



**IMPLEMENTATION OF  
THE JUDGMENTS OF  
THE EUROPEAN COURT  
OF HUMAN RIGHTS:  
MOLDOVA**

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**European Implementation Network  
January 2021**



The European Implementation Network works with NGOs and others across Europe to promote the full and timely implementation of judgments of the European Court of Human Rights ("ECtHR").

The most successful work on implementation of ECtHR judgments combines advocacy at the national level with engagement with the supervision process at the Committee of Ministers of the Council of Europe.

EIN supports work at both levels through advocacy, training, and resources.

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# FOREWORD

Judgments of the European Court of Human Rights are rightly celebrated for bringing justice to victims of human rights violations. However, they are only a first step towards human rights protections. Unfortunately, judgments can remain pending implementation for very long periods of time. This can mean that human rights violations continue to occur. EIN aims to highlight examples of this by assessing the implementation record of Council of Europe member states. In doing so, we hope to raise awareness and incentivize both governments and wider civil society to play a pro-active role in the implementation of judgments of the European Court of Human Rights.



This report examines the implementation record of the Republic of Moldova. There are clear positive examples of implementation, where significant reforms have happened or are underway (for example, on freedom of assembly – see page 11). However, the report also shows that there is much room for improvement. At the moment, 51 leading judgments are still pending implementation. Each of these represents a systemic and recurring human rights problem that has not yet been effectively addressed. Furthermore, the average time that leading cases have been pending is over eight years (for the statistics and our analysis, see pages 6-10). It is notable that, in 49 percent of pending leading cases, there is not yet an Action Plan which sets out how the judgment is going to be implemented. This means opportunities to bring domestic legislation, policies and practices into line with European human rights standards are being lost, while human rights violations continue to reoccur. Pre-trial detention, prison conditions, and domestic violence are some of the areas in which important reforms are called for.

In other member states of the Council of Europe, we have seen that systematic implementation of judgments of the European Court of Human Rights has been achieved with the help of strong institutional structures. Our experience has also shown that increased involvement and a stronger collaborative relationship between national authorities and civil society can lead to significant progress, turning the judgments of the European Court of Human Rights into human rights protections. We hope that the dissemination of this report will serve as an informative basis for future work on the implementation of judgments in the Republic of Moldova.

*Professor Başak Çalı,  
EIN Chair*

# WHY IMPLEMENTATION MATTERS

## *Sarban v. Moldova* and the Reform of Domestic Law on Detention on Remand

Mr. Sarban was a long-standing politician when he was arrested and placed in custody on criminal charges that were later [revealed to be fabricated](#). His **pre-trial detention** was ordered **through a standardised judicial decision** and **extended via simple copy/paste**, without addressing any of his arguments. For ten weeks, he remained in detention despite his **weak state of health**, without being afforded a genuine opportunity to be heard by a judge. Mr. Sarban then turned to the European Court of Human Rights, which [established](#) that the **poor reasoning of the decisions ordering and/or extending pre-trial detention** and the **delay in examining habeas corpus requests** violated his right to liberty and security. Following the Court's judgment, the applicant was released, acquitted of all charges and awarded compensation. Having cleared his name, he resumed his [political career](#). However, the relevance of the case extends beyond Mr. Sarban. The judgment issued in his name had important consequences for the Moldovan legal system, ultimately triggering **ongoing reforms**.



**The convention system has the power to make a real difference to people's lives and to help bring about positive changes across the continent**

(Secretary General of the Council of Europe, 4 September 2020, DC 106 (2020))



Weston MacKinnon [via](#) Unsplash.com

The Committee of Ministers selected Sarban as the “**leading judgment**” of a group of cases finding **systemic violations regarding detention on remand in Moldova**. The implementation of this group of judgments goes beyond the specific case and tackles general dysfunctions in the domestic legal system, benefiting all those who find themselves in the same position as Mr Sarban - i.e. **arrested and detained on remand without relevant and sufficient reasons**. This process has already produced positive results in terms of criminal procedure reforms, although the benefits of these legal changes [still need to be fully realised in practice, as noted by local NGOs](#).

The case is therefore an example of the benefits of judgments of the European Court of Human Rights - but also the delay in their implementation in Moldova.

# WHY IMPLEMENTATION MATTERS

## How Implementation Works

The implementation process of the Sarban group of cases spans over a period of time of **more than 10 years** and involves many different actors. It can thus be taken as an example of the complex nature of the implementation process, as well as the importance of exchange between **government, the Council of Europe and civil society**.

### The Judgment of the ECtHR

Through the [judgment](#) of 4 October 2005, the ECtHR found a violation of **Article 3 (ill-treatment)**, for the authorities' failure to provide basic medical assistance to the applicant, and of **Article 5 §§ 3 and 4 (right to liberty)** for the poor reasoning in the domestic courts' decisions ordering and/or extending the applicant's detention on remand, and for the delay in examining his habeas corpus requests.

### The Procedure before the Committee of Ministers

Sarban was selected as the "leading" judgment as regards **systemic violations of Article 5**. In addition to those declared by the ECtHR in Sarban, this group of cases concerns: detention on remand without a judicial order; the exclusion of a particular category of accused persons from release pending trial; and the non-disclosure of the case file in habeas corpus proceedings.

### The Road to Legal Reforms

As detailed in the government submissions of [2014](#), [2015](#), [2017](#) and [2020](#), Moldovan criminal procedure underwent significant reforms aimed at bringing detention on remand in line with the standards of the European Court of Human Rights.

### The Involvement of the Council of Europe

The Council of Europe took an active stance in the process, not only by **funding programmes** aimed at building legal capacity at the local level, in [2013](#) and in [2018](#), but also giving an [opinion](#) on the amendments to domestic law, and producing a [report](#) to assess the status of execution of this group of cases and set the way forward.

### The Role of Local NGOs

In 2017, the Committee of Ministers [decided](#) to close the supervision of some of the issues identified in this group of cases, while continuing to monitor the poor motivation of the decisions ordering and/or extending pre-trial detention.

**Instrumental to this decision** were the efforts of the [Legal Resources Centre from Moldova](#), which in a [series](#) of [Rule 9.2. communications](#) demonstrated that the main problem highlighted in this group of cases had not been resolved by the legislative amendments.

These views are echoed in the [latest decisions](#) of the Committee of Ministers, which will resume supervision of this group of cases in 2021. The final outcome of the process will depend on the continuing participation of all three of government, the Council of Europe and civil society.

# EVALUATING THE IMPLEMENTATION PROCESS

## Key Figures (1)

Number of leading judgments pending implementation


51

As of November 2020, a significant number of leading ECtHR judgments against Moldova are still pending implementation. This means that the **human rights problems identified by the judgments have not been resolved**, and are therefore likely to recur.

Average time leading cases have been pending

8 years  
9 months


This backlog of leading cases is due to the considerable amount of time needed on average to close each leading judgment, which causes an **overload in the implementation process**.



**Leading judgments** are those that identify a **new significant or systemic problem** in a country. Each leading judgment therefore represents a human rights issue that needs to be resolved via the implementation process.



Assessing the **proportion of leading judgments being implemented** is the best method available to assess whether a country is carrying out general reforms to put into effect judgments from the European Court of Human Rights.



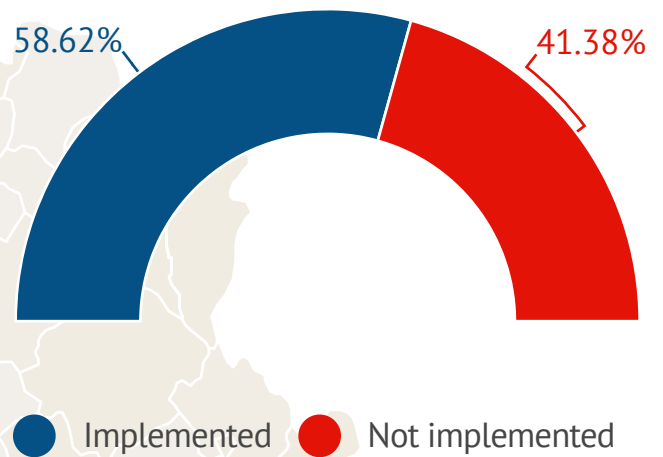
It is also necessary to look at the **overall number of leading cases pending**. The countries with the most serious non-implementation problem have both a high proportion of leading cases still pending **and** a high overall number of pending leading cases.

# EVALUATING THE IMPLEMENTATION PROCESS

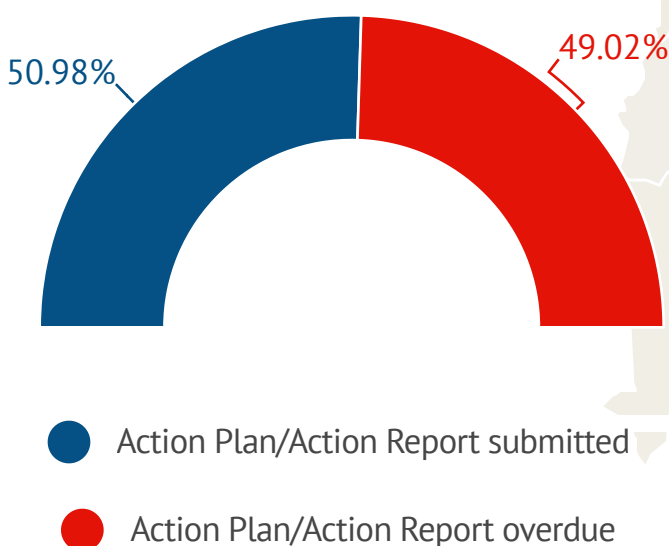
## Key Figures (2)

Over 40% of the leading judgments issued against Moldova in the past 10 years **await full implementation**. This means that over 40% of the **systemic human rights issues** identified by the ECtHR in recent times in the country have not been properly dealt with by the authorities. These figures are all the more concerning considering that, in the absence of **general legislative and/or policy reforms indicated by the ECtHR in these judgments**, the violations are likely to recur.

### Number of leading judgments from the last 10 years still pending



### Percentage of leading judgments with overdue Action Plan/Action Report

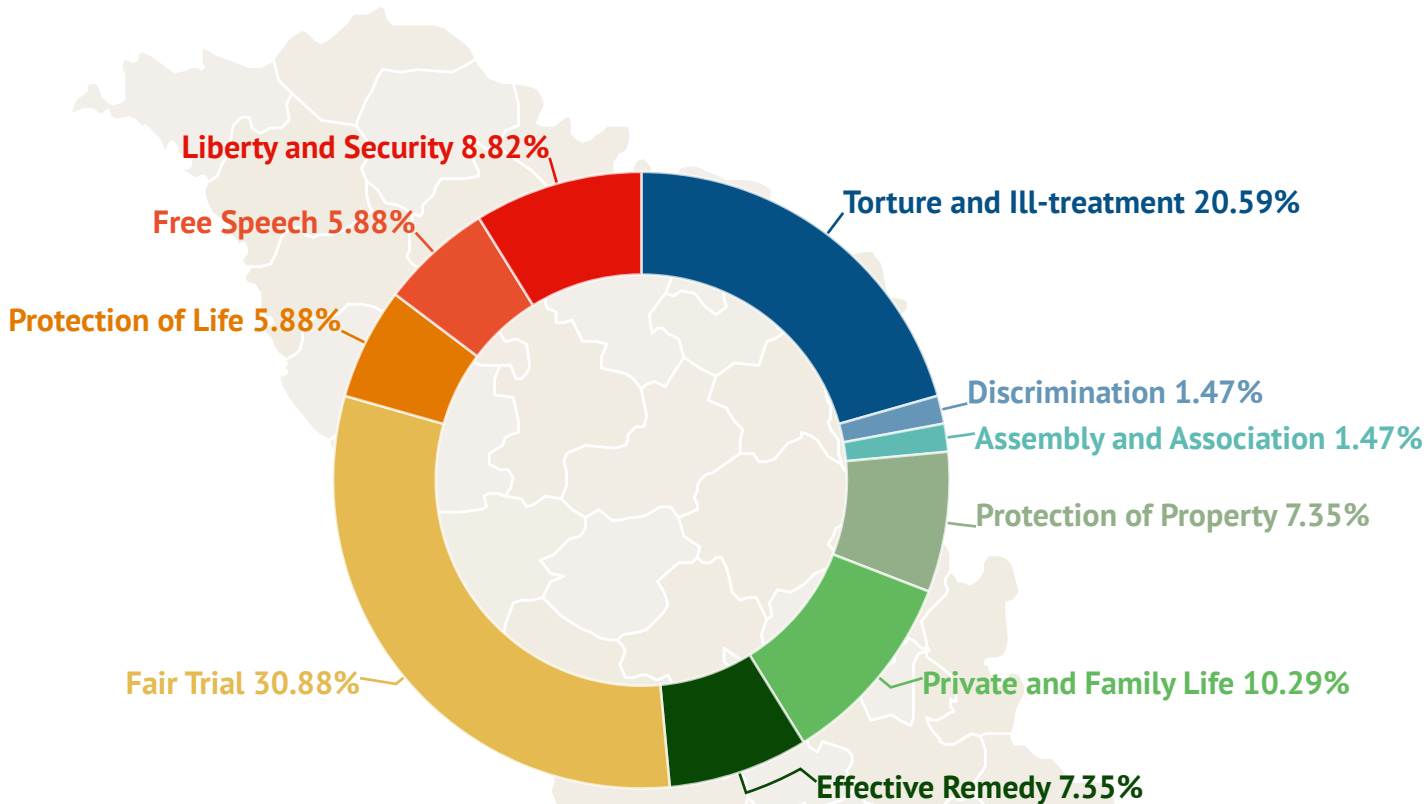


Looking at the pending leading judgments overall, it is worth noting that in nearly half of the cases the Moldovan government have not submitted an **Action Plan** (i.e. the document setting out what steps are envisaged in order to implement the judgment) and/or an **Action Report** (i.e. the overview of the measures successfully taken). This is a huge obstacle to implementation, as the lack of an Action Plan and/or Action Report implies government inactivity in relation to the implementation process.

# EVALUATING THE IMPLEMENTATION PROCESS

## Type of Violation

Besides the percentage of implemented/non-implemented leading judgments, **the nature of the violation(s)** found by the European Court with leading judgments pending implementation is also worth noting.



### Recurring Violations

	There are <b>14 findings</b> of a violation of Article 3 ( <b>prohibition of torture and ill-treatment</b> ) in the leading judgments pending implementation, mostly resulting from <b>dire conditions of detention</b> , a problem which is dealt with in the group of cases of <a href="#"><i>I.D. v. Moldova</i></a> .
	The findings of violation of the <b>right to fair trial (21 in total)</b> concern both civil and criminal matters (15 and 9 violations respectively) and span from the breach of the accused person's right to defence, to the non-enforcement of final judgments, and the infringement of the principle of equality of arms.
	Another notable issue is the breach of the <b>right to liberty and security</b> , recurring <b>6 times</b> . Issues include <b>unlawful detention on remand</b> (examined in the <a href="#"><i>Sarban</i></a> group of cases) and <b>unlawful confinement in psychiatric institutions</b> (dealt with in the <a href="#"><i>David</i></a> and the <a href="#"><i>Gorobet</i></a> groups).



# ANALYSIS

## The State of ECtHR Implementation (1)

The Republic of Moldova has made **significant steps forward in the implementation of certain high-profile judgments** (for example, on the subject of freedom of assembly). The government shows commitment when dealing with groups of cases subject to **strong international pressure**, especially when these are examined under the **Enhanced Procedure of supervision by the Committee of Ministers**. When a case is under the spotlight, the authorities are keener to engage in the process, readier to make efforts towards reforms, and in principle more open to listen to the inputs of civil society. The positive activities of the government on these subjects are to be welcomed.

However, the statistics show that there is **much room for improvement** when the situation is examined overall. There are a significant number of leading judgments where the reforms have not yet been carried out to address the underlying human rights issue. These **judgments have been pending for a long period of time on average** and there is **insufficient government reporting** on how they are to be implemented.

The Legal Resources Centre Moldova and Promo-Lex are two non-governmental organisations that carry out extensive work on the issue of non-implementation of ECtHR judgments in Moldova. We asked them to set out what they perceive to be the reasons behind the absence of systemic implementation in the country. They provided the following responses:

Rather than from insufficient knowledge of the Convention standards, the main obstacle to implementation appears to lie in the country's **institutional and legal framework**, which did not undergo system reforms following the transition to democracy.

This is coupled with an **enduring “bureaucratic” mentality**: as stated in the Report of the International Commission of Jurists [on judicial independence](#), many top rank officials served under the old regime and/or embody the same mentality, thus acting as a barrier to reform.

**Limited cooperation** and **lack of communication** between the authorities and the different stakeholders of the implementation process is another obstacle. Without transparency it is impossible to set up a coherent agenda of reforms, let alone to implement them in practice.

Against this background, legal amendments do not suffice to meet the indications contained in the ECtHR judgments. **Unless they are shared among civil society, legislative actions have little impact**, and may even backfire and worsen the situation.



**For years to come, there is unlikely to be tangible, practical change without a change in the attitude of the judiciary and prosecutors.**

**(Daniel Goinic, Legal Officer at the Legal Resources Centre from Moldova)**

# ANALYSIS

## The State of ECtHR Implementation (2)

Moldovan NGOs also provided the following ideas as recommendations to improve implementation in the country:

■ Many obstacles to implementation may be dealt with by introducing an **inclusive procedure at the domestic level** allowing all the parties involved in the execution of a given group of cases to advance their views and make their voice heard.

”

**The key to full ECtHR implementation is continuing international pressure coupled with robust advocacy at the national level.**  
(Alexandru Postica, Director of PromoLex)

■ A thorough discussion between the different stakeholders (governmental bodies, national human rights institutions, victims' representatives, and NGOs) should take place **in parallel with the process of international supervision.**

■ **Robust advocacy** is crucial in the circumstances, given the importance of civil society in holding the authorities accountable. To achieve this, local NGOs need the support of international human rights groups and of the Council of Europe via capacity building programmes, training activities, and research grants.

”

**We need an open table for discussion between the government and civil society on implementation of ECtHR judgments at the domestic level**  
(Alexandru Postica, Director of PromoLex)

■ The establishment of a **Sub-commission for Parliamentary Oversight of the Enforcement of ECtHR Judgments** is a welcome step. It must be properly empowered to provide the authorities with a full **understanding of the demands of civil society** and have a **high level of credibility** in pursuing substantive and enduring change.

”

**The adoption of a mechanism of parliamentary control over the execution of ECtHR judgments is one of the top priorities for 2020/2021**  
(Daniel Goinic, Legal Officer at the Legal Resources Centre from Moldova)

# CASE STUDY (1)

## The Long March Toward the Right to Public Protest

In December 2004 the NGO [Hyde Park](#) planned to hold a peaceful meeting before the Romanian embassy in Chişinău, but the authorisation was denied on the grounds that the protest was “**unfounded and unwelcome**”. Hyde Park challenged the decision up to the Supreme Court, but to no avail. In the following years the NGO was routinely denied authorisation to hold assemblies. Spontaneous gatherings were dispersed and participants arrested. The same happened to other organisations trying to stage public protests, like the Christian Democratic People's Party.

**These were by no means isolated incidents.** As established by the European Court of Human Rights in a group of judgments finding **multiple violations of Article 11** (right to assembly), the right to peaceful protest lacked sufficient guarantees in domestic law. In 2014, however, this domestic law was amended in the framework of the implementation of this group of judgments. The changes proved capable of **fostering real change in the legal landscape on freedom of assembly**. The new law, which was received in positive terms by international institutions, such as the [OHCHR](#), and NGOs, like [Freedom House](#), relieves from bureaucratic procedures all assemblies of less than 50 people, and substitutes the authorisation required under the old law with a simple duty of notification for larger gatherings.

”

**The guarantee of the right to freedom of assembly cannot be left to the whim of the authorities and their perception of what is or is not deserving of authorisation**

*(Hyde Park and Others v. Moldova, 31 March 2009, § 30)*



Stefan Wisselink [via](#) Flickr.com

Moreover, the new legislation lists **core principles** that mirror those enshrined in Article 11, including **proportionality** and the **presumption in favour of the right to assembly**.

In light of the positive developments in the legal framework and in underlying practice, in 2017 the Committee of Ministers [agreed](#) to close these cases, expressing satisfaction for the steps taken by the authorities.

In 2019 the Committee of Ministers also agreed to [close supervision of cases concerning freedom of assembly for LGBTI groups](#), after finding that NGOs had been able to hold Pride marches freely for two years.

Concerns remain about this and other freedom of assembly rights in the country. At the time of writing, a [leading](#) freedom of assembly case is still pending implementation at the Committee of Ministers, while [new cases](#) on Article 11 are currently being communicated by the European Court of Human Rights. Nevertheless, the [improvement](#) in domestic legal guarantees on freedom of assembly has had significant impact on protecting the right to protest in the country.

# CASE STUDY (2)

## The Fight Against Domestic Violence

T.M. and C.M. are a mother and daughter who suffered **repeated abuse** from M.M., their former husband and father. While M.M.'s threatening behaviour reached a climax, **the police effectively ignored the mother's complaints and requests for help.**

Eventually, justice was achieved in Strasbourg. In 2014 a **judgment** of the European of Human Rights established that Moldova had breached **Article 3** of the Convention on account of the **poor handling of the situation**, and **Article 14** of the Convention for the **discriminatory attitude of the authorities.**

Following the prompt opening of the procedure for the supervision of the execution of the case by the Committee of Ministers, T.M. and C.M. were paid the just satisfaction awarded by the European Court, and obtained a fresh investigation against M.M. However, the issue goes far beyond the specific case, which is only one example of the **systemic problem** posed by domestic violence, coupled with the disconcerting attitude of the authorities towards women. The Moldovan government has agreed to take a number of steps to address the problem, including signing the **Istanbul Convention**, funding awareness-raising campaigns, and passing a comprehensive legislative reforms. However, much remains to be done.



**The authorities' actions were not a simple failure or delay in dealing with violence against the [...] applicant, but amounted to condoning such violence and reflected a discriminatory attitude towards her as a woman**

*(T.M. and C.M. v. Moldova, 28 January 2014, § 62)*



Käänöstoimisto Transly [via](#) Unsplash.com

The NGO the **Women's Law Centre** argued in **two submissions** to the Committee of Ministers that the measures taken so far have had an ambivalent impact. While awareness-raising campaigns encouraged women to report domestic violence, **3 complaints out of 4 are left unanswered.** Moreover, too often perpetrators are given only **mild administrative sanctions with little deterrent effect**, whilst other measures enacted (like legal aid for victims and emergency barring orders) **are often ineffective.** The Istanbul Convention has not yet been ratified.

These concerns are shared by the Committee of Ministers, which in its latest **decision** criticised the authorities for not having ratified the Istanbul Convention, and invited them to examine a number of key continuing problems in preventing domestic violence and punishing perpetrators.

The case once again shows the **importance of properly implementing judgments of the European Court of Human Rights**, and the value of input from civil society, international institutions and government in this process.

# NGO ENGAGEMENT

NGOs play a crucial role in the implementation process. Through their **Rule 9.2 communications** and **informal briefings** they can shed light on the actual state of execution of a given group of cases, and prevent them from being closed too early. NGOs also push forward reforms at the national level through their advocacy.

These are some of the NGOs engaged in the process of the implementation of ECtHR judgments concerning Moldova. They can be contacted for more information on specific cases.

## Legal Resources Centre from Moldova

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## Women's Law Centre

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## Promo Lex

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EIN partners with NGOs across Council of Europe member states to build legal capacity, give advice (including **on how to write a Rule 9.2 communication**), and offer a platform for NGOs in Strasbourg – helping NGOs make a real difference through full participation in the implementation process.

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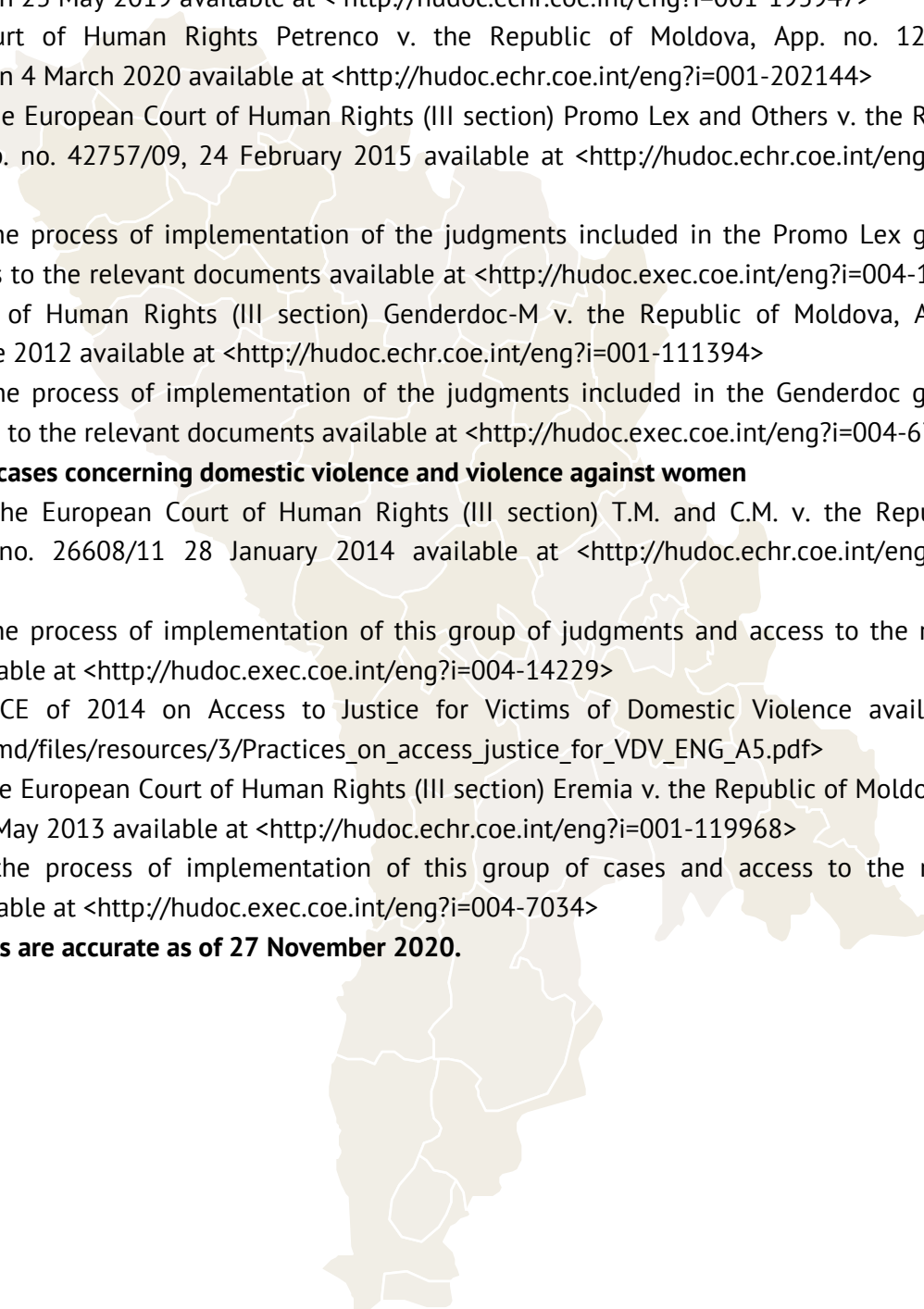
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## **On the statistics**

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**All the hyperlinks are accurate as of 27 November 2020.**



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