

REPORT

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The efficiency of the mechanism for compensation by the state of the damage caused by protracted proceedings or non-enforcement of judgments

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LEGAL
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FROM MOLDOVA

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THE EFFICIENCY OF THE MECHANISM FOR COMPENSATION BY THE STATE OF THE DAMAGE CAUSED BY PROTRACTED PROCEEDINGS OR NON-ENFORCEMENT OF JUDGMENTS

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Summary

Justice delayed is justice denied. Therefore, lately, special attention has been paid to the length of proceedings at European level. Moldova did not have and does not have chronic problems length of court proceedings. On the contrary, Moldovan courts examine all types of cases about 2.8 times faster than the Council of Europe's average.¹ However, until the middle of the last decade, the non-enforcement of judgments was a particularly severe problem. Things have not changed significantly in terms of non-enforcement of judgments requiring allocation of social housing.

In *Olaru and Others v. Moldova* judgement (28 July 2009), the European Court of Human Rights (ECtHR) called on the Government, *inter alia*, to establish a remedy at the national level for victims of the non-enforcement of judgments on housing. For this purpose, on 21 April 2011, the Parliament passed the Law no. 87 on the compensation by the state of the damage caused by the violation of the reasonable time requirement or of the right to the enforcement of the judgement within a reasonable time (Law no. 87). Under this law, persons who believe that their cases are examined with excessive delays, or judgments in their favor have not been enforced for too long, may apply to the court for compensation of material and moral damages. Judges are obliged to examine such claims within a short time.

In 2014, the LRCM analyzed over 90% of all proceedings filed under the Law no. 87 and as part of which an irrevocable judgment was adopted between September 2012 and October 2013. The LRCM's analysis found that, *inter alia*, such actions were examined rather slowly, while judges provided superficial reasoning to their judgments in such cases and even stated that the reasonable time requirement was violated, although the ECtHR standards do not allow for such conclusions.² Compensations awarded for moral damage were lower than that those awarded by ECtHR in comparable cases, while only a small part of justified legal costs were compensated.³ This document was developed in order to further promote the uniformity of judicial practice and to increase the practical efficiency of the mechanism introduced by the Law no. 87.

¹ LRCM, "*Justice of the Republic of Moldova in figures - a comparative perspective*" (2019), p. 18, available online: <https://crjm.org/wp-content/uploads/2019/10/Justi%C8%9Bia-din-Repubblica-Moldova-%C3%AEn-cifre-%E2%80%93-o-privire-comparativ%4%83-final-web.pdf>.

² LRCM, "*The mechanism for compensation of damages caused by the violation of reasonable time requirement — is it efficient?*"; (2014), pp. 6 - 10, available online: <https://crjm.org/wp-content/uploads/2019/10/Justi%C8%9Bia-din-Repubblica-Moldova-%C3%AEn-cifre-%E2%80%93-o-privire-comparativ%4%83-final-web.pdf>.

³ *Idem*, p. 10.

After more than six years, the LRCM analyzed again the practice of examination of such types of cases. In total, 176 cases with irrevocable judgments were analyzed between October 2017 and March 2020. The purpose of the analysis is to assess the effectiveness of the mechanism introduced by the Law no. 87, and to establish, whether if there have been changes in the length of their examination actions, the quality of the reasoning of the decisions, as well as the awarded compensations. The efficiency of the acceleratory remedy introduced by Law No. 88 or other remedies for breach of the reasonable time requirement, are not covered by this document.

The analysis of the practice from October 2017 to March 2020 confirms that the practice of application of the Law no. 87 has not changed significantly compared to 2012-2013. A case regarding the violation of the reasonable time requirement was examined on average for 11.6 months, while a case regarding the non-enforcement of judgments – for 12.8 months, which is a lot. The level of compensations granted rarely meets the recommendation of the Supreme Court of Justice (SCJ) and the ECtHR practice, while justified legal costs are only partially compensated.⁴ The reasoning of judgments on the merits, as a rule, is even shorter than in 2012-2013 and sometimes it is impossible to identify concrete arguments on which the judgment is based. Usually, the reasoning provided by judges is limited to one sentence, while reiterating the parties' arguments and claims. Moreover, the reasoning of judgments in at least 9% of all cases analyzed raises questions as to the validity of the judicial solution.

⁴ LRCM, “*The mechanism for compensation of damages caused by the violation of reasonable time requirement — is it efficient?*” (2014), pp. 6 - 10, available online: <https://crjm.org/wp-content/uploads/2019/10/Justi%C8%9Bia-din-Republica-Moldova-%C3%AEn-cifre-%E2%80%93-o-privire-comparativ%4%83-final-web.pdf>, p. 10.

Introduction

Until the middle of the last decade, the non-enforcement of judgments was a particularly severe problem in the Republic of Moldova. In its judgment *Olaru and Other v. Moldova*⁵, ECtHR found that, until 2009, the applications submitted to the ECtHR against the Republic of Moldova often invoked the failure to enforce judgments on time. Many applications regarding non-enforcement concerned the failure of the Government to comply with its obligation to provide social housing. In its judgment *Olaru and Others*, the ECtHR called on the Government, *inter alia*, to establish a mechanism at national level for remedies to persons affected by the non-enforcement of judgments on housing.

In order to prevent the increase in the number of judgments on the obligation to provide housing, at the end of 2009, the Parliament excluded from the legislation the right of most categories of government employees to housing.⁶ On 21 April 2011, the Parliament adopted the Law no. 87 that entitles any individual or legal entity to claim compensation from the government for the violation of the reasonable time requirement. Compensations can be claimed by initiating legal proceedings. Under the Law no. 88 on amending and supplementing some legislative acts (hereinafter the Law no. 88), adopted on the same date, another mechanism was introduced to speed up the lengthy proceedings.

In 2014, the LRCM analyzed over 90% of all proceedings filed under the Law no. 87 and as part of which an irrevocable judgment was adopted between September 2012 and October 2013. The LRCM's analysis found that, *inter alia*, such actions were examined rather slowly, while judges provided superficial reasons of their judgments in such cases and even stated that the reasonable time requirement was violated, although the ECtHR standards do not allow for such conclusions.⁷ Compensations awarded for moral damage were much lower than those awarded by ECtHR in comparable cases, while only a small part of justified legal costs were compensated.⁸

⁵ *Olaru and others v. Moldova* (28 July 2009), (Applications no. 476/07, 22539/05, 179/08 and 1316/07).

⁶ See the Law no. 90 of 4 December 2009. This law did not rule out fully the possibility of such judgments. On 1 November 2012, the SCJ adopted Opinion no. 3, which states that “judges who, at the time of repeal [of the provision granting the right to housing were not provided with housing, are entitled, within three years from the date of repeal of the law, to apply for housing from the local public administration”], available at: http://jurisprudenta.csj.md/search_rec_csj.php?id=18.

⁷ LRCM, “*The mechanism for compensation of damages caused by the violation of reasonable time requirement — is it efficient?*” (2014), pp. 6 - 10, available online: https://crjm.org/wp-content/uploads/2019/10/Justi%C8%9Bia-din-Republica-Moldova-%C3%AEn-cifre-%E2%80%93-o-privire-comparativ%4%83_final-web.pdf.

⁸ *Idem*, p. 10.

After more than six years, the LRCM analyzed again the practice of examination of such types of cases. The analysis is based on 176 cases with judgments that became irrevocable between October 2017 and March 2020. The purpose of the analysis is to assess the current effectiveness of the mechanism introduced by the Law no. 87 and to identify any changes in the length of the examination of those actions, the quality of reasons for judgments and the compensations awarded. The efficiency of the acceleratory remedy introduced by the Law no. 88 or other remedies for the breach of the reasonable time requirement was not considered in this document.

In order to ensure the proper reflection of the situation, the cases dealing with non-enforcement of judgments were analyzed separately from the ones regarding the length of legal proceedings. The conclusions and recommendations were formulated based on Council of Europe standards and the best practices of European countries, as well as taking into account previous findings.

Methodology

The research was conducted between March and September 2020 and is based on 176 irrevocable judgments issued by the SCJ between October 2017 and March 2020. The cases that did not reach the SCJ were not analyzed, as the SCJ did not have the opportunity to decide on the correctness of solutions offered by the lower courts.

The research was conducted in three stages. In the first stage, the authors identified the judgments filed under the Law no. 87 with the help of the representatives of the Litigation Department of the Ministry of Justice. The Department kindly provided access to the LRCM team to a table that includes data on most of the actions filed under the Law no. 87 from January 2017 to 2020. The LRCM team selected from that table all the cases in respect of which⁹ irrevocable judgments were issued (about 228 cases filed under the Law no. 87).

In the second stage, the LRCM team, based on the information from the table prepared by the team of the Ministry of Justice, identified the judgments on the website of the SCJ. The identified judgments were stored and thoroughly analyzed. The judgments were screened



The in-house database of the LRCM with all the analyzed decisions can be accessed online, using a mobile phone. Open and center the camera on your mobile phone to scan the QR code

by: the subject matter of the primary dispute, the length of the primary proceedings and those under the Law no. 87, as well as the damages claimed and awarded. The information obtained was entered into an internal database, available at the link below or by scanning the barcode next to it.¹⁰

In order to ensure the correctness of conclusions, after analyzing the judgments, the authors of the research excluded the cases that were declared inadmissible on procedural grounds (missing the time limit for appeal or cassation, repeated applications or applications made by persons who were not entitled to appeal the judgment).

In the last stage, the LRCM team identified about 25 cases that were of interest for further research. For their thorough examination,

⁹ The legal advisers of the LRCM obtained access to the table compiled by the representatives of the Ministry of Justice at the beginning of March 2020.

¹⁰ LRCM's internal database can be accessed at the following address: https://drive.google.com/file/d/1nBSNq8D18x4HH_GjvWX84dIxjieI3CD-/view?usp=sharing.

judgments issued by lower courts were necessary. Copies of these judgments were requested through an official request from the Ministry of Justice, who represents the state in all cases filed under the Law no. 87. The Ministry of Justice allowed us to make copies of all available judgments. In two of the 25 cases, the judgments of the lower courts could not be found in the archives of the Ministry of Justice or on the national courts' portal.

We are grateful and sincerely thank the representatives of the Ministry of Justice of the Republic of Moldova, in particular Mr. Radu FOLTEA, State Secretary and the Litigation Department team led by Mr. Constantin CACHIȚA for access to the table with data on actions filed under the Law no. 87 and the judgments we needed for research. These data were crucial for the study.

Problem description

a) Situation prior to the Law no. 87

Social relations are becoming increasingly complex, and legal actions in court last longer than before. This inevitably leads to an increase in the length of court proceedings, especially in times of pandemic crisis. However, this reality cannot justify systemic delays in the justice system, because, as is well known, justice delayed is justice denied.

Article 6 of the European Convention on Human Rights (ECHR), which refers to both case examination proceedings and the enforcement of judgments, requires the examination of disputes or charges “within a reasonable time”. There are no fixed time limits that, when exceeded, automatically lead to the violation of the ECHR. When deciding whether a reasonable time requirement was breached, the ECtHR takes into account the complexity of the case, the applicant’s and the authorities’ behaviour, as well as the stake for the applicant.¹¹ As a rule, complaints against legal proceedings lasting less than two years in one court or non-enforcement of judgments by the state that takes less than one year are rejected by the ECtHR as manifestly ill-founded.

The Republic of Moldova did not have and does not have chronic problems regarding the time limit for the examination of cases by the courts. On the contrary, Moldovan courts deal with all types of cases, in the first instance, appeal and cassation in just 259 days, which is 2.8 times faster than the average of Council of Europe (CoE) countries.¹² Protracted examination of cases in the Republic of Moldova is an exception, which, as a rule, is due to frequent postponement of court hearings and returning of cases for retrial. Until 30 June 2020, ECtHR found the Republic of Moldova in violation of reasonable time in 9 cases where judicial proceedings lasted too much.¹³

A more problematic issue in the Republic of Moldova is the non-enforcement or delayed enforcement of enforceable judgments. Until 30 June 2020, due to non-enforcement or delayed enforcement of judgments, the ECtHR found Republic of Moldova in violation of

¹¹ See *Frydender v. France* (27 June 2000), para. 43; *Raylyan v. Russia* (15 February 2007), para. 31.

¹² LRCM, “*Justice of the Republic of Moldova in figures - a comparative perspective*” (2019), available online: <https://crjm.org/wp-content/uploads/2019/10/Justi%C8%9Bia-din-Republica-Moldova-%C3%AEn-cifre-%E2%80%93-o-privire-comparativ%4%83-final-web.pdf>.

¹³ LRCM, “*Moldova at the European Court of Human Rights: Over 600 violations in 23 years*” (2020), p. 7, available online: <https://crjm.org/wp-content/uploads/2020/09/CRJM-23ani-CtEDO.pdf>.

Article 6 of the ECHR in 67 judgments.¹⁴ At least a quarter of these judgments involved the failure to pay monetary compensations by the authorities for more than 12 months. Apparently, such situations are no longer a systemic problem. However, there are still problems with the enforcement by authorities of judgments on housing, as well as judgments between individuals. One of the latest judgments finding Moldova in violation on this issue was issued in July 2020, in the case *Osadcii and others v. the Republic of Moldova*.¹⁵ In this case, although in the end the judgments in favor of the applicants were enforced at national level, the Court was not convinced that the amounts awarded to the applicants at national level were adequate to those granted by the Court in similar cases against the Republic of Moldova.

b) Judgment *Olaru and others* and the provisions of the Law no. 87

In its judgment *Olaru and others*, the 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. As of 28 July 2009, more than 300 such applications were pending at the ECtHR. Therefore, in the judgment *Olaru and others*, the ECtHR mentioned, *inter alia*, the following:

„58. [...] *The State must introduce a remedy that truly ensures an effective redress for violations of the Convention, which are due to the prolonged failure by the state authorities to enforce the final judgments on the granting of state housing against the State or its entities. Such a remedy [...] must comply with the requirements arising from the Convention [...]*”

In the judgment *Scordino no. 1 v. Italy* (29 March 2006), the ECtHR described the requirements that must be met by the compensatory remedy mentioned in the judgment *Olaru and others*.¹⁶ Thus:

- a) the procedure for examining the claim for compensation must be fair (para. 200);
- b) the action must be examined within a reasonable time (para. 195 *in fine*), but faster than the usual compensation procedures;
- c) the compensation awarded must not be unreasonable in comparison with the awards made by the ECtHR in similar cases (para. 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).

¹⁴ *Idem*, page 7.

¹⁵ See *Osadcii and others v. Republic of Moldova* (July 7, 2020), para. 15-24.

¹⁶ Similar requirements to the remedy introduced for excessive length of proceedings are also set out in the Recommendation of the Committee of Ministers of the Council of Europe. CM/Rec(2010)3 of 24 February 2010, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1590115&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

In order to enforce the judgment *Olaru and others*, on 21 April 2011, the Parliament passed the Law no. 87, which entered into force on 1 July 2011. This law does not refer only to the non-enforcement of judgments. It gives the right to any individual or legal entity to claim in court the material and moral compensations for the violation of the reasonable time requirement at the stage of criminal investigation, trial or enforcement of the judgment. The law stipulates that the action shall be filed against the Ministry of Justice.¹⁷ These actions fall under the jurisdiction of the Chisinau Court and should be examined by the first instance court within no more than 3 months. The judgment of the first instance court is not enforceable. It can be appealed to the Chisinau Court of Appeal and to the Supreme Court of Justice. The law does not prohibit the submission of these cases for retrial. The law does not stipulate any special time limits for examining appeals or cassations in cases filed under the Law no. 87.

The remedy introduced by the Law no. 87 clearly meets two of the five requirements listed in the judgment *Scordino (no. 1)* (those in letters a) and e) above). Procedures are examined in court, according to rules that provide sufficient appearances of fairness, and national authorities have three months to comply with the enforcement warrant.¹⁸ In the decision *Balan v. Moldova* (24 January 2012), the ECtHR admitted, *prima facie*, that the remedy introduced by the Law no. 87 is effective, suggesting persons wishing to complain to the ECtHR about the violation of the reasonable time requirement to use the remedy until its exhaustion. After the *Balan* decision, more than 300 Moldovan applications relating to the reasonable time requirement, which were pending before the ECtHR as of 28 July 2009 (the day the judgment *Olaru and others* was delivered) or which were filed subsequently, were declared inadmissible by the ECtHR due to non-exhaustion of domestic remedies. Applicants were suggested to file actions under the Law no. 87.

c) Judgement *Osadci and others* and the provisions of the Law no. 87

On 7 July 2020, the ECtHR delivered its judgment in the case of *Osadci and others v. Republic of Moldova*. The applicants complained to the Court under the Article 6 § 1 ECHR and Article 1.1 of the Protocol no. 1 to the Convention, due to the failure to enforce within a reasonable time judgments issued in their favor regarding the obligation of the local authorities to provide them with housing, based on the provisions of the Law on Police.

The Court found, *inter alia*, that the judgments in favor of the applicants had been enforced from 66 to 72 months. It also noted that the domestic courts recognized the

¹⁷ Until 6 October 2012, these actions were filed against the Ministry of Finance. Law no. 96 of 3 May 2012 amended the Law no. 87 and stipulated that the actions shall be filed against the Ministry of Justice.

¹⁸ Initially, the judgements issued under the Law no. 87 of 21 April 2011 on state compensation for damages could be enforced within 6 months from the date on which they remained irrevocable. These provisions were declared unconstitutional in the judgment of the Constitutional Court no. 32 of November 17, 2016. The Constitutional Court established that judgments issued under the Law no. 87 shall be enforced immediately after the final judgment and executed no later than three months from that date, similarly to the time limit for the execution of final judgments of the European Court of Human Rights.

violation of applicants' rights due to the unreasonable duration of enforcement and awarded some compensations. However, the Court was not convinced that the amounts awarded to the applicants at national level were sufficient compared to those awarded by the ECtHR in similar cases filed against the Republic of Moldova. Thus, in the case of *Osadci and others*, the Court acknowledged that the remedy introduced by the Law no. 87 was not effective for the applicants, which reveals a new approach to the previous findings set out in the Decision *Balan v. Moldova*. One of the applicants also complained about the lack of an effective domestic remedy (Law no. 87), claiming that the national mechanism did not generate a sufficient compensation. The Court established that there was also a violation of the Article 13 of the Convention.

d) Judgment of the Constitutional Court no. 32/2016 and the provisions of the Law no. 87

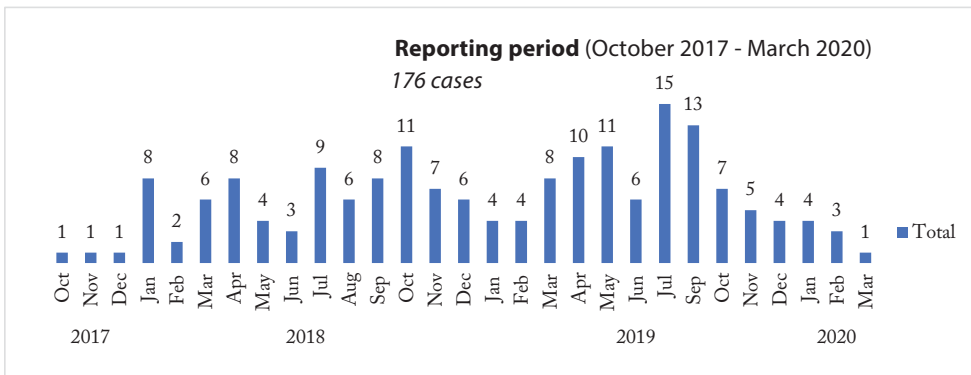
On 17 November 2016, the Constitutional Court issued a judgment declaring unconstitutional some phrases from the provisions of the Article 6 of the Law no. 87. These refer to the time limit for execution of judgments against the state.¹⁹ The Court noted that the provisions of the Law no. 87 restrict the scope of enforcement of final judgments delivered against the state to those that are irrevocable, which is in conflict with the provisions of the Constitution. The Constitutional Court established that judgments issued under the Law no. 87 shall be enforced immediately after the final judgment and executed no later than three months from that date, similarly to the time limit for the enforcement of final judgments of the European Court of Human Rights.

¹⁹ Judgment of the Constitutional Court no. 32 of 17 November 2016, available at: <http://www.constcourt.md/ccdocview.php?l=ro&tip=hotariri&docid=597>.

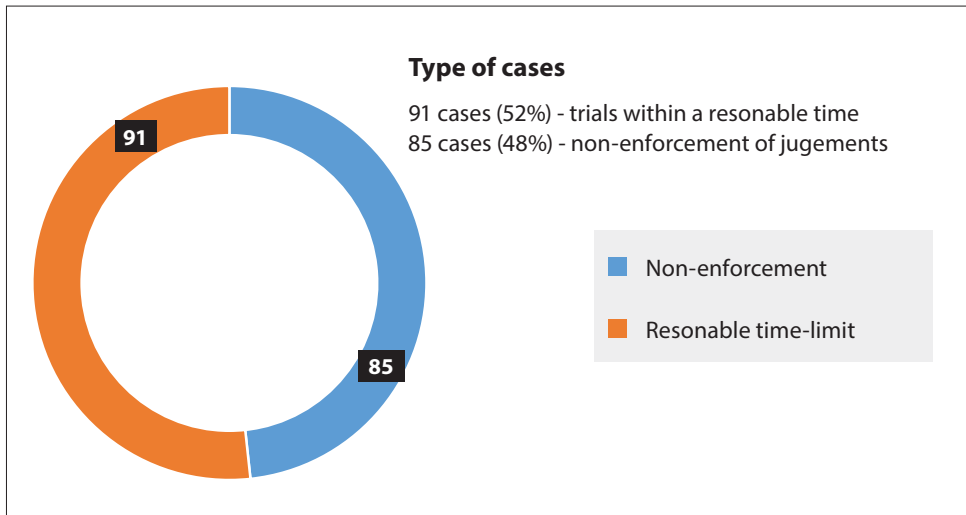
Effectiveness of the mechanism introduced by the Law no. 87

a) Period and type of cases analyzed

The research is based on the analysis of 176 cases with irrevocable judgments issued between October 2017 and March 2020 by the SCJ. The authors did not take into account the judgements that were not appealed to the SCJ. At the same time, the research excluded from the start the cases examined under the Law no. 87, which, at some stage, were declared inadmissible on procedural grounds (missing the time limit for appeal or cassation, repeated applications or applications submitted by persons who were not entitled to file appeals). The list of cases with irrevocable judgments was obtained from the records compiled by the staff of the Ministry of Justice of the Republic of Moldova, which represents the state in these cases.

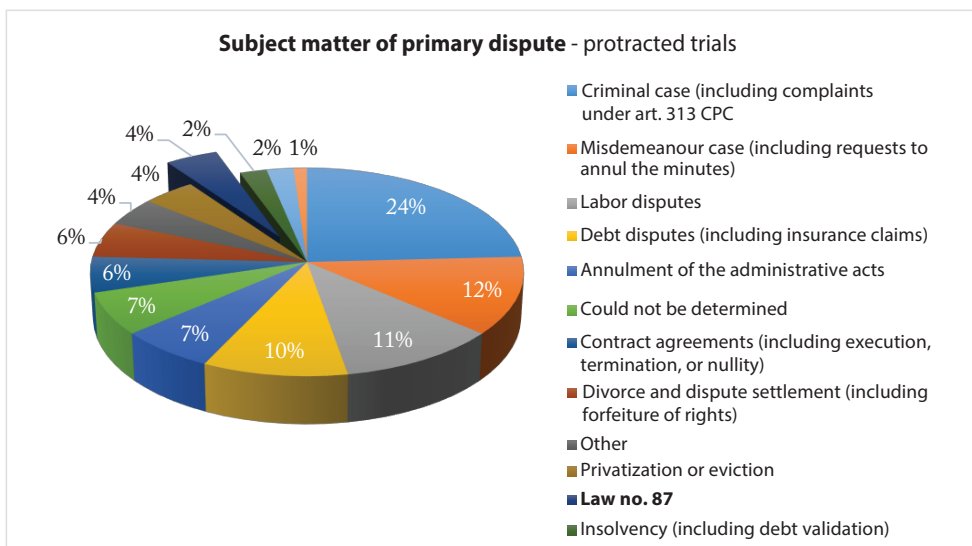


In order to ensure the proper reflection of the situation, cases on non-enforcement of judgments were analyzed separately from cases on the length of legal proceedings. Thus, 91 of the 176 cases (52%) refer to trials within a reasonable time, while 85 cases (48%) refer to non-enforcement of judgements.

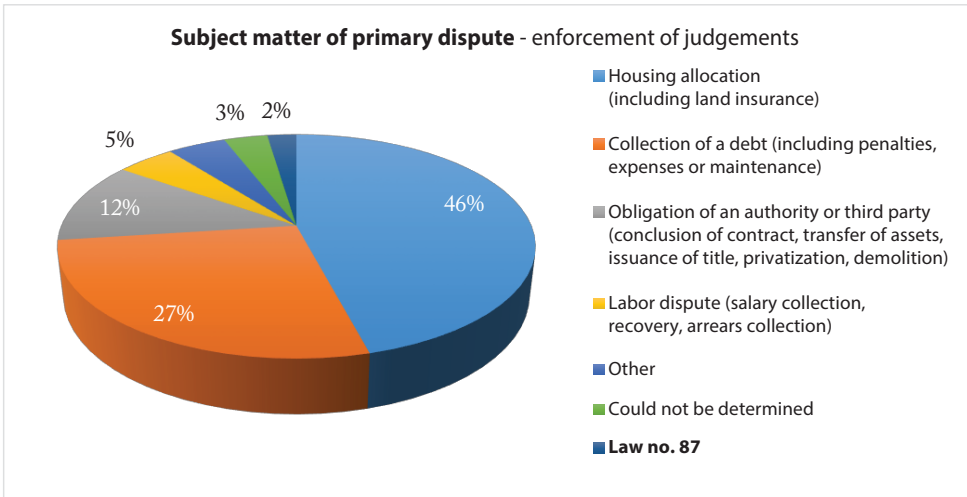


b) Subject matter of primary disputes

The subject matter of the disputes that determined the applicants to address to the court under the Law no. 87 varies. In case of protracted trials, most cases – 31 (36%) of the 91 refer to material and moral compensation for violation of the reasonable time requirement at the stage of criminal prosecution, trial or appeals in criminal or administrative matters. Other 10 cases (11%) refer to (un)reasonable length of employment disputes, while nine cases (10%) are debt collection disputes. It is surprising that four cases (4%) out of the 91 referred to another set of procedures under the Law no. 87, which implicitly questions the effectiveness of the mechanism established by this law.



As regards the 85 cases with irrevocable decisions on the non-enforcement of judgments, the vast majority – 39 cases (46%) refer to the duration of non-enforcement of judgments on providing housing or land for construction of houses. In other 23 cases (27%), the subject-matter of the primary dispute refers to debt collection from an individual, while 10 cases (12%) of the 85 concern disputes regarding obligations between authorities and individuals (execution of contracts, issuance of permits or deeds, etc.). Just like the first category, in two cases (2%) the plaintiffs requested to ascertain the violation of the time limit for the enforcement of an irrevocable judgement adopted under the Law no. 87.



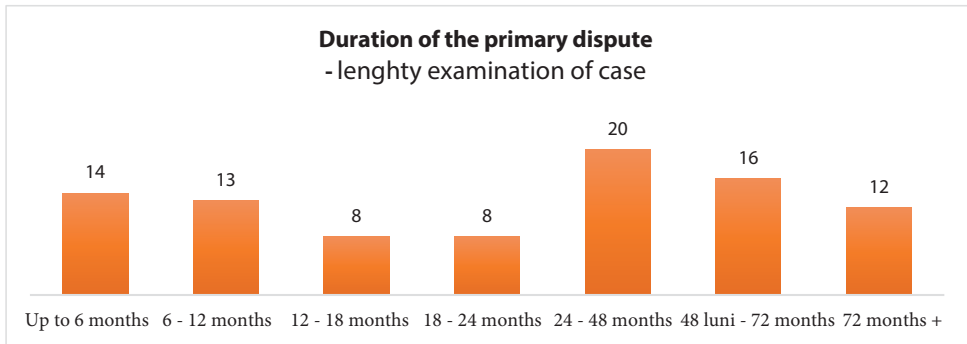
Nonetheless, the diversity of considered cases is not an impediment to compare them in terms of some common indicators, such as the length of the primary dispute, the timeframe for examination under the Law no. 87, the quality of the reasoning and the compensation for damage in case of protracted trial or non-enforcement of judgments.

c) Length of primary disputes

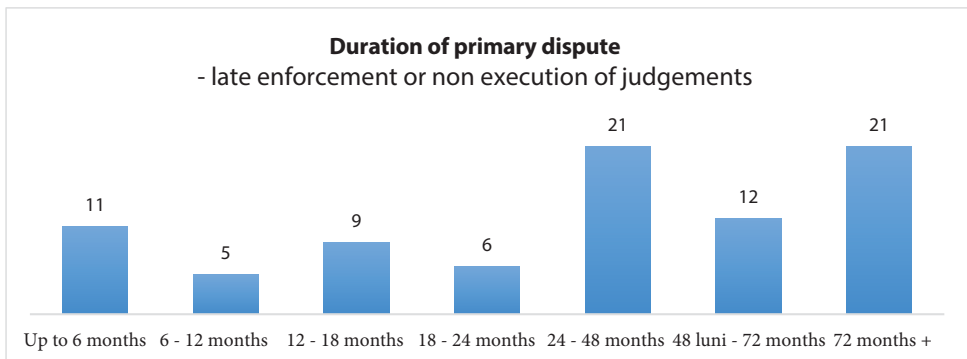
There are no fixed time limits that, when exceeded, automatically lead to the violation of the ECHR. When deciding whether a reasonable time requirement was breached, the ECtHR takes into account the complexity of the case, the conduct of the applicant and the authorities, as well as the stake for the applicant²⁰. As a rule, complaints against legal proceedings lasting less than two years in one level of jurisdiction or non-enforcement of judgments by the state that takes less than one year are rejected by the ECtHR as manifestly ill-founded.

As for the cases studied, slightly over a half – 48 cases (52%) of the 91 concerning the reasonable time of their examination, the primary disputes lasted two or more years. Of these, in 12 cases (13%), primary disputes lasted more than six years. Formally, most of the cases analyzed do not violate ECtHR standards.

²⁰ See *Frydender v. France* (27 June 2000), para. 43; *Raylyan v. Russia* (15 February 2007), para. 31.



Regarding the second category (disputes ascertaining the violation of the time limit for the enforcement of judgements), the length of non-enforcement exceeded 12 months in the vast majority of cases – 69 cases (81%) of the 85 analyzed. In 21 cases (24%), the non-enforcement lasted more than six years.

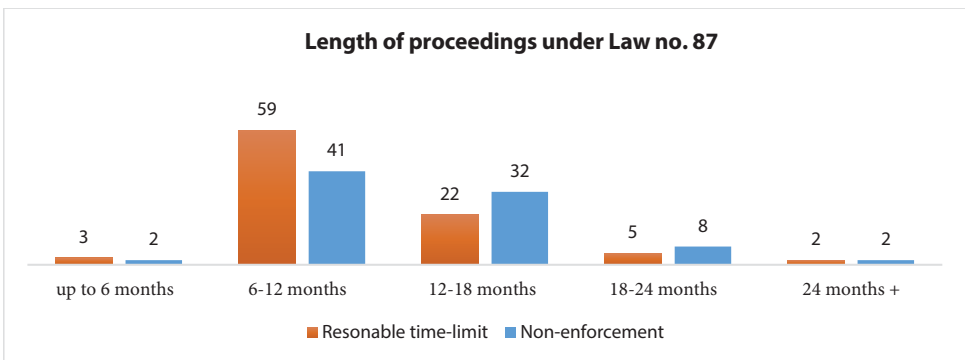


d) Length of proceedings under the Law no. 87

Law No. 87 stipulates that the first instance court shall consider the action within three months following its submission. Neither Law No. 87 nor other legislation stipulate any special periods for examining the appeals and cassations in cases filed under the Law No. 87. In practice, the latter are examined as per the general sequence.

During the reporting period, a case concerning the breach of the reasonable time limit for the trial was examined for 11.6 months on average, of which 3.8 months – in the first instance court, about 4.9 months – in the court of appeal and 2.9 months – in the SCJ. In seven judgements (8%) of the 91 cases examined, the length of proceedings under the Law No. 87 exceeded 18 months.

Length of proceedings (protracted trial)	Up to 6 months	6-12 months	12-18 months	18-24 months	24 months +
91	3	59	22	5	2
100%	3.3%	64.8%	24.2%	5.5%	2.2%
Length of proceedings (enforcement of judgments)					
85	2	41	32	8	2
100%	2.4%	48.2%	37.6%	9.4%	2.4%



Disputes regarding the enforcement of judgements within a reasonable time last a bit longer. Such cases were examined, on average, within 12.8 months, of which 4.5 months – in the first instance court, 5.4 months – in the court of appeal and 2.9 months – in the SCJ. In 12 judgements (12%) out of 85 cases examined, the length of proceedings under the Law No. 87 exceeded 18 months.

Examination of a case filed under the Law No. 87 within a timeframe exceeding 18 months, corroborated with the enforcement of the judgement in other several months, seems to be problematic in light of the ECtHR standards. Moreover, the cases filed under the Law No. 87 can be sent for re-trial, although this occurs occasionally. Of the 176 cases examined, at least ten (6%) were initially sent for retrial by the SCJ to the court of appeal. Referral for retrial increases the length of proceedings by 7-9 more months on average.

e) Reasoning of judgements

Of the 176 cases reviewed, only 122 concern the unreasonable length of proceedings²¹. 54 cases refer to periods that are too short to be considered unreasonable by the ECtHR. Overall, the judges admitted 75 of the 122 actions. 50 cases were dismissed by judges usually on grounds such as: (i) the length of legal proceedings or enforcement was not unreasonable; (ii) the parties to the proceedings exercised their procedural rights under the legislation in

²¹ Actions concerning the length of legal proceedings exceeding two years or failure to enforce the judgement for more than one year.

force, while the length cannot be imputed to the court, or; (iii) it was a dispute between private individuals, for which the State is not liable. Most of the dismissed cases are well founded. Nonetheless, the arguments in at least 16 judgements (9%) rejecting the action raised questions as to the validity of the reasoning. As a rule, they contained template-type reasoning, reproducing legal provisions and ECtHR cases, without explaining how these standards apply directly to the specific case²². In one case, the court solution, which remained irrevocable, concluded that the length of two years and 11 months for the trial was not long enough to be addressed under the Law No. 87.²³ In another case, the court considered the delay not imputable to the state, because, after the case was sent for retrial, it was reassigned 5 times for objective reasons (judge's maternity leave, new appointment, suspension, etc.).²⁴

The table below provides information on the quality of the reasoning of judgements:

Quality of the reasoning of judgements									
	Reviewed cases	More than 2 years		Admitted cases		Dismissed cases out of 50 cases			
Length of legal proceedings	91	50	55%	31	34%	19			
						thoroughly reasoned		insufficiently reasoned	
						11	12%	8	9%
	Reviewed cases	More than 1 year		Admitted cases		Dismissed cases out of 72 cases			
Enforcement of judgements	85	72	85%	44	52%	28			
						thoroughly reasoned		insufficiently reasoned	
						20	24%	8	9%
total	176	122	69%	75	43%	31	18%	16	9%

The above finding on reasoning of judgements is also valid for the SCJ. As a rule, the latter uses template reasoning. The SCJ refers to the ECtHR judgements, but such referrals are general with no explanations how the standards of the mentioned ECtHR judgments apply to the examined cases. It is worth noting that only in 19 out of 176 cases the SCJ changed the solution of lower courts, while in 157 cases the SCJ stated that the second appeal is inadmissible. According to the SCJ, most frequently, the second appeal would fail to fit in the reasoning referred to in Article 432 (2) – (4) of the Civil Procedure Code (CPC). In the cases where the SCJ changed the solution of lower courts, most often, it

²² Case 2ra-878/18 of 16 Mai 2018 or 2ra-2293/19 of 24 December 2019.

²³ Case 3ra-472/18 of 25 April 2018.

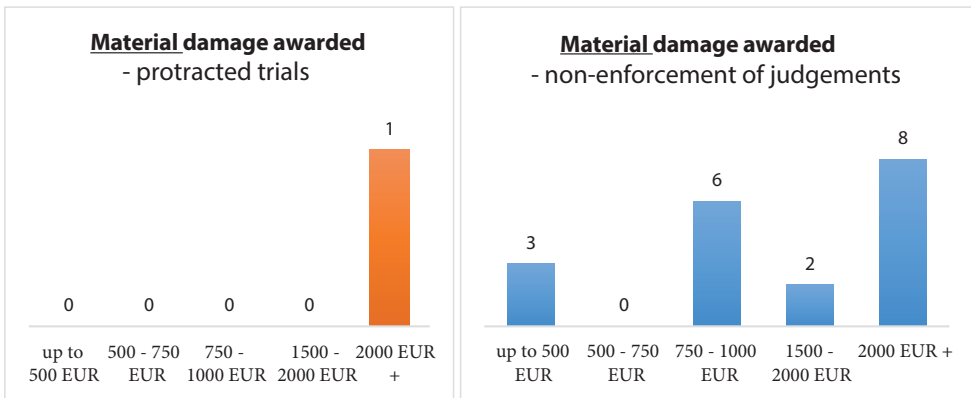
²⁴ Case 2ra-291/20 of 19 February 2020.

found an infringement. Only in two judgements the SCJ increased substantially the amount of compensations awarded to applicants.²⁵

Compared to the previously reviewed period (2012-2013), the lower courts invoke more frequently in their judgments the criteria used by the ECtHR to identify whether there was or not a violation of the reasonable time for trial or enforcement of judgement, i.e. the complexity of the case, the conduct of the parties or the stake for the applicant. These criteria were defined in the ECtHR case law and in the Practical Guide on the application of the ECtHR case law regarding the non-enforcement or excessive length of proceedings developed by the Governmental Agent in 2012.²⁶ Nevertheless, in many cases the arguments in the judgments regarding the grounds or lack of grounds of the action are more general than in 2012-2013 and, sometimes, it is impossible to identify specific arguments underlying the judgements. As a rule, the court's assessment is limited to one general sentence. In the remaining part, the court reproduces the arguments brought by the parties and their claims. Furthermore, inappropriate reasoning of judgements is a widespread phenomenon in the Moldovan justice, which is characteristic not only for the judgements relating to the Law No. 87.

f) Compensation for material and moral damages

Of the 176 cases reviewed, in 90 cases (51%) the action was fully or partially admitted. 38 (42%) of the 90 cases concern the violation of reasonable time limit for examining the case and 52 (58%) – the non-enforcement of judgements. In 19 out of 52 cases concerning the non-enforcement of judgements, the courts awarded compensation for material damages. In just one case out of the 38 concerning the violation of a reasonable time limit, compensation was awarded for material damages, although the substantiation of such claim is not very clear, as the causal link between the excessive time limit for examining the case and the damage caused was not obvious from the reasons for the judgment.²⁷



²⁵ Case 2ra-1193/19 of 22 July 2019. The SCJ increased the non-material compensation awarded from 50,000 MDL to 100,000 MDL; Case 2ra-4/2019 of 6 March 2019, the SCJ increased the non-material compensation awarded from 7,000 MDL to 60,000 MDL.

²⁶ Ministry of Justice, Practical Guide on the application of the ECtHR case law regarding the non-enforcement or excessive length of proceedings, available at: http://justice.gov.md/public/files/file/GHID_PRACTIC_DAG_MJ_mai_2012.pdf.

²⁷ Case 2ra-1719/19 – the Court de Appeal increased the amount claimed by the plaintiff, including material damages in a criminal case.

The highest amount of damages (trial in reasonable time)

Date at SCJ	File no.	Claimant	Subject	Length of proceedings (months)	Material damages	EUR
25.09.2019	2ra-1719/19	Ion Levinta	Criminal case	101	40,000	2,033.0

The lowest and the highest amounts of damages (non-enforcement of judgements)

Date at SCJ	File no.	Claimant	Obiect	Length of proceedings (months)	Material damages	EUR
26.09.2018	2ra-1193/19	Alexei Gheorghe	Housing	36	126,000	6,404.3
18.03.2020	2ra-256/20	Boris și Larisa Furculita	Housing	48	6,819	351.5

As regards the moral damages awarded by the Moldovan courts, their extent vary considerably. It looks like SCJ acknowledged that the amount of moral damages awarded for ECHR violations is too low, and the case law in this area is not uniform. On 23 July 2012, SCJ posted on its website Recommendation no. 6 on the just compensation to be awarded for violations of the ECHR.²⁸ This reads:

„... analyzing the case law of the ECtHR in cases concerning non-enforcement of judgements, we find that the amount [of moral damages awarded by ECtHR in Moldovan cases] is approximately 600 Euro for a 12-month delay and 300 Euro for every 6-month period of delay following”.

According to the ECtHR standards, compensation awarded as moral damages at the national level should not be unreasonable when compared to the compensation awarded by the ECtHR in comparable cases, such as cases where a similar violation has been found to be committed by that state or a state with a comparable level of economic development. In the case of *Burdov no. 2 vs Russia* (15 January 2009), ECtHR stated the following as regards the compensation of moral damages:

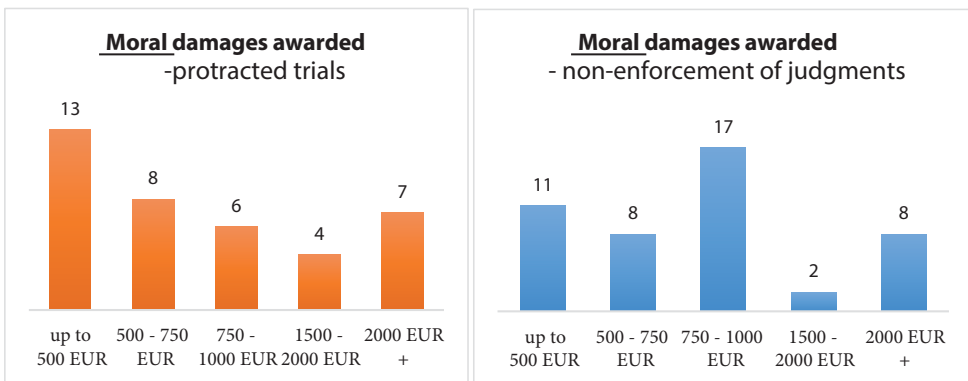
“100. There is a strong, but rebuttable, presumption that excessively long procedures will cause moral harm. The Court considers that this presumption is particularly strong with regard to the excessive delay in the execution by the State of a judgment given against it ... in view of the inevitable frustration caused by the State’s failure to pay its debts and the fact that the applicant has already passed through court proceedings and won the case.”

²⁸ Recommendation is available on: http://jurisprudenta.csj.md/search_rec_csj.php?id=21.

It follows from the text quoted above that the award of moral damages, and not the mere finding of a breach, must be the rule in the event of non-enforcement of judgments. Regarding the criteria to be taken into account when quantifying the moral damages, in the case Burdov no. 2 cited above the ECtHR stated the following:

„154. The Court recalls that it determines the amount of moral damages taking into account such factors as the applicant’s age, personal income, the nature of the amounts awarded by the national courts, the duration of enforcement proceedings and other relevant matters (see Plotnikov, cited above, § 34). The applicant’s health is also to be taken into account, as well as the number of judgments that have not been properly and/or timely enforced. All these factors could influence to a different extent the amount awarded by the Court as moral damages and even result, exceptionally, in the non-award of such damage. At the same time, it has become quite clear in the case law of the Court that such amounts are, in principle, directly proportional to the period during which a binding and enforceable judgment has remained unenforced.”

Detailed information on the 176 cases and moral damages awarded to the applicants is shown below.



The highest amount (MDL 70,000) was awarded as moral damages to an individual against whom a criminal case lasted for 11 years. The average duration of the litigations in which the violation of the reasonable term has been found was 3.3 years, and the average amount of moral damage awarded in the 90 admitted actions was about MDL 10,733 (Euro 542).

The lowest and the highest amount of damages (trial of cases)

Date at SCJ	File no.	Claimant	Subject	Length of proceedings (months)	Moral damages	EUR
26.09.2018	2ra-425/18	Jurcov Anatolii	Criminal case	11.5	500	25,2
3.06.2019	2ra-972/19	Teleche Tatiana	Criminal case	139	70,000	3,558.0

Out of the 85 cases analyzed that concerned non-enforcement or delayed enforcement of judgements, 52 were admitted. The highest compensation awarded amounted to MDL 100,000 for the non-enforcement of a judgement for 14 years. The average duration of non-enforcements or delayed enforcements in the 52 admitted actions was 4.4 years, and the average compensation awarded was only MDL 13,480 (EUR 674). According to the joint opinion of the President of the SCJ and the Government Agent dated 23 June 2012, which is based on the ECtHR case law, compensation for delays or non-enforcements of 4.4 years had to be at least EUR 2,600, i.e. four times higher.

The lowest and the highest amount of damages (non-enforcement of judgements)

Date at SCJ	File no.	Claimant	Subject	Length of proceedings (months)	Moral damages	EUR
26.09.2018	2ra-1193/19	Ina Baicev	Housing	168	100.000	5,082.8
3.06.2019	2ra-167/19	Andrei Zagoreanu	Housing	6	1.000	50.8

The above information clearly shows that the moral damages granted under the Law no. 87 are considerably lower than the compensation granted by the ECtHR in comparable cases. The claimants frequently justify their claims for moral damages in line with the joint opinion of the SCJ and the Governmental Agent. However, the level of compensation awarded by the SCJ clearly confirms that the recommendations of the Joint Opinion were not taken into account by the SCJ in determining the amount of moral compensation awarded for breach of the reasonable time limit for examining the case or enforcing judgements. Only in a few cases were moral compensations awarded in accordance with the Joint Opinion of the SCJ and the Governmental Agent. At the same time, courts do not usually operate with the criteria used by the ECtHR to quantify the moral damages.

g) Compensation of court costs

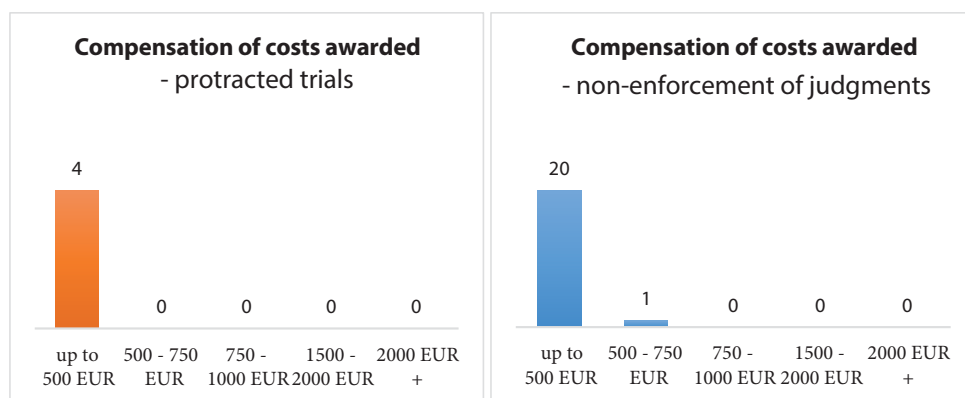
Actions filed under the Law no. 87 are not subject to court fee. However, they often involve legal assistance costs. The high costs of legal assistance placed on the applicant's shoulders may reduce to zero the efficiency of the remedy introduced by Law no. 87. Given that the applicant hires a lawyer, it can be shown that, if the legal assistance costs are reimbursed only marginally, when a final judgement is awarded, the applicant may end up with an amount just slightly over or even lower than the legal fees paid. In other words, even if he wins the lawsuit the applicant de facto gets very little or nothing. The Bar Association of the Republic of Moldova approved the recommended amount of lawyers' fees, the minimum hourly rate being EUR 50 and the maximum EUR 150.²⁹

Requests for the recovery of costs and expenses related to the judicial proceedings were

²⁹ Bar Association Council, Decision no. 2 dated 30 March 2012, available at: <http://www.avocatul.md/files/documents/Recomandarii%20onorarii%202012.pdf>.

identified in 40 (23%) of the 176 cases. We conclude that only in 25 of the 75 admitted actions the expenses for legal assistance were compensated. Judges usually do not clearly explain why they reject in whole or in part claims for compensation of legal assistance costs. This may be due to the poor justification of these claims by the parties. However, few Moldovan judges examine the extent to which legal assistance costs were necessary and reasonable, although this is required by art. 96 (1) of the Code of Civil Procedure. The amount awarded often appears to be determined at the discretion of the judge, without reference to the circumstances of each case.

The average compensation was MDL 3,263 (EUR 165), and the highest amount was MDL 10,000 (EUR 508.3).



The highest amount of costs and expenses awarded (trial of cases)

Date at SCJ	File no.	Claimant	Subject	Length of proceedings (months)	Costs and expenses	EUR
07.11.2019	2ra-2215/18	Mircos Vladimir	Annulment of interlocutory judgment	20.4	5,000	251.2

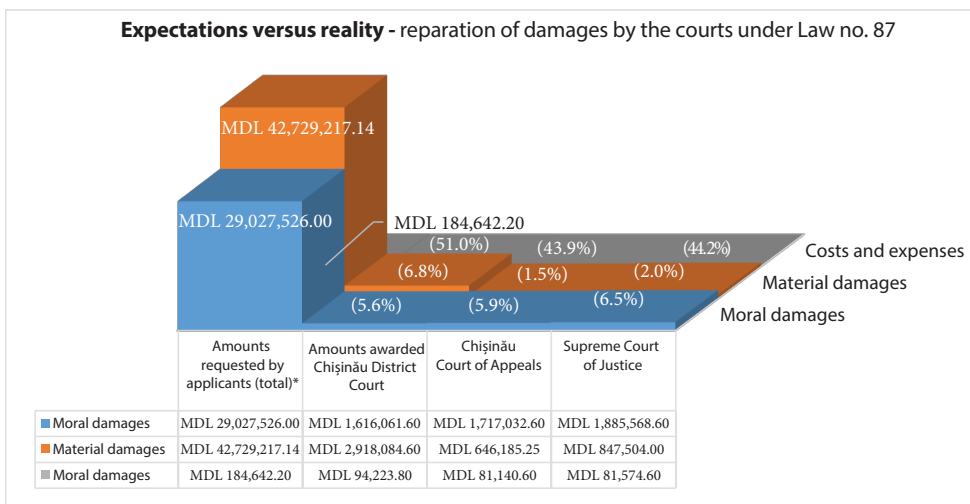
The lowest and the highest amount (non-enforcement of judgements)

Date at SCJ	File no.	Claimant	Subject	Length of proceedings (months)	Costs and expenses	EUR
14.11.2018	2ra-2033/18	Costin Tudor	Housing	58	10,000	503.1
13.03.2019	2ra-378/19	Oleg Spiridonov	Housing	108	277	13.8

It should be noted that the final amounts awarded by the courts are much lower than the applicants' expectations. Of the total number of 176 cases examined, the courts admitted only

6.5% of the combined amount of claims for moral damages, 2% for material damages and 44% for the amount of costs and expenses. This does not automatically mean that the courts unjustifiably rejected these claims, especially since in some cases the amounts requested by the applicants were unrealistic (claim of one million MDL for the non-enforcement of a judgement for two years).

If we analyze the dynamics of the amounts awarded, as regards moral damages, the lower courts grant the smallest moral damages, after which they increase insignificantly in the Courts of Appeal and the SCJ. A reverse dynamics can be observed in the case of material damages. Here, the courts of first level were the most “generous”, after which the amounts were reduced four times at the level of Courts of Appeal, and increased insignificantly at the SCJ. As regards the recovery of costs and expenses, the courts of first level granted on average 50% of the requested amounts, after which they were further reduced by 7-8% at the Courts of Appeal level and increased insignificantly at the SCJ. In the end, only 44% of the amounts requested as costs and expenses were awarded by the SCJ. For more details, please see below:



Conclusions and recommendations

In 2014, LRCM analyzed over 90% of all proceedings filed under the Law no. 87 in which an irrevocable judgment was adopted between September 2012 and October 2013. The analysis by LRCM found that these actions were examined quite slowly, the judges briefly motivated the judgments and even found that the reasonable time requirement was violated, although ECtHR standards do not allow to draw such a conclusion.³⁰ As regards the compensation for moral damages, this was lower than that awarded by the ECtHR in comparable cases, and justified legal costs were only partially compensated.³¹

Six years later, LRCM reviewed once more the relevant case law. Overall, 176 cases with irrevocable judgments were analyzed between October 2017 and March 2020. The cases were analyzed in terms of the length of the examination of these actions, the quality of the reasoning of judgments, as well as the compensations awarded.

The analysis of the case law between October 2017 and March 2020 shows a lack of noticeable progress compared to previous findings. The level of compensation for moral damages is lower than that awarded by the ECtHR in comparable cases, and justified legal costs are only partially compensated. The reasons for the judgment, as a rule, are brief and sometimes it is impossible to identify the actual arguments underlying the judgment. As a rule, the court's assessment is limited to one sentence, while the remaining part reproduces the arguments of the parties and their claims.

In order to eliminate the identified deficiencies, the 2014 LRCM analysis recommended changing the procedure for awarding compensation for the violation of a reasonable time limit, by establishing an extrajudicial mechanism through which compensation is awarded by the Ministry of Justice based on clear criteria. The decision of the Ministry of Justice could be challenged directly at the SCJ, which should issue an irrevocable solution on the case. Similar mechanisms work effectively in the Czech Republic, England and Spain. These recommendations remain valid following the current review.

If the current system is maintained, a mechanism should be introduced in the courts to

³⁰ LRCM, „*The mechanism for compensation of damages caused by the violation of reasonable time requirement — is it efficient?*” (2014), pp. 6 – 10, available at: <https://crjm.org/wp-content/uploads/2019/10/Justi%C8%9Bia-din-Republica-Moldova-%C3%AEn-cifre-%E2%80%93-o-privire-comparativ%C4%83-final-web.pdf>.

³¹ Idem, p. 10.

secure priority examination of urgent cases, including those under the Law no. 87. There is also a need for in-depth training of judges who examine proceedings under the Law no. 87 for a proper application of the ECtHR standards. The SCJ should also establish practices to ensure adequate compensation for breaches of a reasonable time limit for case examination.

In order to address the identified deficiencies, we recommend changing the procedure for awarding compensation for the breach of a reasonable time limit, as follows:

- a) The Ministry of Justice should award compensations based on a scale similar to that used by the ECtHR;
- b) The decision of the Ministry of Justice can be appealed directly to the SCJ, which will issue a final solution on the case.

If the current system of awarding compensations is maintained, the following measures should be implemented:

- a) Establish in the courts a system to ensure priority examination of urgent cases, including those under the Law no. 87;
- b) Solve in practice or in the law the issue of sending for retrial of cases under the Law no. 87;
- c) Train in-depth all judges who examine cases under the Law no. 87 for a proper application of the ECtHR standards;
- d) Establish a practice at the level of SCJ to ensure adequate compensations for the breach of a reasonable time limit;
- e) SCJ should closely monitor the examination of cases under the Law no. 87 and analyze annually the case law in this area, until it is fully aligned to the ECtHR standards.

An alternative to changing the compensation procedure under the Law no. 87 would be to eliminate the identified deficiencies, i.e. the shortening of the time for examining the actions under the Law no. 87 and increasing the compensations awarded under this Law. This can be most easily achieved by:


- a) Establishing a functional mechanism to ensure priority examination of urgent cases, which is missing today. This would involve rethinking the operation of judges, so that each of them reserves enough time each week for hearings in urgent cases, whether under the Law no. 87 or other actions;
- b) Solving in practice or in the law the issue of sending for re-trial of cases under the Law no. 87;
- c) Providing in-depth training to judges from the Chisinau Court, as well as those from the Civil Division of the Chisinau Court of Appeal and SCJ in the area of ECtHR standards regarding the reasonable time limit for case examination;
- d) Establishing a practice at the level of SCJ to ensure adequate compensations for the breach of a reasonable time limit;


- e) Close monitoring by the SCJ of the way of examining the cases under the Law no. 87 and analyzing annually the case law in this area, at least until it is fully aligned to the ECtHR.


However, we should be aware that the measures recommended in the case of maintaining the existing compensation procedure would not have immediate effects. Mechanisms similar to those in the Republic of Moldova, Italy and Russia have already been assessed by the ECtHR as ineffective or partially ineffective due to poor judicial practices.

Legal Resources Center from Moldova (LRCM) is a nonprofit organization that contributes to strengthening democracy and the rule of law in the Republic of Moldova with emphasis on justice and human rights. Our work includes research and advocacy. We are independent and politically non-affiliated.

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