

Republic of Moldova

EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS

MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries¹ of a selection of the main reforms and achievements reported in final resolutions since the Convention system was amended in 1998 by Protocol No. 11, with a clear focus on recent reforms referring, however, also to important earlier developments.

In view of the wealth of cases closed, the selection concentrates on those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. As a rule, the survey does not cover information on measures aiming at providing individual redress to applicants.

The presentation is organised country-by-country and reforms are, in principle, presented in the order corresponding to the thematic domains used in the Council of Europe's specialised database HUDOC EXEC and the Committee of Ministers' Annual Reports on the Supervision of the Execution of the European Court of Human Rights' judgments.

Many reforms address issues which appear to be on-going challenges in the member State. The effects of reforms adopted at one point in time may thus need to be monitored and possibly re-evaluated as conditions change.²

¹ The summaries are the sole responsibility of the Department for the execution of the judgments of the European Court of Human Rights.

² The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued [Recommendation \(2004\)5](#) on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

► **Actions of security forces and effective investigations**

To prevent ill-treatment in the context of demonstrations, the legal framework for the policing of public assemblies was reformed by the 2012 Law on the use of physical force, special means and firearms in law enforcement. Measures to be taken in case of serious public disturbances comprise de-escalating steps, notably vis-à-vis the organisers of the event, police warnings to the participants about the possibility of using special means of dispersal following a reasonable warning time to comply. A special guide regarding the implementation of the law, taking into account best practices and UN requirements, was issued in April 2018. In addition, training and awareness-raising measures are organised regularly. A new anti-torture division was created in the General Prosecutor's Office, within which prosecutors examine cases of ill-treatment and related offenses. Also, special prosecutors were appointed on a regional basis, tasked with investigating cases of torture and other forms of ill-treatment.

Taraburca group
 (18919/10)

Final Resolution
 CM/ResDH(2018)464

► **Right to liberty and security**

▢ Prevention of abuse of power in criminal proceedings / lawfulness of detention

Abuse of power during arrest and pre-trial detention was addressed by a range of measures including, an increase of the disciplinary liability for prosecutors (introduced in 2008), a new ethical code for prosecutors (introduced in 2015), and the strengthening of the prosecutors' independence vis-à-vis the executive and the legislator (introduced in 2016). In addition, as from 2013, new Constitutional Court practice introduced a clear prohibition on all State authorities to interfere with the prosecutors' handling of individual cases. Furthermore, the Code of Criminal Procedure was amended in 2006 to prevent the general practice of detention pending trial without legal basis: public prosecutors are now under an obligation to request the prolongation of detention pending trial after submitting the case to the trial court. The requirement of reasonable suspicion was introduced as a fundamental condition for opening and carrying out criminal proceedings and ordering arrest and detention on remand. In 2013, the Supreme Court adopted a mandatory guidance for police officers to be applied in cases of arrest. In 2014/2015, the Ministry of Justice prepared a set of respective amendments to the Code of Criminal Procedure.

Cebotari (35615/06+)

Final Resolution
 CM/ResDH(2016)147

Colibaba and Boicenco
 (29089/06+)

Final Resolution
 CM/ResDH(2016)146

Gorea and Turcan
 (21984/05, 10809/06)

Final Resolution
 CM/ResDH(2016)291

Musuc (42440/06+)

Final Resolution
 CM/ResDH(2018)227

► **Functioning of justice**

▢ Fairness of proceedings

The prosecutor general's power to ask for the annulment of final judgments was abolished in 2003. A law on special investigation activities of 2012 provides that such measures shall be authorised only if the purpose of the criminal proceedings cannot be achieved differently or for reasons of state security. Entrapment techniques are prohibited and evidence obtained by them is inadmissible.

Following amendments of the Civil Procedure Code in 2015, domestic courts are now under an obligation to communicate to each party a copy of belated observations of the opposing party.

Rosca (6267/02)

Final Resolution
 CM/ResDH(2007)56

Asito (40663/98)

Final Resolution
 CM/ResDH(2014)49

Sandu (16463/08)

Final Resolution
 CM/ResDH(2018)12

► Protection of private life

▢ Data protection

In 2011, the law on the protection of personal data set up the National Centre for the Protection of Personal Data, an authority to control personal data processing with the duty to monitor the respect for the legislation on protection of information, in particular, the right to information, data access and interference. Registration of the ethnicity of a child's parents in the child's birth certificate at their request and on the basis of their own declarations and a possibility for a child to change his ethnicity according to his/her own declarations when he/she reaches his/her sixteenth birthday was introduced in 2012 by amendment of the Law on civil status.

Savotchko (33074/04)
Final Resolution
CM/ResDH(2018)130

Ciubotaru (27138/04)
Final Resolution
CM/resDH(2016)84

▢ Access to one's children

In 2018, the Code of Contraventions was amended to provide that the obstruction of a guardianship authority's decision on contact rights with a child shall be punishable by a fine or community work. Following these amendments, the guardianship authority's decision became mandatory for execution by the family members concerned. In case of disagreement, it can be challenged in court.

Bittoun (51051/15)
Final Resolution
CM/ResDH(2020)110

► Freedom of religion

Freedom of religion was improved following the adoption in 2007 of a new law on religious denominations elaborated in cooperation with independent Council of Europe experts, with further amendments in 2009. Clear and objective criteria for the registration, suspension and liquidation of religious denominations were laid down and a system of proportionate reactions to breaches of the law was established. Religious freedom for non-registered religious groups was secured and expulsion, as a sanction, of foreigners disrespecting the law abolished.

Metropolitan Church of Bessarabia (45701/99)
Final Resolution
CM/ResDH(2010)8

► Freedom of expression

▢ Whistle-blowing

A 2011 amendment of the Code of Conduct for Civil Servants granted confidentiality for those reporting acts of corruption or similar illegal activities and introduced a presumption of good faith to prevent disciplinary sanctions for disclosures. In 2018, a Law on whistler-blowers determined rules for disclosures of illegal activities and practices in public and private organisations, the whistle-blowers' rights and safeguards as well as the employers' and competent authorities' ensuing obligations.

Guja (14277/04)
Final Resolution
CM/ResDH(2020)34

▢ Justification of restrictions

In April 2010, specific legislation introduced the notion of proportionality and fair balance between the protected interests of honour, dignity, professional reputation and private life, on the one hand, and the right to free expression, on the other hand. The Supreme Court's relevant explanatory judgment of December 2012 provided clarification on its application in practice and indicated that the closure of mass-media providers can only be ordered as an extreme measure, which must be justified by thorough reasons.

Kommersant Moldovy (41827/02)
Final Resolution
CM/ResDH(2022)115

► Freedom of assembly

Simplified notification procedures were introduced in 2008, yielding positive results as evidenced by statistics between 2008 and 2015. For public events involving more than 50 participants, the local authorities have to be notified five days in advance. No notification is required for spontaneous public gatherings. An assembly can only be prohibited (or its time, place or form changed) by a court decision made within three days following a reasoned request submitted by a local administration.

With regard to the freedom of assembly of LGBTI persons, the legislative framework regarding the holding of public assemblies and protection against discrimination was reformed and the relevant administrative practice was changed accordingly. The efficiency of the measures adopted was shown by the fact that the applicant NGO was able to organise demonstrations (pride marches) without undue restrictions between 2016 and 2019 and with adequate police protection. The Anti-discrimination Council was established in 2016 and legislative proposals to outlaw “propaganda of homosexuality” targeting minors were rejected by Parliament.

With regard to remedies at the disposal of demonstrators in case of police failure to protect them against violent attacks, the 2012 Law on Police provided for the right to challenge police officers' actions, including failures to protect peaceful demonstrators, before administrative or judicial authorities. Decisions taken by the supervisory authorities may be appealed against before administrative court.

In addition, the National Public Order and Security Strategy for 2017-2020 set up a modern and integrated public order and security system, including the “carabineers” as a law-enforcement structure with military status.

*Christian Democratic
People's Party (28793/02+)*
Final Resolution
CM/ResDH(2017)410

Genderdoc-M (9106/06)
Final Resolution
CM/ResDH(2019)239

*Promo Lex and Others
(42757/09)*
Final Resolution
CM/ResDH(2021)239

► Electoral rights

Legislative measures adopted in 2009 lifted the banning of all categories of public servants from holding dual citizenship and of elected MPs with multiple nationalities from taking seats in Parliament.

Tanase (7/08)
Final Resolution
CM/ResDH(2012)40