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The mechanism for compensation damages caused by the violation of reasonable time requirement – is it efficient?

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LRCM LEGAL RESOURCES CENTRE FROM MOLDOVA

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Summary

Justice delayed is justice denied. Therefore a special attention is paid at the European level to the length of judicial procedures. Moldova did not have chronic problems with the length of court proceedings. Nor does it have them now. The non-enforcement of court judgments, however, was a very acute issue until the middle of the past decade and, in case of judgments requiring allocation of social housing, it persists until now.

In its *Olaru and Others v. Moldova* judgment (28 July 2009), the European Court of Human Rights (ECtHR) requested from the Moldovan Government *inter alia* to establish a remedy for the victims of the non-enforcement of judgments requiring allocation of social housing. For this purpose, on 21 April 2011, the Parliament passed the Law No. 87 on the compensation of damages for the violation of the right to examination of the case an execution of the judgment in reasonable time.

This policy document aims at assessing the efficiency of the remedy introduced by the Law No. 87 and makes recommendations for improving this mechanism. This activity also contributes to the implementation of Action 2 from Intervention Area 3.3.4 of the Action Plan for the implementation of the Justice Sector Reform Strategy for 2011-2016.

The Legal Resources Centre from Moldova (LRCM) analyzed 262 cases filed under Law 87 and found that these actions had been examined slowly. Moreover, judges motivate their judgments on these cases superficially and even found that the reasonable time requirement has breached although ECtHR standards do not support such conclusions. The awarded moral damages are smaller than those awarded by ECtHR in comparable cases and only a very small part of legal costs was compensated.

To address these issues, we recommend changing the compensatory procedure for the breach of the reasonable time requirement. The Ministry of Justice can award compensations on the basis of the clear standards, which are already in place. Applicants may challenge the decision of the Ministry of Justice directly with the Supreme Court of Justice (SCJ), which will issue the final decision on the case. Similar mechanisms exist in the Czech Republic, United Kingdom and Spain.

If it is decided to keep the current system, it is necessary to introduce a system for prioritizing urgent court cases, including those under Law No. 87. Judges dealing with actions under Law 87 need thorough training on the application of the ECtHR standards. The SCJ should also establish practices that ensure proper compensations for the violation of reasonable time requirement.

Introduction

Until the middle of the past decade, the failure to enforce court judgments was a very serious problem in Moldova. In the case *Olaru and Others*, ECtHR found that, until 2009, the most frequent issue raised in applications lodged against Moldova was the failure to enforce judgments on time. Many of these cases involved the Government's failure to provide social housing. In *Olaru and Others*, ECtHR requested Moldovan Government *inter alia* to establish a compensatory remedy for the victims of the failure to enforce court judgments requiring allocation of social housing.

To prevent a higher number of judgments obliging to provide social housing, in late 2009, the Parliament annulled the right of most categories of civil servants to social housing.[1] On 21 April 2011, the Parliament passed Law No. 87, which gives the right to any individual or legal entity to claim compensations from the Government for the violation of the reasonable time requirement. Law No. 88 on amending and supplementing legislative acts, passed on the same date, introduced a remedy for speeding up protracted procedures.

This policy document aims at assessing the efficiency of the remedy introduced by the Law No. 87 and makes recommendations for improving this mechanism. This document does not cover the efficiency of the acceleratory remedy introduced by Law No. 88 or of other remedies for the violation of the violation of the reasonable time.

In 2014, LRCM studied 262 cases filed concerning Law No. 87 in which courts issued final judgments between of September 2012 and October 2013 (more than 90% of all actions). LRCM analyzed the duration of these procedures, the quality of judgment motivation and the awarded compensations. To get an accurate picture, the experts reviewed non-enforcement cases separately from those concerning duration of court procedures. The resulting conclusions and recommendations are based on the standards of the Council of Europe and best European practices.

[1] See the Law No. 90 of 4 December 2009. This law did not exclude all possibilities of new judgments of this type. On 1 November 2012, the SCJ passed the Opinion No. 3, according to which, "judges who at the time of the repeal [of the provision entitling them to social housing] had no housing can, within three years from the date of the repeal, request it from local authorities". This opinion is available at http://jurisprudenta.csj.md/search_rec_csj.php?id=18.

Problem description

a) The situation prior to Law No. 87

The complexity of social relationships is growing and legal actions take more time for resolution. This inevitably impacts the duration of court proceedings, especially during the crisis, when it is impossible to supplement the number of judges. This, however, cannot justify systemic delays in the judiciary because, as it is well known "justice delayed is justice denied."

Art. 6 of the European Convention on Human Rights (ECHR), which also covers both court and enforcement procedures, requires that cases or charges be examined "within a reasonable time." There are no fixed time frames whose overrunning automatically leads to violation of the ECHR. When deciding whether "reasonable time" was violated, ECtHR considers the complexity of the case, the applicant's and the authorities' behaviour and the stake for the applicant.[2] ECtHR usually rejects as manifestly ill-founded the complaints on legal proceedings that take less than two years in one instance or on the Government's failure to enforce judgments that last less than a year.

Moldova has never had chronic problems with delays in court proceedings. Nor does it have them now. On the contrary, judges tend to solve cases as quickly as possible, at the expense of quality. Protracted case resolution in Moldova is an exception that is usually caused by frequent postponement of court sittings and by sending of cases for retrials by higher courts. Until 31 December 2011, ECtHR found the Republic of Moldova in violation of reasonable time in 9 cases where judicial proceedings lasted too much.[3]

More problematic in Moldova is the delayed enforcement or non-enforcement of court judgments. Until 31 December 2011, due to belated enforcement or non-enforcement of court judgments, ECtHR found the Republic of Moldova in violation of Art. 6 of the ECHR in 56 cases.[4] 22 of these cases involved the authorities' failure to pay for over 12 months. These

[2] *Frydlender v. France* (27 June 2000), para. 43; *Raylyan v. Russia* (15 February, 2007), para. 31.

[3] The ECtHR found that court procedures were too long in the following cases: *Holomiov* (7 November 2006); *Mazepa* (12 April 2007); *Gusovschi* (13 November 2007); *Cravcenco* (15 January 2008); *Boboc* (4 November 2008); *Pânzari* (29 September 2009); *Deservire SRL* (6 October 2009); *Matei and Tutunaru* (27 October 2009); and *Oculist and Imas* (28 June 2011).

[4] ECtHR found that, contrary to Art. 6 of the ECHR, final judgments on the payment of money had not been enforced or had been enforced with excessive delays in the following cases: *Prodan* (18 May 2004); *Luntre and Others* (15 June 2004); *Pasteli and Others* (15 June 2004); *Sirbu and Others* (15 June 2004); *Bocancea and Others* (6 July 2004); *Croitoru* (20 July 2004); *Timbal* (14 September 2004); *Popov No. 1* (18 January 2005); *Dumbraveanu* (24 May 2005); *Scutari* (26 July 2005); *Daniliuc* (11 October 2005); *Baibarac* (15 November 2005); *Lupacescu and Others* (21 March 2006); *Lungu* (9 May 2006); *Istrate* (13 June 2006); *Lozan and Others* (10 October 2006); *Draguta* (31 October 2006); *Moisei* (19 December 2006);

failures continued until 2007. Apparently, this is not a systemic problem anymore. There are, however, problems with the authorities' compliance with court judgments requiring allocation of social housing and with execution of judgments against private persons. ECtHR criticized Moldova for the failure to comply with judgments requiring allocation of social housing in 13 cases[5] and the failure to execute judgments against private persons in nine cases.[6]

b) *Olaru and Others* judgment and the Law No. 87

In *Olaru and Others*, ECtHR found that until 2009 the most frequent reason for filing an action against Moldova had been the failure to enforce in time the judgments requiring allocation of social housing, as well as that this was a systemic issue. On 28 July 2009, more than 300 such applications were pending before the ECtHR. Therefore, in its *Olaru and Others* judgment, ECtHR mentioned:

> „58. [...] the State must introduce a remedy which secures genuinely effective redress for violations of the Convention on account of the State authorities' prolonged failure to comply with final judicial decisions concerning social housing delivered against the State or its entities. Such a remedy [...] must conform to the Convention principles [...]."

In *Scordino No. 1 v. Italy* judgment (29 March 2006), ECtHR described the requirements to be met by the compensatory remedy mentioned in *Olaru and Others* judgment.[7] Thus:

a) the procedural rules governing an action for compensation must conform to the principle of fairness guaranteed by Art. 6 of the Convention (para. 200)

Oferta Plus SRL (19 December 2006); *Avramenko* (6 February 2007); *Cooperativa Agricola Slobozia-Hanesei* (3 April 2007); *Mazepa* (12 April 2007); *Botnari* (19 June 2007); *Ungureanu* (6 September 2007); *Bita and Others* (25 September 2007); *Mizernaia* (25 September 2007); *Clionov* (9 October 2007); *Curararu* (9 October 2007); *Grivneac* (9 October 2007); *Buianovschi* (16 October 2007); *Deordiev and Deordiev* (16 October 2007); *Marcu* (16 October 2007); *Nadulisneac Ion* (16 October 2007); *Tiberneac* (16 October 2007); *Tiberneac Vasile* (16 October 2007); *Vitan* (16 October 2007); *Deliuchin* (23 October 2007); *Lipatnikova and Rudic* (23 October 2007); *Banca Vias* (6 November 2007); *Becciu* (13 November 2007); *Cogut* (4 December 2007); *Bulava* (8 January 2008); *Rusu* (15 January 2008); *Vacarencu* (27 March 2008); *Prepelita* (23 September 2008); *Avram* (9 December 2008); *Tudor Auto SRL and Triplu-Tudor SRL* (9 December 2008); *Cebotari and others* (27 January 2009); *Decev* (24 February 2009); *Fedotov* (15 December 2009); *Panov* (13 July 2010); *Muhin* (25 January 2011), *Mocanu* (17 May 2011); *Vartic and Others* (20 September 2011); *Stog and Others* (3 November 2011); *Mistreanu* (15 November 2011).

[5] ECtHR found that, contrary to Art. 6 of the ECHR, final court judgments ordering allocation of social housing have not been enforced or had been enforced with excessive delays in the following cases: *Prodan* (18 May 2004); *Popov No. 1* (18 January 2005); *Dumbraveanu* (24 May 2005); *Draguta* (31 October 2006); *Botnari* (19 June 2007); *Curararu* (9 October 2007); *Cogut* (4 December 2007); *Vacarencu* (27 March 2008); *Prepelita* (23 September 2008); *Panov* (13 July 2010); *Muhin* (25 January 2011); *Mocanu* (17 May 2011); *Vartic and Others* (20 September 2011).

[6] The cases *Istrate, Mazepa* and *Grivneac* refers to payment ordered against private persons; *Clionov* and *Cebotari and Others* refer to the payment of disability benefits by the employer; *Vitan* refers to obligation of ASITO company to pay private pensions ; *Decev* concerns the non-enforcement of a judgment on the protection of honor and dignity by the governor of Gagauzia; *Stog and Others* refers to the reinstatement in a private company and payment of salary benefits; *Bordeianu* (11 January 2011) refers to mother''s difficuties in exercising the guardinship over her child.

[7] Recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2010)3 of 24 February 2010 recommend similar requirements for the remedy for excessive length of proceedings.

b) an action for compensation must be heard within a reasonable time (para. 195 *in fine*), but faster than ordinary compensatory procedures;

c) the level of compensation must not be unreasonable in comparison with the awards made by the ECtHR in similar cases (paras. 202-206 and 213)

d) the rules regarding legal costs must not place an excessive burden on litigants (para. 201);

e) the compensation must be paid promptly and generally no later than six months from the date on which the decision awarding compensation becomes enforceable (para. 198).

In order to enforce the *Olaru and Others* judgment, on 21 April 2011, the Parliament passed Law No. 87, in force from 1 July 2011. This law refer not only to the failure to enforce court judgments. It also enables any individual or legal entity to claim material and moral damages in court for excessive length of proceedings during criminal prosecution, trial or enforcement of the judgment. The law stipulates that the action should be filed against the Ministry of Justice.[8] These actions fall under the jurisdiction of Buiucani District Court, Chișinău,[9] and must be examined by the first instance court within maximum 3 months from submission. The judgment of the first instance court is not enforceable. It can be challenged through appeal or cassation[10] and the law does not ban sending such cases for retrial.[11] The law does not provide for special time limits for examination of appeal or cassation in the cases filed under Law No. 87.

The remedy introduced by Law No. 87 clearly meets two of the five requirements listed in *Scordino No. 1* judgment (letters (a) and (e) above). The procedures are examined in court based on rules that ensure sufficient appearance of fairness. On the other hand, according to Art. 36[1] of Law on the Budgetary System and Budgetary Process, the Ministry of Finance has six months to comply with the enforcement warrant. Otherwise, the bailiff can proceed to forced enforcement, which, apparently, happens seldom. In its *Balan v. Moldova* decision, ECtHR admitted *prima facie* that the remedy introduced by the Law No. 87 is efficient, suggesting applicants to make use of it before complaining to ECtHR of the violation of the reasonable time requirement. According to the statements made by a Moldovan lawyer from the Registry of the ECtHR, the ECtHR gave Moldova the benefit of the doubt but this

[8] Until 6 October 2012, plaintiffs filed such actions against the Ministry of Finance. Law No. 96 of 3 May 2012, amended Law No. 87 and stipulates that plaintiffs must file actions against the Ministry of Justice.

[9] Until 6 October 2012, plaintiffs filed actions on non-enforcement or delayed enforcement with court judgments with Rîșcani District Court, Chișinău, due to the location of the Ministry of Finance. After that date, the actions shall be submitted with Buiucani District Court, Chișinău (Law No. 96 of 3 May 2012). Until 30 November 2012, plaintiffs filed actions on the violation of reasonable time in criminal prosecution or trial with Chișinău Court of Appeals. Law No. 155 of 5 July 2012, banned appellate courts from trying cases in the first instance and all cases are now examined by district courts.

[10] Filing an appeal suspends the enforcement of a court judgment until the decision of the appellate court. The cassation does not suspend the judgment but, according to Art. 6 (1) of Law No. 87, such judgments become enforceable after they become irrevocable. Moreover, Art. 6 (4) of Law No. 87 stipulates that the Ministry of Finance may enforce writs within the time frames established in Law No. 847 of 24 May 1996 "On the Budgetary System and Budgetary Process." Art. 36[1] of this Law bans the forced execution of such writs for 6 months from the date when the judgment becomes irrevocable.

[11] Until 1 December 2012, when amendments to the Civil Procedure Code became effective, plaintiffs could challenge judgments of trial courts only in cassation, whereas retrials were prohibited by law. Law No. 155 of 5 July 2012 provides that all judgments are examined in the first instance by district courts and that judgments of those courts can be challenged by appeal and, afterwards, in cassation. From 1 December 2012, the Civil Procedure Code does not ban sending for retrial cases filed under Law No. 87.

can change in the future if Moldovan courts are unable to align the national judicial practice to the requirements of the ECtHR. This was also stressed in point 27 of the decision in the case of *Balan*.[12]

After *Balan* decision ECtHR dismissed more than 300 Moldovan application concerning of reasonable that were pending with the ECtHR at 28 July 2009, (when *Olaru and Others* judgment was delivered) or were filed afterwards, for the failure to exhaust all domestic remedies. It suggested applicants to file actions under Law No. 87.

On 1 June 2012, 11 months after the Law No. 87 entered into force, the Ministry of Finance was aware of 634 actions filed under this Law (approximately 1% of the total amount of civil cases filed that year). The large number of these claims can be explained by the fact that ECtHR had dismissed more than 300 applications concerning reasonable time requirement and, consequently, applicants filed many of them with Moldovan courts. Apparently, the number of such actions has gradually decreased. However, according to official statistics, on 31 March 2014, 138 actions of this kind were still pending in the district courts.[13]

c) Efficiency of the remedy established by the Law No. 87

The analysis of the court practice made by LRCM[14] raised doubts as to the efficiency of the compensatory remedy for damages caused by the violation of the reasonable time requirement. Serious issues exist with the speed of examination of actions filed under Law No. 87, the quality of judgments motivation and the size of the awarded material or moral damages. In addition, legal costs are usually not compensated properly, even when actions are fully admitted and the involvement of lawyer does not seem excessive.

I. Length of proceedings

It is inacceptable that, in order to receive compensations for the violation of reasonable time, plaintiffs have to go through another set of unreasonably long procedures. Law No. 87 requires the district court to examine such actions within 3 months from the date of filing the action. In reality, however, courts do not comply with these deadlines.[15] Neither Law No. 87 nor any other legislation establishes special time frames for the examination of appeals and cassations in actions filed under Law No. 87. These cases are examined under the normal

[12] These statements were made by Mr. Radu Panţîru on 27 March 2012 at a conference organized by the Council of Europe at the National Institute of Justice. Mr. Panţîru is the most experienced Moldovan lawyer at the Registry of the ECtHR. His speech was later posted on the web site of the SCJ and is available at http://csj.md/news.php?menu_id=460&lang=5.

[13] Ministry of Justice, Statistic Report "Number of court cases examined in the first 3 months of 2014 under Law No. 87 of 21 April 2011, available at http://justice.gov.md/public/files/file/Sistemul%20Judiciar/Studii%20si%20Analize/executarea_legii_87.docx.

[14] In 2014, LRCM analyzed the court practice related to Law No. 87. It studied the complaint and the court judgments on those cases. LRCM analized more than 90% (262) of cases on which courts issued final judgments between September 2012 – October 2013. 143 of the examined cases concerned the duration of court proceedings and 119 – the enforcement of judgments.

[15] According to official statistics (see Footnote 13), as of 1 January 2014, 111 actions filed under Law No. 87 were pending in the first instance court. In the first three months of 2014, 28 actions were filed and 39 were disposed of. As of 31 March 2014, there were still 100 pending actions. In other words, on 31 March 2014, at least 72 of the 111 actions filed before 31 December 2013, were still pending in the first instance courts (assuming that none of the 28 actions filed in the first quarter of 2014 was examined).

procedure. Appeals usually take at least 3 months, cassations – other 3 or 4 months, while the time allocated by law for filing a cassation is two months. The table below presents details about the 262 cases filed under Law No. 87 and analyzed by LRCM.

Length of proceedings filed under Law No. 87 (including examination of cassation)											
	Studied cases	Up to 6 months		6-12 months		13-15 months		16-18 months		18 months +	
Duration of court proceedings	143	22	15,4%	79	55,2%	18	12,6%	11	7,7%	13	9,1%
Execution of judgments	119	11	9,2%	53	44,5%	20	16,8%	10	8,4%	25	21,0%
Total	262	33	12,6%	132	50,4%	38	14,5%	21	8,0%	38	14,5%

Thus, 12.6% of the 262 studied cases were disposed of in less than six months, 50.4% in between 6 and 12 months, 14.5% in between 13 and 15 months, 8% in between 16 and 18 months, and 14.5% in more than 18 months.

LRCM studied the official statistics concerning the length of proceedings in Moldova.[16] The data confirms that as of 1 October 2013, only 3.9% (2,699) of 69,000 civil cases on docket in district courts had been pending for more than 12 months. 2.6% (1.803) were pending between 12 and 24 months, 0.7% (503) – between 24 and 36 months and 0.5% (373) – for more than 36 months. Assuming that the examination of appeals in the studied 262 cases took three months, 22.5% of the actions filed under Law No. 87 were examined in trial courts in more than 12 months. This is much more than the national average for civil cases, which is of 3.8%.[17] These figures suggest that judges examine ordinary civil actions much faster than the actions filed under Law No. 87, which is quite the reverse to what it should be.

The table above shows a better situation than the current real situation. Many of the cases studied by LRCM were examined by courts based on the legislation in place before 1 December 2012, when it was not possible to examine such cases on appeal. As from 1 December 2012, appeal in these procedures is available.[18] Moreover, the time for filing cassation was extended from 15 days to 2 months and parties use this remedy very often. Consequently, after 1 December 2012, the period for examining actions under Law No. 87 increased by minimum 4 months. The examination of actions filed under Law No. 87 for more than 18 months combined with the enforcement procedures of another 6 months seems the be incompatible with standards of the ECtHR. Moreover, as from 1 December 2012, the actions filed under Law No. 87 can be sent for retrial, which happens occasionally, sometimes even repeatedly.[19]

[16] Ministry of Justice, Statistical Report on the Examination of Civil Cases in Trial Courts during 9 Months of 2013, available at http://justice.gov.md/public/files/file/rapoarte/Judecarea_cauzelor_civile_9_luni_2013din-12-12-2013.xlsx.

[17] According to the data for the first 9 months of 2013.

[18] See footnote 11.

[19] For example, the SCJ has sent the case *Ciorici Constantin v. the Ministry of Finance* for retrial twice. More information at http://jurisprudenta.csj.md/search_col_civil.php?id=5415.

II. Motivation of judgments

According to ECtHR standards, the reasonable time requirement can be breached only if the length of proceedings in one instance exceeds 2 years or if the non-enforcement lasts more than one year. Out of the 262 studied cases, only 177 concerned the periods that could be found unreasonable, while the remaining 85 cases concerned too short periods. 54.2% (142) of the 262 actions were admitted and 45.8% (120) were dismissed, usually because the duration of court or enforcement procedures was not unreasonable. Many of these rejections are justified. Yet at least 26 of the 120 court judgments dismissing the claim raised questions regarding the foundation of the court solution. SCJ, in many of its judgments, concluded that "the length of judicial proceedings was not excessive because the time-frames from the domestic legislation were respected, while parties used their procedural wrights, made motions and requests, which led to postponement of court hearings" The table below presents the information on the quality of motivation of judgments.

The quality of motivation of judgments									
	Studied cases	More than 2 years		Admitted actions		Rejected actions out of the 69 cases			
Duration of court procedures	143	69	48,3%	57	82,6%	11			
						Sufficiently motivated		Insufficiently motivated	
						3	27,3%	8	72,7%
	Studied cases	More than one year		Admitted actions		Rejected actions out of the 108 cases			
Execution of judgments	119	108	90,8%	85	78,7%	24			
						Sufficiently motivated		Insufficiently motivated	
						6	25,0%	18	75,0%
Total	262	177	67,6%	142	80,2%	9	25,7%	26	74,3%

The aforementioned finding on the motivation of court judgments is also valid for the SCJ. It usually applies a standard motivation. The SCJ refers to the jurisprudence of the ECtHR in general terms, without explaining how the standards from that jurisprudence apply to the examined case. In determining whether the examination or enforcement periods are excessive, the SCJ generally does not consider in detail the complexity of the case, the parties' behaviour or the importance of the case for the parties, which are the criteria used by the ECtHR. This happens despite the existence of a practical guide to applying the jurisprudence of the ECtHR on excessive length of proceedings or non-enforcement, developed by the Governmental Agent back in 2012.[20] Furthermore, the reasoning from the judgment concerning the foundation or ill-foundation of legal actions

[20] Ministry of Justice, Practical guide to applying the case law of the ECtHR on non-enforcement or excessive length of proceedings, available at http://justice.gov.md/public/files/file/GHID_PRACTIC_DAG_MJ_May_2012.pdf.

is usually short and, sometimes, it is impossible to establish concrete arguments for the court solution. In fact, inappropriate motivation of court judgments is a widespread phenomenon in the Moldovan justice system, which extends beyond the judgments concerning Law No. 87.

III. Compensation of material and moral damages

Out of the 262 studied cases, courts admitted, in part or in full, 142, of which 85 concerned the non-enforcement of judgments. 31 of those 85 concerned the failure to enforce judgments on providing social housing. In 21 of those 31 cases plaintiffs claimed material damages. Courts, however, awarded material damages only in eight cases. The analysis established that, despite of a clear practice of the ECtHR,[21] Moldovan judges do not acknowledge the Government's liability for the failure to enforce court judgments in cases involving private parties, even when the impossibility of execution is exclusively imputable to bailiffs' actions.

According to the standards of the ECtHR, the moral damages awarded by domestic courts should not be unreasonable in comparison with those awarded by ECtHR in similar cases, namely the cases in which ECtHR found a comparable violation against the same state or against a state with a similar level of economic development. In its *Burdov No. 2 v. Russia* judgment (15 January 2009), ECtHR stated the following about the compensation of moral damages:

> "100. There exists a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage. The Court considers this presumption to be particularly strong in the event of excessive delay in enforcement by the State of a judgment delivered against it, given the inevitable frustration arising from the State's disregard for its obligation to honour its debt and the fact that the applicant has already gone through judicial proceedings and obtained success."

Awards of EUR 400.000 in damages for the violation of the length of proceedings, as awarded by Chișinău Court of Appeals in *Sandulachi* case,[22] are not characteristic for the Moldovan justice system. On the contrary, many Moldovan judges consider that human rights violation should not automatically entail compensation of moral damages or that moral damages should not be very large. Small moral damages is always the subject of harsh discussions among Moldovan legal practitioners. When asked about the size of moral damages, judges answered that, in making an award, they take into account the realities of Moldova, which is the poorest European country, while the judges' salaries were small. They also point to the case law of the SCJ, which until recently used to award mostly small compensations. Some judges were reluctant to the idea of awarding large compensations for fear of being accused of corruption, or because they traditionally "were preoccupied

[21] See the judgment of the ECtHR *Banca Vias v. Moldova*, 6 November 2007.

[22] Decision of 23 January 2012 of Chișinău Court of Appeals on the case *Pantelei Sandulachi v. the Ministry of Finance*. The SCJ later quashed that decision and reduced the damages to EUR 1,000.

with the State budget."[23] It is worth mentioning, however, that judges were more generous when the plaintiffs were their fellows or family members of their fellows.[24]

Judges seem to consider that establishing the size of moral damages is not so much a legal matter as something at the judge's discretion. For that reason, they motivate their judgments on this part rather superficially, which leaves it unclear how the size of damages was established and why in other similar cases judges awarded different moral damages.

The size of moral damages awarded by Moldovan judges varies considerably. Until 2013, judges in district courts used to award larger moral damages, which were later reduced considerably in appeal and cassation. In the end, the compensations would become considerably smaller than those awarded by the ECtHR.[25] For this particular reason, by 31 December 2013, Moldova lost six cases at the ECtHR.[26]

The SCJ seems to admit that Moldovan courts award too small moral damages for the violation of the ECHR and that the court practice in this area is not uniform. On 23 July 2012, the SCJ posted on its web site a joint opinion of the Chief Justice and the Governmental Agent on the just satisfaction required for violation of the ECHR.[27] The opinion states:

> " [...] after examining the jurisprudence of the ECtHR on non-enforcement, we found that the size of [moral damages ECtHR awards in Moldovan cases] is approximately of EUR 600 for 12 months of delay and EUR 300 for each following 6-month period."

Out of the 262 studied cases, 143 concerned the excessively protracted court proceedings. 91 of those 143 cases were admitted. The table below shows detailed information about those 91 actions and the compensation awarded. Thus, although 40% of the admitted actions concerned procedures that lasted more than 4 years, only in 3% of cases courts awarded EUR 2.000 or more in moral damages. On the other hand, although only 18% of the admitted actions concerned procedures durations of up to one year,[28] in 73% of the cases the awarded moral damages were smaller than EUR 500. In 14 of the 91 admitted cases, LRCM found that courts acknowledged the violation of the ECHR without awarding moral damages. The largest moral damages were of MDL 50.000 and were awarded to a lawyer for criminal procedures against him which lasted 6 years and

[23] Legal Resources Centre from Moldova, Enforcement of the Decisions of the European Court of Human Rights by the Republic of Moldova 1997 – 2012", Chișinău 2012, p. 55.

[24] In 2006, in the case ***Grosu and Others v. Moldova*** (ECtHR's decision of 13 July 2007), the SCJ awarded the plaintiff, who was a former judge, EUR 9,500 in moral damages for the illegal quashing of an irrevocable judgment. In 2007, in the cases ***Guranga*** and ***Cumatrenco*** (ECtHR decisions of 20 March 2007), the SCJ awarded to judges or their families EUR 4,400 and, respectively, EUR 4,850 in moral damages for the illegal quashing of irrevocable judgments. The moral damages awarded by the ECtHR in comparable cases are much smaller.

[25] Legal Resources Centre from Moldova, Enforcement of the Decisions of the European Court of Human Rights by the Republic of Moldova 1997 – 2012", Chișinău 2012, p. 55.

[26] See the judgments of the ECtHR ***Ciorap No. 2*** (20 July 2010); ***Ganea*** (17 May 2011); ***Avram and Others*** (5 July 2011); ***Cristina Boicenco*** (27 September 2011); ***G.B. and R.B.*** (18 December 2012; and ***Pietriș S.A.*** (3 December 2013).

[27] Joint opinion of the Chief Justice and the Government Agent on just satisfaction required for violation of the ECHR, available at http://csj.md/admin/public/uploads/Opinie%20privind%20satisfac%C5%A3ia%20echitabil%C4%83.doc.

[28] The admission of these actions is problematic in itself, because ECtHR usually dismisses as manifestly ill-founded claims on the length of proceedings shorter than two years. 32% of the admitted actions concerned procedures that lasted less than two years. This can be indicative of a rather poor knowledge of the EtCHR standards by judges.

6 months. The average size of moral damages in those 77 admitted actions was of MDL 7.084 (EUR 442), although the average duration of the procedures for which the damages were awarded was of two years and 11 months.

Studied cases	Actions on excessively protracted judicial procedures											
143	Admitted actions								91		64%	
	Claimed moral damages								91		100%	
ADMITTED CLAIMS							REJECTED CLAIMS					
77							14					
DURATION OF MAIN PROCEDURES												
up to 1 year		1-1.5 years		1.5-2 years		2-3 years		3-4 years		4 years and more		
14	18%	7	9%	4	5%	12	16%	9	12%	31	40%	
MORAL DAMAGES AWARDED BY IRREVOCABLE JUDGMENT												
up to € 500		€ 500-750		€ 750-1,000		€ 1,000-1,500		€ 1,500-2,000		€ 2,000 and more		
56	73%	14	18%	2	3%	2	3%	1	1%	2	3%	
Smallest award		MDL 500		20 March 2013		Case 2ra-794/13		Liubovi Constantinova v. the MoF		6 months		
Biggest award		MDL 50,000		20 September 2012		Case 2r-703/12		Tuhari Igor v. the MoF		6 years 6 months		
Average duration of the main procedures in which the action was admitted								2 years 11 months				
Average award								MDL 7,084 (EUR 442)				

Courts admitted 91 out of 119 studied actions concerning non-enforcement or delayed enforcement with court judgments. In 88 of those 91 cases, plaintiffs claimed moral damages. Courts admitted 82 of them. The table below shows detailed information about those On 82 actions the moral damages were awarded. Thus, although only 4% of these actions concerned periods of less than 1,5 years, in 67% of cases moral damages were below EUR 750. Although 39% of actions concerned periods of more than 4 years, only in 7% of cases courts awarded EUR 2,000 and more as moral damages.[29] The largest award for moral damages was of MDL 60,000 for the failure to enforce a judgment for 12 years. Although the average duration of non-enforcement or delayed enforcement in those 82 admitted actions was of 3 years and 6 months, the average size of the awarded moral damages was of only MDL 11,961 (EUR 747). According to the joint Opinion of 23 June 2012 of the Chief Justice and of the Governmental Agent, which was developed on the basis of the ECtHR practice, the damages for delays or non-enforcement for 3 years and 6 months should have been of EUR 2,100.

[29] Apparently, this is the lowest moral compensation ECtHR has awarded for the failure to enforce a judgment for 4 years.

Studied cases	Actions on non-enforcement or belated enforcement with court judgments		
119	Admitted actions	91	76%
	Claimed moral damages	88	97%

ADMITTED CLAIMS	REJECTED CLAIMS
82	6

DURATION OF MAIN PROCEDURES												
up to 1 year		1-1.5 years		1.5-2 years		2-3 years		3-4 years		4 years and more	
2	2%	2	2%	10	12%	16	20%	20	24%	32	39%

MORAL DAMAGES, AWARDED BY IRREVOCABLE JUDGMENT											
up to € 500		€ 500-750		€ 750-1,000		€ 1,000-1,500		€ 1,500-2,000		€ 2,000 and more	
37	45%	18	22%	9	11%	5	6%	7	9%	6	7%

Smallest award	1,000 MDL	25 September 2012	Case 2r-1442/12	Bodarev Ion v. the MoF	3 years
Biggest award	60,000 MDL	25 September 2013	Case 2ra-2030/13	Svetlana Turcanu v. the MoF	12 years
Average duration of the main procedures in which the action was admitted				**3 years and 6 months**	
Average award				**11,961 MDL (EUR 747)**	

The information from the above two tables clearly shows that the moral damages awarded under Law No. 87 are considerably smaller than those awarded by the ECtHR in comparable cases. We tried to analyze how to what extent the SCJ follows the joint Opinion of 23 June 2012 of the Chief Justice and of the Governmental Agent. In most of studied cases, the SCJ issued the final decision. Unfortunately, we found no reference to this recommendation in any of those decisions, even in cases in which the plaintiffs made referent this joint opinion in justification of compensation claims. The size of the awarded damages clearly shows that the SCJ did not take into account the recommendations from the joint opinion when establishing the size of the award for moral damages for the breach of the reasonable time requirement. Lately, however, the SCJ tended to moderately increase the size of the awarded moral damages in all types of cases.

IV. Compensation of legal costs

Actions filed under Law No. 87 are not subjected to court fee. These procedures, however, entail for plaintiffs substantial legal assistance costs, which can hamper the efficiency of the remedy introduced by Law No. 87. Since courts usually compensate only a fraction of the spending lawyer's fee, in cases where the final compensations awarded are only slightly larger or even smaller than the attorney's fees, it is hard to conclude that the plaintiff obtained an adequate redress.

The Moldovan Union of Lawyers recommends and attorney's fees for EUR 50 per hour and to EUR 150 per hour.[30] Out of the 182 admitted actions studied by LRCM, plaintiffs claimed the compensation of legal assistance costs only in 46 cases. This suggests that plaintiffs usually do not claim such compensations or claim only partial compensations. Perhaps, this is due to the court practice of compensating only a fraction of legal costs, even if the action is fully admitted, the time spent for the case is justified, and the attorney's fees are close to the lowest fee recommended by the Union of Lawyers. Judges usually do not explain the reasons for partial or entire dismissal of claims for the compensation of legal fees, perhaps due to insufficient justification of such claims. Moreover, despite the requirement of Art. 96 para. (1) of the Civil Procedure Code, there are not many judges who examine the legal costs were necessary and reasonable as to the quantum. Judges often establish the amount of such compensations at their entire discretion, without taking into account the circumstances of each case. Only in 35 of the 46 cases in which plaintiffs claimed the compensation of legal assistance costs, courts admitted those claims. The average size of such compensations was of MDL 3,705 (EUR 238) and the maximal compensation was of MDL 19,242.

Studied cases	**Compensation of legal fees**				
262	Admitted actions			182	
	Claimed compensations of legal fees			46	25%
ADMITTED CLAIMS			**REJECTED CLAIMS**		
35			11		
Completely	**Partially**				
21	14				
Smallest award	MDL 200	27 November 2012	Case 2r-2118/12	Mihai Voloc and Others v. the MoF	
Largest award	MDL 19,242	25 September 2013	Case 2ra-2030/13	Svetlana Turcanu v. the MoF	
Average award				**MDL 3,705**	

[30] Board of the Moldovan Union of Lawyers, Decision No. 2 of 30 March 2012, available at http://www.avocatul.md/files/documents/Recomandari%20onorarii%202012.pdf.

Policy options and recommendations for the Republic of Moldova

As previously mentioned, the remedy introduced by Law No. 87 is affected by bad implementation of the law. Actions are not examined promptly and awarded compensations are very small by ECtHR standards. Solutions to this problem can be found in comparative law.

a) A new compensatory procedure

Many countries have introduced various compensatory remedies for the violation of reasonable time requirement. These remedies can be divided in two types:

a) Claims filed with the Constitutional Court,[31]

b) Claims filed with ordinary courts.[32]

The introduction in Moldova of the individual appeal to the Constitutional Court under Law No. 87 entails the amendment of the Constitution. It also requires reviewing the role of the Constitutional Court, because in the countries in which citizens have access to the Constitutional Court, the jurisdiction of this institution is not limited to violations of the reasonable time requirement. Since in Moldova there are not so many actions filed under Law No. 87, they can be left in the jurisdiction of ordinary courts of law.

In some countries, before using the compensatory remedy, plaintiffs have to use a preliminary procedure. In the Czech Republic, Poland and Spain, for example, before using the compensatory remedy, it is necessary to address a claim for compensation of damages to the Ministry of Justice, which can award them independently. Plaintiffs may challenge the decision of the Ministry of Justice in court, which checks how the Ministry of Justice complied with the law and the ECtHR standards. In England and Wales, compensation is awarded by the institution in charge of court administration.

The mandatory preliminary procedures and empowering the Ministry of Justice to award damages for the violation of reasonable time have the following advantages:

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[31] Venice Commission, "Can Excessive Length of Proceedings be Remedied? Science and Technique of Democracy," available at http://www.venice.coe.int/webforms/documents/?pdf=CDL-STD(2007)044-e. According to this document, in 2006 such remedy existed in Albania, Andora, Austria, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Germany, Liechtenstein, Malta, Slovakia, Slovenia and Spain.

[32] This remedy exists in Italy, Republic of Moldova and Russia

a) A single authority is responsible for establishing the size of compensation, which leads to uniform practices and allows fast change of practices that are flawed;

b) Often Governmental Agents to the ECtHR are within Ministry of Justice. The Governmental Agent can contribute to an appropriate implementation of the ECtHR standards;

c) short length of administrative procedures, which allows paying damages shortly after the decision of the administrative authority;

d) Simplified appeal procedure, due to the fact that, in the countries with such a mechanism in place, plaintiffs can challenge the decision of the Ministry of Justice with one single court;

e) Reduction of the judges' workload, because lower courts do not have to deal with these cases;

f) Lower costs for plaintiffs, who have to pay attorneys considerably less, due to less time spent for their cases.

The main disadvantages of the remedy in question are:

a) The right of the Ministry of Justice to establish whether judges examined certain cases quickly enough may affect judges' independence. This problem, however, does not exist in cases of non-enforcement or belated enforcement of court judgments;

b) The Ministry of Justice can take advantage of its authority, awarding smaller damages and generating more actions in courts.

As for the risk of affecting judges' independence, England and Wales, Czech Republic and Spain do not consider it sufficient. This risk can be limited or avoided by:

a) Developing clear rules for assessing the reasonable time. Apparently, the Governmental Agent has already developed such rules in 2012. Finding the violation of the reasonable time requirement, when standards for calculation are sufficiently clear is rather a technical exercise. Moreover, this exercise cannot affect the merits of the examined case;

b) Authorizing the Ministry of Justice to award damages only for non-enforcement or belated enforcement of court judgments.

The risk of abuse in establishing the size of moral damages can be limited by using clear calculation formulas for moral damages, just as recommended in the joint opinion of the Chief Justice and the Governmental Agent. Moreover, the solution of the Ministry of Justice will be subjected to court controls in any event. In addition, it is possible to oblige the Ministry of Justice by law to publish all decisions on awarding damages under Law No. 87 on its web site. Due to pressures on the Government, the Governmental Agent will also be inevitably involved in this process to ensure a proper application of the ECtHR standards. Compensations for the violation of reasonable time are awarded through administrative decisions in many countries, including Czech Republic and England. Moldova already has in place a similar procedure for compensation of damages – in the Law No. 1225 of 8 December 1992 on the rehabilitation of the victims of political repressions.

The introduction of a mandatory preliminary procedure will remove the need for three levels of jurisdiction for examining actions filed under Law No. 87. Involving too many courts

in such cases only reduces the efficiency of the remedy. A solution would be to challenge the decisions of the Ministry of Justice issued under Law No. 87 similarly to the decisions of the Superior Council of Magistracy — directly with the SCJ. Most countries that have a compensatory remedy for the violation of reasonable time have established one level of judicial control (Czech Republic, Slovakia, and Poland). This does not limit the access to justice because the procedures of the SCJ guarantee it. Moreover, the access to justice does not guarantee the right to appeal, especially against the decisions of the highest tribunal of the country.[33] This procedure will considerably reduce the duration of compensatory procedures.

b) Removing deficiencies and preserving the current procedure

An alternative to changing the compensatory procedure under Law No. 87 is removing the identified deficiencies, that is reducing the time for resolution of actions filed under Law No. 87 and increasing the size of damages awarded under this law. The easiest way to achieve this is by:

- **a)** Introducing in courts a mechanism for prioritizing urgent cases, which currently does not exist. This means rethinking the judges' daily activity so that each of them would allocate sufficient time every week to examine urgent cases, whether filed under Law No. 87 or on other legislation;
- **b)** Solving the issue of sending for retrial of cases filed under Law No. 87 by means of the judicial practice or legislative changes;
- **c)** In-depth training of judges from Buiucani District Court and from Civil Collegiums of Chisinau Court of Appeals and from the SCJ in applying the ECtHR standards on reasonable time requirement;
- **d)** Establishing by the SCJ a practice that would ensure adequate compensations for the violation of the reasonable time requirement;
- **e)** Ensuring that the SCJ and the SCM carefully monitor court proceedings on cases filed under Law No. 87 and performing annual analysis of the court practice, at least until it is aligned to the ECtHR standards.

To be noted, however, that the measures recommended in case of preserving the existing compensatory procedure will not have immediate effects. ECtHR already acknowledged that similar judicial mechanisms from Italy and Russia were totally or partially inefficient due to deficient court practices.

[33] See admissibility decision *Amihalachioaie v. Moldova* (23 April 2002).

Conclusions and recommendations

LRCM analyzed 262 actions filed under Law 87 and found that these actions had been examined slowly. On the other hand, so far judges motivates the judgments on these cases superficially and even found that reasonable time has elapsed although the standards of the ECtHR do not support this conclusion. The awarded moral damages were much smaller than those awarded by the ECtHR in similar cases, while the compensation for justified legal costs was incomplete. All these issues can lead ECtHR to the conclusion that the deficient implementation of Law No. 87 led to inefficiency of this remedy.

To address the identified issues, we recommend changing the compensatory procedure for the violation of reasonable time as it follows:

a) The Ministry of Justice awards compensations on the basis of a grid similar to the one used by the ECtHR;

b) Plaintiffs can challenge the decision of the Ministry of Justice directly with the SCJ, which will issue the final decision on the case.

If the preservation of the current compensatory system for the violation of reasonable time is preferred, it is necessary:

a) To introduce in courts a mechanism for priority examination of urgent cases, including those filed under Law No. 87;

b) Solving the issue of sending for retrial of cases filed under Law No. 87 by means of the judicial practice or legislative changes;

c) In-depth training of judges who examine actions filed under Law No. 87 for applying ECtHR standards;

d) To establish at SCJ a practice that would ensure adequate compensations for the violation of reasonable time;

e) To ensure that the SCJ and the SCM carefully monitor court proceedings on cases filed under Law No. 87 and performing annual analysis of the court practice, at least until it is aligned to the ECtHR standards.

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