.

if he or she had been fully acquitted of all the charges against him or her and the European Court has established relevant violations in a number of cases[22].

32. Therefore, if illegality of remanding in custody is conditioned by a final exoneration (acquittal or discharge of the person from criminal investigation or the termination of the criminal investigation on grounds of rehabilitation), the preceding recommendation is equally relevant for the violations concerned. In particular, **the Law is to be amended (legal framework enhanced) so that it provides for compensation for violations concerned with preliminary arrest (and other preventive measures) regardless of final acquittal (exoneration by the prosecution).**

33. At the same time (to the contrary), it is to be concluded that, in view of the absence of further qualifying conditions, the Law treats an acquittal (exoneration) following a conviction as a direct ground for compensation. This would amount to a (higher) domestic standard applied in some other jurisdictions[23]. The same could be applied to detention or remand in custody (preventive arrest)[24].

34. The Law is suffering from further inconsistencies and deficient legislative techniques used for formulating the key norms elaborating on the criteria of illegality. In particular, while suggesting in its Article 2 a definition of ‘exceptional cases’, which includes some reference to serious and abusive violations of fundamental rights and freedoms of the person, guaranteed by the Constitution and international treaties to which the Republic of Moldova is a party, as well as extremely serious or irreparable consequences of the illegal acts committed, it fully omits to operationalise it further in the body of the Law. This provision (also subject to further improvements, if invoked) could be seen as **suggesting some grounds for extending the extremely narrow definition of ’illegal acts’ and it could be further developed (not as an exception) and furnished with implementing clauses in the Law.**

35. Furthermore, in addition to the reviewed notion and term concerned with illegality and ‘illegal act(s)’, the Law replaces it and operates with the different wording ‘in violation of the legal provisions’ when specifying the special investigative measures subject to it (in Article 3). **These and some other legislative deficiencies seriously**

[22]See *inter alia Veretco v. the Republic of Moldova*, ECtHR judgment of 18.07.2006, application No. 679/13, §§ 28, 64-68 with further references). In addition, for the entire issue with regard the Republic of Moldova, see the latest Ministers’ Deputies Decision CM/Del/Dec(2023)1468/H46-15 of 7 June 2023, para. 7, with further links.
[23]See *N.C. v. Italy,* ECtHR Judgment of 18.12.2002, application No. 24952/94, § 57.
[24]The proposals suggested by the authorities in this regard are addressed in the section on the Draft amendments below.

undermine its entire clarity and decreases efficiency of the remedies it is supposed to provide and are to be remedied.

36. Reconciliation with the injured party should not be considered as a factor that excludes illegality of interventions attributable to a state **and the provision (Part 1 of Article 4 of the Law) is to be reviewed.**

37. The Law applies confusing legislative techniques for referring to the grounds for compensating pecuniary and non-pecuniary damages. While for the former in Article 7 it refers to its Article 3 (1), i.e. the listed illegal interventions, for the purposes of outlining the grounds for the latter it refers to its Article 6, which is linked to Article 3, it enumerates the decisions confirming their illegality. It is to be noted that Article 3 of the Law, at the same time, applies to both pecuniary and non-pecuniary damage. Although, in principle, the provisions of the Law (in their entirety) should not be read as introducing differential treatment of pecuniary and non-pecuniary damages in this regard, it would be **necessary to remedy the inconsistency of the legislative technique in issue.**

38. The Law rightly provides for an apology as an additional form of redress that is recognised both by the international human rights law and used in the practice of execution of European Court's judgments[25]. However, the provisions of the Law, its Article 12, concerned with an apology to unlawful prosecution, limits it to 'full removal of the person from prosecution' (to be understood as exoneration), as well as based on the grounds specified in Parts 7 and 8 of Article 275 and § (2) of Part 2 of Article 285[26] of the CPC and acquittal. Although an apology fall under satisfaction-related remedies and differ from compensations[27], it would **be advisable to expand applicability of apology over the entire range of interventions covered by the Law.**

39. The Law incorporates a range of indicative provisions as to the calculation of amounts of compensation for both pecuniary and non-pecuniary damage. However, it is of non-exhaustive character with regard to the non-pecuniary damage only. This is ensured by §§ (f) and (g) of Part 1 of Article 11 of the Law, which, in addition to some

[25]For example, see the outline of the status of execution of European Court judgment *El-Masri v. the former Yugoslav Republic of Macedonia*, with further references, https://hudoc.exec.coe.int/eng?i=004-6448

[26]Providing for prosecuting for crimes with regard to which there have been exonerating decisions or acquittal against the person or he/she had not reached the age for criminal liability.

[27]See Articles 20 and 22 of the 2005 United Nations (UN) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

particular and most frequent factors, concern 'the physical suffering, the nature and degree of mental suffering" and 'the extent to which the monetary compensation can alleviate the physical and mental suffering caused'. The same does not apply to compensations for pecuniary damages for physical persons, which, as far as income-related grounds are concerned, is restricted to various parameters of contract-based employment or average salary only (Article 8 of the Law). It is not leaving a possibility to adjust to the specific circumstances and arguments of the victims' pecuniary consequences of the illegal interventions. The limitations are excessive and **do not cover other (in particular lost) income-related pecuniary damages, which are envisaged for the legal persons only and this omission or excessive restriction should be remedied.**

40. The norms concerned with the representation of the State in relevant litigations and execution of decisions taken under the Law, including the amendments introduced in 2017, are of high importance, in particular, the latter set of issues are crucial for ensuring the effectiveness of the remedy. The arrangements concerned should indeed **follow the rationale of distribution of competence between the state institutions, budgetary and other instruments so that they secure observance of reasonable time, execution-related and other fair trial standards** that are fully applicable for the purposes of Article 13 of the Convention[28].

41. The Law in its Article 20 suggests a definitive provisions that the authorities concerned are to refer the matter to the General Prosecutor's Office only after the reparation, from the respective budget account in order to determine whether the actions or inactions of the person(s) in a position of responsibility, who caused the pecuniary and non-pecuniary damage, can be qualified as crimes. It would, as a minimum, be **too late from the point of view of the promptness and other standards of effective investigation and, accordingly, this provision is to be also made compatible with the relevant standards (as suggested in para. 29 of this Assessment).**

[28]See *Paulino Tomás v. Portugal*, ECtHR decision of 27.03.2003, application No. 58698/00.

C. Analysis of the Draft amendments

42. This section analyses the two sets of amendments comprising the Draft proposals developed by the Administrative Litigations Directorate and alternative proposals of the Chișinău District Court. The section omits the repetition of general comments and recommendations previously mentioned regarding the Law. Instead, it focuses on specific draft amendments proposed for consideration.

43. The rationale of the proposal to add new Part 1^1 to Article 2 as to establishment of illegality of the acts has been addressed by the conceptual comments made in in the preceding section of the Assessment. In this vein, it would amount to lowering the current domestic standard of automatic or 'presumed' illegality (unlawfulness) of acquittal or exonerating decisions (taken by the prosecution). While this move, would not be incompatible with the Convention, it will be disbalanced, since the entire set of proposed amendments omits lifting the corollary limitation of applicability of this Law to full acquittal or exoneration. The **preceding comments and recommendations made in this regard remain valid** accordingly.

44. At the same time, the proposal to specify in the Law, in addition to the invoked opinion of the Supreme Court, that it is the criminal jurisdiction (prosecutors/courts) that are to ascertain illegality of the interventions (acts) could make sense. Although the Law, in particular its Article 6, does imply this, **a clause specifying the roles of the criminal and civil jurisdictions could be welcome.**

45. The proposed increase of the (rate of) conventional unit to 50 Moldovan Lei (in Part 2 of Article 2 of the Law), which, however, is applicable only for compensation of illegal conviction to community work (as specified in Article 8 of the Law) would be a correct move, provided it complies with actual levels of the damages concerned.

46. The proposed supplement of Article 6 of Law No. 1545 with sub/para. (e) that would spell out a decision for the termination of the contraventional trial on exonerating grounds, is in line with the comments and recommendation made in para. 25 above. However, it would **fail to remedy the full acquittal or procedural exoneration-related limitations,** which must be lifted as already stressed in this Assessment.

47. The amendment of sub/para. (b) of Article 6 of Law so to specify that it applies only to persons formally charged with a crime (recognised as an accused), would unjustifiably limit it further. Taking into account the wording 'charged with a crime'

and autonomous meaning of 'criminal liability',[29] **it would leave a significant part of relevant potential violations and damages outside the Law that is immediately supposed to address them and run counter preceding overall comments and recommendations as to its expansion over the entire range of violations under consideration**[30].

48. Against this background, an introduction of a general clause similar to the proposed **inclusion in Article 3 of s/para 'g' referring to 'other actions restricting the rights and freedoms of natural and legal persons' could be supported**, provided it is reinforced by other relevant improvements of the legislative framework suggested earlier in this Review.

49. The proposed introduction of a conciliation procedure before the claimant seeking compensation, envisaged by the Law, prior to or at the beginning of the judicial proceedings (possibly through the mediation mechanism), would be in line with the best practices and the European Court case-law suggesting that the "authority" referred to in Article 13 does not need, in all cases, to be a judicial institution. Moreover, if introduced as an initial option, 'backed up if need be by an application to the courts for judicial review'[31], it indeed could serve the purposes of streamlining and simplifying the procedures, as well as decreasing the caseload of the judicial system. This, however, **could become a meaningful alternative if and when an extra-judicial remedy will be following a well-established domestic judicial practice, which, in its turn would fully take into account the European Court practice, including as to the compensation amounts[32]. Moreover, the decisions taken (agreements approved) as a result of such procedures should be legally binding and enforceable[33].**

50. The suggestion to exclude the word "intentional" from the definition of illegal acts (provided in Article 2 of the Law) would be in line of the comments made in para. 23 of this Assessment.

51. While the comment as to the currently redundant definition of '**exceptional cases' (provided in Article 2 of the Law) corresponds to the observations suggested**

[29]See *inter alia Deweer v. Belgium*, ECtHR judgment of 27.02.1980, application No. 6903/75, §§ 42-54.
[30]See Section B of this Assessment above.
[31]*Boyle and Rice v. the United Kingdom*, ECtHR judgment of 27.04.1988, applications Nos. 9659/82 9658/82, § 75.
[32]*Tsvetkova and Others v. Russia*, ECtHR judgment of 10.04.2018, applications Nos. 54381/08 10939/11 13673/13, §§ 154-159 (with further references, including *Ganea v.* Moldova, ECtHR judgment of 17.05.2011, application No. 2474/06, § 30).
[33]See *Zazanis v. Greece*, ECtHR judgment of 18.11.2004, application No. 68138/01, § 47.

in para. 32 of this Assessment above, its deletion would run counter to the developed considerations.

52. The proposed addition in Article 15 (1) of the Law the term 'dismissal' would be one of the correct moves that are required to remedy many other inconsistencies, legislative omissions and deficiencies.

53. The proposed involvement of the General Prosecutor's Office for acting as a (co)respondent on behalf of the State for the cases envisaged in Article 12 of the Law is to be **reconciled with the concerns as to the functions of the prosecution, in particular, its role in civil jurisdiction**. Any advanced coordination for the purposes in issue between the prosecution, any other institution or body concerned, would be preferrable.

54. Notwithstanding the general principle and clauses as to recourse available in the Civil Code, the **proposed deletion of the relevant Chapter V of the Law would run counter the *lex specialis* and, more importantly, preventive considerations** that could be regarded as an additional tool for motivating the officials in issue to avoid violations in question.

D. Conclusions

55. Certain inconsistencies and deficiencies could be and are reportedly remedied through the court practice, necessitating extensive interpretation of the Law. However, taking into account the prevailing legalistic approaches, this would be very much hindered by the deficient provisions and legislative techniques in question.

56. The grounds and scope of applicability of the Law are excessively narrowed down by the definition of illegal acts and further qualifying (itemising) clauses formulated in Article 2, further inexhaustive and inconsistent listing of the procedural interventions and other provisions. As a result, the Law leaves outside of its remit a considerable range of violations and damages that might be caused even by the (limited scope of) interventions in issue, and, at least, does not comply with the European Court *lex specialis* standards under Articles 5 (5), Article 3 of Protocol 7, and the overall requirements envisaged under Article 13 of the Convention. Overall, *the poor quality of the Law and its substantial deficiencies considerably undermine its capacity to serve as an appropriate legal basis for and efficiency of domestic remedies available for the victims of relevant human rights violations.*

57. *In view of the range and character of amendments required for addressing the suggested and related considerations, it would be worthwhile developing and adopting a new legislative act. It would be advisable to pursue this approach even for remedying the legislative deficiencies within the immediate scope of the current Law, i.e. compensation of damages resulting from violations concerned with the administration of criminal justice, including contraventional proceedings.*