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| **MINISTERS’ DEPUTIES** | Notes on the Agenda | **CM/Notes/1318/H46-14** | 7 June 2018 |

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| **1318th meeting, 5-7 June 2018 (DH)**  Human rights    **H46-14 Luntre and Others group v. Republic of Moldova (Application No. 2916/02)**  Supervision of the execution of the European Court’s judgments  Reference documents  [DH-DD(2017)1336](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2017)1336" \o "1302nd meeting (December 2017) (DH) - Revised action report (22/11/2017) - Communication from the Republic of Moldova concerning the case of LUNTRE v. Republic of Moldova (Application No. 2916/02) [Anglais uniquement] ), [CM/Del/Dec(2017)1280/H46-18](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Del/Dec(2017)1280/H46-18) |

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| **Application** | **Case** | **Judgment of** | **Final on** | **Indicator for the classification** |
| 2916/02 | LUNTRE AND OTHERS GROUP (List of cases [CM/Notes/1318/H46-14-app](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Notes/1318/H46-14-app)) | 15/06/2004 | 15/09/2004 | Structural problem |

**Case description**

This group includes 55 cases in which the domestic judgments became final between 1995 and 2008. These cases concern failure or substantial delay in the enforcement of these judgments, most of which were delivered against the state or state companies relating to both monetary and in kind obligations, and the lack of any effective remedy in this respect. They also concern ensuing violations of the right to peaceful enjoyment of the applicants’ possessions on account of the failure to enforce decisions (violations of Article 6 § 1, Article 13 and Article 1 of Protocol No. 1). The non-enforcement mainly occurred as a result of the unavailability of State budgetary funds and/or the ineffectiveness of the bailiff system at the relevant time.

Lastly, the Court found violations of Article 6 § 1 on account of the excessive length of proceedings (*Mazepa* case) and breach of the principle of legal certainty (*Tudor-Auto S.R.L. and Triplu-Tudor S.R.L.* case).

**Status of execution**

The Committee of Ministers examined this group of cases at its 1230th meeting (June 2015) (DH) and 1280th meeting (March 2017) (DH) and noted, as concerns individual measures, that no further measures were required in 49 cases but urged the authorities to promptly complete the pending enforcement proceedings and provide information in the remaining six cases.

As concerns general measures, the Committee noted with satisfaction that the Moldovan authorities have taken significant measures to resolve the problem of non-enforcement of domestic court decisions, including the introduction of a new bailiffs system and reforming the system of allocation of budgetary funds to ensure full and timely compliance by the State authorities with their financial obligations. Following amendments, the legislation now provides that court decisions against the State should be executed voluntarily. If a domestic judgment is not executed by the relevant public debtor within six months of its submission, a bailiff is entitled to initiate enforcement proceedings against State property.

As concerns issues related to monetary compensation for depreciated savings in the Savings Bank and for property nationalised on account of political repression, national mechanisms were set up to award such compensation. As the reason for the delays in the payment of this type of compensation was related to the lack of budgetary resources allocated for these purposes, regular budgetary allocations are now being made to ensure timely payments and thus prevent the need for individuals to go to the courts.

As concerns in kind obligations, in particular the allocation of social housing, it is recalled that social housing privileges were abrogated by a law adopted in December 2009.[[1]](#footnote-1) The Court indicated that this measure would solve the root cause of the problem for the future.[[2]](#footnote-2) Individuals can claim monetary compensation equal to the price of the housing which was granted to them either by private property[[3]](#footnote-3), or compensation for rent if the housing was granted with tenancy rights.[[4]](#footnote-4)

As concerns the effectiveness of remedies, it is recalled that a new law entered into force on 1 July 2011, which provides a compensatory remedy in cases of excessive length of judicial and enforcement proceedings. The Committee is currently examining the effectiveness of this remedy in the context of execution of the *Olaru and Others* group.

As concerns the efficiency of the new bailiffs system, the Committee invited the authorities to provide their analysis of the effectiveness of the current system of enforcement, including statistical data.

On 22 November 2017, the Moldovan authorities submitted a revised action report with certain updated information (see [DH-DD(2017)1336](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2017)1336" \o "1302nd meeting (December 2017) (DH) - Revised action report (22/11/2017) - Communication from the Republic of Moldova concerning the case of LUNTRE v. Republic of Moldova (Application No. 2916/02) [Anglais uniquement] )) which can be summarised as follows:

*Individual measures*: The authorities submitted that no further measures are necessary in four of the outstanding six cases, in which the domestic judgments have now been enforced or the applicants did not lodge their writs of execution, which concern private debtors, with the bailiff and took no other action in pursuing enforcement proceedings.[[5]](#footnote-5)

The domestic court decision in the *Curararu* case, ordering the local authorities to allocate the applicant an apartment, has not been enforced because of the lack of an available dwelling. The Government is looking for other solutions in this case aimed at reaching a friendly settlement agreement and has brought up this issue before the relevant Parliamentary Commission. As concerns the *Cebotari and Others* case, the domestic court decision has been partially executed. Full execution is pending the bankruptcy procedure of a private debtor. None of the applicants in the *Curarau* and *Cebotari and Others* cases made use of the domestic remedy to request compensation for lengthy execution proceedings.

*General measures*:

Monetary compensation and budgetary issues: The authorities continue to ensure that regular budgetary allocations are made, notably to ensure the swift functioning of the payment schemes at issue and to avoid recourse to the courts. Thus, as concerns the payment scheme set up to provide compensation for depreciated savings in the Savings Bank, in 2017 the authorities allocated 40 million MDL (about 1.91 million euros) for the proper functioning of this scheme. As concerns the compensation scheme for properties nationalised on account of political repression, in 2017 payments from the State budget to the local authorities with a view to paying monetary compensation to victims of political repressions came to a total of 13,665,000 MDL (about 650,000 euros).

Efficiency of the new private enforcement system: The authorities are in the process of putting in place a system of registration of the national execution proceedings which will allow the gathering and analysis of complex official statistical data in this area and provide good indicators of the performance of the new private bailiff system.

In the meantime, for the purpose of assessing the effectiveness of the current system of enforcement, the authorities analysed the activity of randomly selected 4 out of 168 bailiffs[[6]](#footnote-6) (representing 2,4% of all bailiffs) over the last six years. The data showed that each bailiff receives yearly about 600 writs of execution, 60% of which are enforced during the same year depending on the date of their submission. On average, a writ of execution is enforced within one year. The government submitted that this statistical data prove the efficiency of the new system.

Other violations: General measures in response to the excessive length of judicial proceedings are being examined in the context of the *Cravcenco* group and those in response to the infringement of the principle of legal certainty under the *Popov (No. 2)* group.

**Analysis by the Secretariat**

*Individual measures*:It follows from the information provided that only in 2 out of 55 cases (*Curararu* and *Cebotari and Others*) are certain issues still outstanding as regards individual measures. The other 53 repetitive cases could thus be closed, which would in no way prejudge the Committee’s continued examination of any remaining general measures.

As regards the *Curararu* case (concerning a municipality as debtor), the authorities’ intention to explore other possible solutions should be strongly encouraged so as to finally resolve the pending question.

As regards the *Cebotari and Others* case (concerning a private debtor), it is noted that the debtor company has been in insolvency proceedings since 2003. This argument was raised by the Government before the Court but rejected as this did not prevent the delay without any compensation being offered, and as bankruptcy in any event did not stop enforcement of debts.[[7]](#footnote-7) Considering the violation found, the fact that the applicants’ invalidity benefits should be recalculated periodically and paid for the rest of their lives, as well as the fact that the State’s outstanding obligation to ensure the effective enforcement of the domestic decision is not in dispute, the authorities should be strongly encouraged to find rapidly other solutions to finally resolve this outstanding issue.

*General measures*: At the outset, it is recalled that the measures taken within the context of the *Luntre and Others* group are aimed at remedying the root cause of the problems of non-enforcement of domestic court decisions. The lack of remedy in respect of non-enforcement of domestic court decisions is examined within the context of the *Olaru and others* group of cases.

Monetary compensation and budgetary issues: As concerns issues related to compensation for depreciated savings in the Savings Bank, regular budgetary allocations are being made for enforcement of these obligations[[8]](#footnote-8) and no new complaints are being lodged with the European Court. This issue thus appears to have been solved.

The Government is also allocating funds to pay the sums due under the scheme related to the issue of restitution or compensation for properties nationalised on account of political repression. Between 2008-2013, over seven million euros were allocated for this purpose and the authorities continue with regular allocations of funds.[[9]](#footnote-9) Even if certain old complaints are still pending with the European Court, there is no indication that the budgetary allocation is today a problem. This issue thus also appears to have been solved.

The information provided about the abrogation of privileges for allocation of social housing indicates that the root cause of this issue has also been solved. Nevertheless, additional information would be useful on the authorities’ compliance with the other types of domestic judgments involving in kind obligations.

Efficiency of the reformed enforcement system: It appears that there is no national database of enforcement proceedings in the Republic of Moldova and thus no comprehensive statistical data available. The Committee may wish to strongly encourage the authorities to put in place without delay such a database, which will allow the collection and full analysis of relevant data.

It is noted in this context that the European Commission for the Efficiency of Justice (CEPEJ) recommends States to undertake quality control of enforcement proceedings based on established quality standards/criteria aiming at assessing annually, through an independent review system and random on-site inspection, the efficiency of enforcement services. In light of CEPEJ standards, the authorities should be invited to provide information on the use of tools and instruments to analyse the functioning and efficiency of the enforcement system.

*Overall conclusion*: Given the significant measures taken and progress achieved so far with regard to both individual and general measures, it appears that the remaining questions no longer warrant enhanced supervision by the Committee. It is thus proposed to close the supervision of the 53 repetitive cases in which the individual measures have been resolved and to transfer the two remaining cases to the standard supervision procedure in order to join them to the *Olaru and Others* group. This would notably permit a clear overview of both the reformed enforcement system as well as of the domestic remedy introduced in response to the various judgments of the European Court.

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| Financing assured: YES |

1. See [CM/Del/Dec(2012)1136/15](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Del/Dec(2012)1136/15" \o "1136 (DH) meeting/réunion, 6-8 March/mars 2012 - Decision cases No. 15 / Décision affaires n° 15 - Olaru group against the Republic of Moldova / Groupe Olaru contre République de Moldova 476/07). [↑](#footnote-ref-1)
2. See §§ 31 and 57 of the *Olaru and Others* judgment (No. 476/07). [↑](#footnote-ref-2)
3. See, for example, *Mocanu* and *Dumbraveanu* cases. [↑](#footnote-ref-3)
4. For example, following the Court’s judgment in the case of *Parasca* (No. 17986/09) the applicant claimed and was awarded by the domestic courts the price of the rent of an apartment. See <http://jurisprudenta.csj.md/search_col_civil.php?id=40812> (in original language, not translated). [↑](#footnote-ref-4)
5. *Mazepa*, *Grivneac*, *Decev* and *Tudor-Auto S.R.L. and Triplu-Tudor S.R.L*. cases. [↑](#footnote-ref-5)
6. See <http://unej.md/stats.php> (in original language, not translated). [↑](#footnote-ref-6)
7. See § 41 of the judgment in the *Cebotari and Others* case. [↑](#footnote-ref-7)
8. The sums allocated in EUR according to the authorities: 2014 – 2,67 million, 2015 – 2,37 million, 2017 – 1,91 million. In 2018 (according to publicly available information): 2,43 million (see <http://mf.gov.md/ro/content/în-2018-continuă-indexarea-depunerilor-băneşti-ale-cetăţenilor-la-banca-de-economii>, in original language) [↑](#footnote-ref-8)
9. See [CM/Del/Dec(2015)1230/10](https://search.coe.int/cm/Pages/result_details.aspx?Reference=CM/Del/Dec(2015)1230/10" \o "1230DH meeting/réunion - 9-11 June/juin 2015 - Decision cases No. 10 / Décision affaires n° 10 - Luntre and Others group against Republic of Moldova / Groupe Luntre et autres contre République de Moldova (2916/02)). In 2015-2016 the allocations totalled about 1,61 million EUR and in 2017 – 650,000 EUR [↑](#footnote-ref-9)