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Meeting: 1310th meeting (March 2018) (DH)

Item reference: Revised action plan (11/01/2018)

Communication from the Republic of Moldova concerning the cases of CIORAP, PALADI and BECCIEV v. the Republic of Moldova (Applications No. 12066/02, 39806/05, 9190/03)

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Réunion : 1310^e réunion (mars 2018) (DH)

Référence du point : Plan d'action révisé

Communication de la République de Moldova concernant les affaires CIORAP, PALADI et BECCIEV c. République de Moldova (requêtes n° 12066/02, 39806/05, 9190/03) (**anglais uniquement**)



MINISTRY OF JUSTICE OF THE REPUBLIC OF MOLDOVA GOVERNMENT AGENT

Revised Action Plan

on the execution of the European Court of Human Rights judgments
delivered in the group of cases ***Ciorap, Becciev, Paladi v. the Republic of Moldova***
(applications nos. 12066/02, 9190/03, 39806/05)

According to paragraph 7 of the Decision adopted by the Committee of Ministers of the Council of Europe at its 1288th meeting from 6-7 June 2017, the Government of the Republic of Moldova (hereinafter “the Government”) were invited to submit updated information related to the adoption of legislation that introduces new remedies to challenge conditions of detention, as well as the progress achieved in this area.

The Government note that the Law on amending and completing certain legislative acts was adopted on 20 July 2017 and entered into force on 20 December 2017, excepting Article II in the part related to Articles 473²-473⁴ from the Code of Criminal Procedure (*Complaint against the administration of the penitentiary institution on conditions of detention seriously affecting the rights of convicts or detainees; Examination of complaints related to conditions of detention seriously affecting the rights of convicts or detainees and the burden of proof; Solution given by the court*), that shall enter into force as of 1 January 2019.

That law has not been substantially amended in comparison with the draft notified to the Committee of Ministers in March 2017, i.e. the remedy provided therein has not been modified. The Government note that several provisions however will enter into force later than foreseen. That decision was taken due to the ongoing problem of inadequate conditions of detention in several detention facilities, but especially in Prison no. 13, which was mentioned in the judgments adopted by the European Court of Human Rights versus the Republic of Moldova more often than other prisons. It shall be noted that the number of detainees in Prison no. 13 has not changed much since January 2017, it corresponding to 1069 persons on 1 January 2018. As the conditions of detention are still being ameliorated, and the process thereof could last more than several months, the immediate institution of this remedy would not in itself achieve the desired solution as long as this – in the Court’s view – structural problem remains unresolved. Therefore, the new remedy will be introduced together with the projected finalization of the construction of a new modern detention facility, and the current Prison no. 13, which appears in most of the Court’s judgments, will be closed down. These measures will ameliorate the conditions of detention and they will certainly overcome the difficulties related thereto, especially, and at least, the overcrowding dominating in that specific prison. Hence, it is only after the construction of the new prison that the new remedy would be both logical and fully functional.

The respective law refers mainly to conditions of detention and duration of detention on remand. Thus, two new paragraphs have been added to Article 385 from the Code of Criminal Procedure, which provide the following:

“(5) In case a violation of the rights related to conditions of detention guaranteed by Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms was established according to the

case-law of the European Court of Human Rights, the punishment shall be reduced as follows: two days of imprisonment for one day of detention on remand.

(6) In case the convict was in detention on remand in the conditions specified at paragraph (5) no less than three months before the case was scheduled for trial, when ordering community service, fine or deprivation of the right to hold certain positions or to practice certain activities as the main punishment, the court shall exempt him from executing the punishment.”

Moreover, four new articles (473¹-473⁴) instituting a mechanism for the convict to address to the investigating judge, and subsequently to the court of law, with a complaint on the conditions of his detention have been introduced. In case the circumstances set in the applicant’s complaint regarding his conditions of detention are well-founded and confirmed, the court may reduce the convict’s punishment with 1 to 3 days for each 10 days of detention in inadequate conditions calculated cumulatively. As to the remaining period, the court shall award the detainee compensations amounting to 2 conventional units for each day in which the applicant suffered as a result of the established violation, as well as the costs and expenses incurred. At the same time, applicants may file a civil action. It shall be noted in this respect that this law will be applicable to all kinds of detainees, including to those sentenced to administrative arrest and those detained in police detention facilities, except for the persons under house arrest.

As to the request to submit information on renovation works in other institutions subordinated to the Ministry of Internal Affairs, the Government inform that in the sub-units of the General Police Inspectorate there are 39 Temporary Detention Isolator (hereinafter “TDI”), of which 7 TDIs, (Bălți, Ialoveni, Strășeni, Criuleni, Dubăsari, DGSO (INI) and Dondușeni) were closed, whereas the activity in 6 TDIs (Anenii Noi, Ocnița, Sîngerei, Telenești, Șoldănești and Vulcănești) was partially suspended between 07 March 2013 and 30 December 2016 (following the reform of the Ministry of Internal Affairs) because of their non-compliance with the technical norms and the requirements for the adequate conditions of detention. As a result and in the framework of the Mol reform, the Government note that they invested approximately 360’000 euros in order to improve the conditions of detention within the TDIs since 2012. At the same time, according to the Government Decision no. 587 of 12 May 2016 on the approval of the Police Development Strategy for 2016-2020 and the Implementation Plan thereof, a clear pathway for the development of the Police for the immediate period has been established, including the strengthening of police in terms of detaining and escorting the preventively detained persons.

Individual measures

Regarding the current conditions of detention of the applicants in the cases *Constantin Modârcă* and *Silvestru*, the Government would like to point out that the applicant **Silvestru** Sergiu was released from Prison no. 9 – Pruncul on 27 November 2017 having fully executed his sentence. Therefore, the conditions of his detention do not pose any problem.

As to the applicant **Modârcă** Constantin, he has been serving his sentence in Penitentiary no. 9 – Pruncul since 9 December 2012. According to the information provided by the Department of Penitentiary Institutions, Constantin Modârcă is currently detained, together with other 3 detainees, in cell no. 10 with a total area of 15.04 m², located on the first floor. The cell is equipped with two bunk beds, so each detainee has his own sleeping place. The cell is well-lit both naturally and electrically with light bulbs of sufficient wattage. Upon admission to prison, the applicant was provided with a mattress and all the necessary bed linen, which are regularly changed. The applicant is also provided with warm meals three times a day, according to an established schedule. It shall be noted that the applicant has not complained to the penitentiary administration of the

conditions of his current detention. It is also confirmed by the applicant's written statement as to lack of objections to Penitentiary no. 9 – Pruncul.

In the *I.D.* case concerning the criminal case against some police officers, the Government note that by its final decision of 12 April 2016, the Supreme Court of Justice ordered the re-hearing of the case by the Chisinau Court of Appeal in another panel of judges. According to updated information, the next meeting before the appellate court is scheduled for 6 February 2018. The Government will keep the CM informed about the unfolding and the outcome of those proceedings.

Regarding the additional measures to remedy the violation of Article 8 of the Convention in the *Ostrovar* case, it shall be noted that the applicant Ostrovar Vitalii has been released from detention, and therefore his right under Article 8 is no longer violated. Nevertheless, the issue arising under that provision has been resolved due to the latest amendments to the Enforcement Code. Thus, the procedure for checking correspondence was implemented merely in order to prevent for drugs, toxic substances, explosives or other forbidden objects to be smuggled into the penitentiary. Therefore, the control of the correspondence is still being carried out by strictly observing the rules in that respect, i.e. it being opened by the detainee in the presence of a prison's officer, whereas the latter is not allowed to read the correspondence, his presence being necessary merely for the above security and order reasons.

Similarly, the Enforcement Code has amended the procedure for the provision of short and long-term meetings with family members or other persons indicated by the detainee. For the purpose of complying with the provisions of Article 8 of the Convention in terms of family visits, the right of remand prisoners to receive visits, including long-term visits, has been granted. At the same time, life sentenced prisoners can have unlimited meetings with probation officers, and they can also benefit from the right to a long-term (i.e. up to 48 hours) quarterly visit/meeting.

In conclusion, the Government consider that the mechanisms described above are efficient, and their implementation will reduce the number of detainees in detention facilities in the future, as well as by instituting a clear procedure that would solve the issue of massive granting of prosecutors' motions for pre-trial detention, which will be notified to the Committee of Ministers of the Council of Europe in due time.



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