



## Briefing paper CIORAP v. MOLDOVA group of cases (conditions of detention)

1 March 2018

### Introduction:

This briefing paper is based on two submissions prepared by the [Legal Resources Centre from Moldova](#) (LRCM) aimed at providing alternative information to the Committee of Ministers of the Council of Europe about the general measures taken for execution of the [Ciorap group of cases](#): one in [September 2016](#) and one in [February 2018](#)<sup>1</sup>.

### Case information:

The European Court found the following main problems regarding the conditions of detention in the Prison No. 13: (extreme) overcrowding, unsanitary conditions / hygiene and insufficiency and low quantity of food. The briefing paper is focused on poor conditions of detention in the Prison No. 13 from Chisinau and lack of effective domestic remedies in this respect.

On 21 October 2013 the Government of the Republic of Moldova submitted an [action plan for the execution of the judgments in Becciev, Ciorap and Paladi groups of cases](#). On 11 January 2018, the Government of the Republic of Moldova submitted a [revised Action Plan](#) for the execution of these judgments. In respect of general measures, it mainly refers to a compensatory remedy introduced on 20 December 2017, with the monetary compensation in force from 1 January 2019. The Government admitted that the overcrowding of the Prison No. 13 is still a problem, as well as the “massive granting of prosecutors’ motions for pre-trial detention”.

## 1. MATERIAL CONDITIONS OF DETENTION IN THE PRISON NO. 13

### a) Overcrowding

The Prison No. 13 has 171 cells, with the total space of 2,521 m<sup>2</sup>, including the dining space and the space of the lavatories. The [Moldovan authorities consider](#) that the maximum capacity of the Prison No. 13 is 1,000 detainees, i.e. they allocate 2.5 m<sup>2</sup> per detainee. The CPT standard is 4 m<sup>2</sup> per detainee, which does not include the lavatories and the space used for dining. The Moldovan authorities, ab initio, when establishing the capacity of the Prison No. 13, create preconditions for severe overcrowding. The real situation is even more serious. For instance, on 31 December 2016, there were 1,029 detainees in it and 1,069 on 31 December 2017.

In its 2013 action plan, the Government undertook to reduce the number of the remanded persons and, implicitly, the prison population. The official statistics proves the contrary. The prison population in Moldova increased from 6,735 in December 2013 to 7,635 (+ 13.4%) in December 2017. More than 15% of the prison population are the persons arrested pending trial. Most of pre-trial detainees are detained in the Prison No. 13. As of 31 December 2017, out of 1,069 persons detained in that prison, 826 (77%) were pre-trial detainees.

The reluctance of judges and prosecutors to apply alternative measures to detention pending trial is the main reason of overcrowding of the Prison No. 13. According to official statistics, in 2017, the number of the prosecutors’ arrest requests increased by 30%, compared to 2013. The prosecutors lodged 2,672 arrest requests in 2013 and 3,470 in 2017, with a permanent increase trend since 2013.

<sup>1</sup> It includes official statistics for 2017.

The rate of arrests authorized by judges also increased, from 77% in 2013 to 87% in 2017. The systemic problem of excessive use of arrest in Moldova is being discussed by the Committee of Ministers for more than 12 years in the context of *Sarban* group of cases.

In [the last published Report on the visit to the Republic of Moldova \(2015\)](#), the CPT noted that the national standard of at least 4 m<sup>2</sup> of living space per prisoner was far from being met in most of the prisons visited; in particular, at Chişinău (Prison No. 13) and Soroca Prisons, the levels of overcrowding reaching disturbing proportions. It requested the authorities to take urgent measures to reduce occupancy levels at Chişinău Prison (para. 59). The above data suggest that no substantial changes occurred following the 2015 CPT Report.

#### **b) Unsanitary conditions / hygiene**

In [the last published Report on the visit to the Republic of Moldova \(2015\)](#), the CPT observed that the material conditions of detention at the Prison No. 13 were inadequate in many other respects (e.g. poor, or even very poor, state of repair and hygiene; limited access to natural light; insalubrious sanitary facilities; infestation by vermin; worn-out and filthy mattresses; etc.). We are not aware of any important measure, and the Government also did not mention any, that would improve the sanitary conditions/hygiene in the Prison No. 13. In May 2017, the Ombudsman paid a monitoring visit to the Prison No. 13. [The report issued in July 2017](#) (in Romanian), mentions inter alia that the detainees do not have sanitation / laundry / linen cleaning services, while the problem of poor hygiene persists.

#### **c) Insufficiency and low quantity of food**

[The July 2017 Ombudsman report](#) mentioned above notes that in May 2017 the food for detainees in the Prison No. 13 was of a poor quality. The fact that the situation in this regard did not improve is also confirmed by the official statistics on costs spent for the food of detainees from the Prison No. 13. Data show that between 2012 – 2017 the amount allocated per day per detainee in Prison 13 I less than 1 euro. These funds are manifestly insufficient, as it impossible to ensure a minimal level of feeding by spending less than 1 euro per detainee per day.

#### **Building of a new prison in Chisinau**

The problems of the Prison No. 13 are acknowledged by national authorities. According to the 2013 Government's Action Plan, the authorities concluded an agreement with the Council of Europe Development Bank and have received a loan for construction of new prison in an amount of almost EUR 40 million. The Moldovan authorities shall also invest about EUR 6 million. The capacity of the new prison should be of about 1,600 detainees. It will merge two prisons from the Chisinau region, including the Prison No. 13. The construction should have started in 2014, but this was not the case. In November 2016 the project design of the new prison started. A plot of land was identified, but no construction started. According to the representatives of the Penitentiary Department, it will take from 3 to 4 years to build this prison. Due to planning constraints and electoral year in 2018, there are small chances that the construction will start in 2018. In a best case scenario, a new prison in Chisinau will be available from 2022.

## **2. THE NEW DOMESTIC REMEDY**

On 20 December 2017, the Law No. 163, of 20 July 2017, entered into force. It provides, inter alia, for a compensatory and restorative remedy for the persons detained in bad prison conditions. The compensatory remedy provides that the persons detained in conditions contrary to Art. 3 of the Convention can request a reduced imprisonment sanction, waiving of the non-privative sanctions or monetary compensations. One day of the detention in bad conditions counts as two days of imprisonment (art. 385 para. 5 of the Criminal Procedure Code). If the detention in bad condition

lasted for more than 3 months at the investigation stage, the detainees convicted to non-privative sanctions is fully liberated of the fine, community work or of the ban to hold a public office (art. 385 para. 6 of the Criminal Procedure Code).

The detainees, before or after conviction, can also seek for a restorative remedy. They can lodge an action to the investigative judge. The investigative judge shall deal with it in one month and, if finding that the conditions of detention were contrary to Art. 3 of the Convention, should order the prison administration to improve the conditions of detention of the applicant in 15 days. The judge can also apply the facilities provided by art. 385 para. 5 and 6 of the Criminal Procedure Code (reducing the number of detention days due to poor conditions) and, if this is not possible, order a monetary compensation of MDL 100 (EUR 5) per each day of detention in bad conditions (see Art. 473<sup>3</sup> and Art. 473<sup>4</sup> of the Criminal Procedure Code). However, Art. 473<sup>3</sup> and Art. 473<sup>4</sup> of the Criminal Procedure Code will enter into force only on 1 January 2019 (see art. VI of the Law No. 163). It is not clear why the entrance into force of these provisions was suspended.

The remedies look efficient in theory. Similar remedies did not exist in the Republic of Moldova and every legal novelty meets practical challenges. The Moldovan judges and prosecutors should be trained in order to reduce the eventual risks of improper application of the new legislation. We recall that the Moldovan judges were reluctant so far to act proactively in ordering a redress for the violation of the Convention. The ECtHR established at least 13 violations of the Convention for the insufficient compensations granted to the applicants, 4 of which concern insufficient compensations for the violation of Art. 3 of the Convention.

## RECOMMENDATIONS

We call the Committee of Ministers to recommend the Moldovan authorities the following:

- a) As top priority, to comply with their undertaking and to build, without delay, a new prison to replace the Prison No. 13;
- b) Until the construction the new prison is finished, take measures to eliminate the overcrowding and to improve the hygiene in the Prison No. 13. The problem of overcrowding can be achieved through application of non-custodial preventive measures;
- c) Increase substantially the funds allocated for detainees' food;
- d) Provide training for the relevant stakeholders to ensure that the new remedy introduced to address the problem of detention in bad conditions is effectively applied in practice. The Moldovan Government shall also inform the Committee of Minister periodically of the impact of this remedy.