



Moldova: Researched and compiled by the Refugee Documentation Centre of Ireland on 23 December 2010

- 1. What protection can the state authorities offer the person from the gang he fears and what mechanisms are open to the person for redress?**
- 2. Can the person avail of witness protection if they decided to report allegations?**
- 3. Are there viable relocation alternatives within Moldova for such a person?**
- 4. What is the likelihood of problems for someone who returns and wishes to have nothing to do with a criminal gang anymore - bearing in mind that the person has not gone to the authorities or reported to anyone?**

The most recent UK Home Office Operational Guidance Note on Moldova states:

“Some claimants will make an asylum and/or human rights claims based on a lack of sufficient police protection where crimes carried out by organised criminal gangs have been reported. Claimants will usually refer to widespread corruption throughout the State authorities as a contributory factor.

Treatment. Organised crime and corruption are particularly problematic. The shadow economy, dominated by extensive organised crime networks, accounts for between 30 and 70% of all economic activity. According to Transparency International (TI), in 2002 there were some 300 criminal groups in Moldova, most of which belonged to one of 35 criminal clans. Though a lack of State power has also resulted in increases in tax evasion, drug trafficking, illegal import/export operations and contract murders, the creation of the Centre for Combating Economic Crimes and Corruption (CCECC) in June 2002 improved the government’s record in combating fraud and corruption.

Corruption was believed to be pervasive throughout government and society, as reflected in numerous public opinion polls and reports by NGOs in 2006. For example, TI again reported that corruption remained a severe problem in the country. Although the government has special law enforcement and judicial units to combat corruption and acknowledged the problem, some critics charged that authorities used these units to persecute political opponents.

Sufficiency of protection. Though there have been State and NGO anti-corruption and witness protection initiatives since 2002 which have improved the State’s approach to tackling corruption and organised crime, the practical effect of these measures appears to be, as yet, limited and these problems remain endemic in Moldova. The State authorities’ capacity to offer effective protection against organised crime remains severely hampered by institutionalised corruption. It is therefore unlikely that claimants would be able to seek and receive adequate protection from the State authorities for complaints related to serious and organised crime, as opposed to common criminals with little influence vis-à-vis the State authorities. The individual circumstances of each

case ought to be examined closely to determine what kind of gang the claimant fears and what the gang's influence is. Any past attempt (s) to seek State protection should also be considered to determine whether in a particular case the claimant is likely to receive sufficiency of protection on return. (United Kingdom Home Office (4 April 2007) *Operational Guidance Note – Moldova*)

In relation to internal relocation this Operational Guidance Note states:

“Internal relocation. The availability of a viable internal relocation alternative depends on the type and status of crime group cited by the claimant.

Organised criminal gangs usually operate in particular localities where their dominance is not threatened by rival gangs, especially for the purposes of people trafficking. Where a claimant fears a gang and the evidence is that the gang operates in a particular region only, it is likely that he will be able to move to another part of Moldova where this essentially localised threat would not exist. This kind of case can be certified on the basis of internal relocation, unless it is arguable that the gang would be willing and able to track him down in another part of Moldova.

Some organised criminal gangs such as the Mafia and related criminal groups are well-connected and known to operate countrywide. Where a claimant fears this kind of gang, internal relocation is unlikely to be available.”
(Ibid)

The Conclusion to this Operational Guidance Note states:

“In spite of government initiatives to combat State corruption and counter organised crime, corruption remains pervasive throughout the State authorities and organised crime continues to be a very serious problem. In cases where it is accepted that the claimant fears a serious and organised criminal gang which is well-connected and known to operate countrywide, there is unlikely to be adequate State protection and a viable internal relocation alternative. A grant of Humanitarian Protection in such cases is likely to be appropriate. However, in cases where the claimant fears a group which operates on a local basis or common criminals with little influence vis-à-vis the State authorities, the grant of Humanitarian Protection is not likely to be appropriate and should be certified as clearly unfounded.” (Ibid)

A document by the Organization for Security and Co-operation in Europe states in relation to the law on witness protection:

“On 4 April 2008 the draft Law on Victim and Witness Protection was adopted in its first reading by Parliament. The new law provides stronger protections and assistance to victims and witnesses, especially in cases of human trafficking, and creates a new Directorate for Witness Protection in the Ministry of Interior. "The new law replaces the 1998 law that covered witness protection. The Mission's ATG Programme, in partnership with the US Embassy, supported drafting this law through an expert from the Institute for Penal Reform.

On 24 April the Mission's ATG Programme hosted a meeting with the Center to Combat Trafficking in Persons (CCTiP), IOM, US Embassy, and relevant NGO actors to discuss

further steps to support or enhance legal guarantees for victims and witnesses. CCTiP proposed drafting a new law to provide protection and social assistance to people who are doubly victims and witnesses in criminal proceedings. The participants agreed to elaborate a concept note for this proposed law, and CCTiP officially requested collaboration from the Ministry of Social Protection, Family and Child.

On 16 May the draft Law on Victim and Witness Protection was adopted in its second reading by Parliament. Its official title is Law on Protection of Witnesses and other Participants in the Criminal Cases. After its promulgation by the President, it was published in the Official Monitor on 27 June 2008. The law provides for the security of participants in criminal cases whose lives, physical safety, freedom or property are threatened due to their participation in legal proceedings for serious crimes. The law establishes a detailed and comprehensive legal framework. However, effective implementation depends on financial support, and the law lacks a strong financial mechanism. The law entered into force on 27 September 2008. (Organization for Security and Co-operation in Europe (2009) *Moldova, Republic: Anti-Trafficking and Gender Programme of the OSCE Mission to Moldova*, p. 14)

The US Department of State Trafficking Report states:

“The government applied the 2008 witness protection law for the first time to assist two victims of trafficking who chose to assist government prosecutions during the reporting period.” (United States Department of State (14 June 2010) *Trafficking in Persons Report 2010 – Moldova*)

The US Department of State Country Report states under the heading ‘Trial Procedures’:

‘In September 2008 a witness protection law entered into force to ensure the protection of persons whose life and property are threatened as a result of their participation in trial proceedings. However, implementation of the law was inconsistent.’ (US Department of State (11 March 2010) *2009 Country Report on Human Rights Practices - Moldova*)

This report also states under the heading ‘Role of the police and security apparatus’:

“A Transparency International survey conducted between February and March reported that 51 percent of the persons interviewed said they paid bribes to the police. According to the latest available statistics, 600 citizens lodged complaints with prosecutors' offices in 2007 regarding abusive police behavior. Following the complaints 258 criminal cases were opened, 32 police officers were dismissed, 12 were prosecuted for bribery, and 24 former officers were imprisoned.” (Ibid)

This report also states under the heading ‘Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons’:

“The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to

internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.” (Ibid)

In relation to witness protection for trafficking Amnesty International report:

“Despite the existence of witness protection programmes, very few victims of trafficking for sexual exploitation were able to benefit from effective witness protection if they agreed to testify. Women were only offered witness protection if the risk of attack by traffickers could be proven and in most cases this required evidence of a previous attack or threat. According to the US State Department Trafficking in Persons Report published in June, Moldova failed to address complicity in severe forms of trafficking by government officials.” (Amnesty International (28 May 2008) *Amnesty International Report 2008 - Moldova*)

A Response to an Information Request by the Immigration and Refugee Board of Canada from 2006 states in relation to witness protection:

“Witnesses and victims of crime are protected by the Witness Protection Section of the Moldovan Ministry of Internal Affairs (ABA and CEELI June 2005, 34). According to research conducted by the American Bar Association (ABA) and the Central European and Eurasian Law Initiative (CEELI) in 2005, due to "budgetary constraints", measures to protect victims and witnesses did not include relocation, but did include the following:

- providing physical protection (in the home, outside the home, and while moving from one location to another);
 - protecting the home;
 - concealing the witness' identity and whereabouts (i.e. by introducing a false name for the witness in court documents and retaining the witness' real identity in a separate file that is only available to the judge, prosecutor, and investigator in the case);
 - disclosing the witness' identity and whereabouts in a limited fashion;
 - conducting proceedings involving the witness in a confidential manner (i.e. in camera proceedings but only in Chisinau courts); and
 - implementing evidentiary limitations to safeguard the witness (ibid., 34-35).
- The ABA and CEELI report also suggested that Moldova's witness protection measures are inefficient and that, while "measures are available [to protect witnesses] and are delineated in law, they are scarcely applied" (ibid., 35). February 2006 correspondence from the director of TraCCC, also implied that witness protection programs in Moldova were inefficient (11 Feb. 2006).” (Immigration and Refugee Board of Canada (17 February 2006) *Moldova: Victims of organized crime and state protection available to them; corrupt police in organized crime and reports of organized crime targeting police; state protection available to former organized crime members*)

This Response also states in relation to protection:

"No specific information on whether a former organized crime member would receive state protection for his or her cooperation with the authorities could be found among the sources consulted by the Research Directorate. However, February 2006 correspondence from the Director of the TraCCC [Transnational Crime and Corruption Center] implied that it was unlikely that the state would be capable of providing protection to a former organized crime member, or any other individual, as the state's witness protection programs are inefficient (11 Feb. 2006)." (Ibid)

Information on the likelihood of problems for someone who returns and wishes to have nothing further to do with a criminal gang given that the person has not gone to the authorities or reported to anyone was not found among sources consulted by the Refugee Documentation Centre within time constraints. Specific information on state protection for former criminal gang members was not found among sources consulted by the Refugee Documentation Centre within time constraints. I am attaching a document by the Open Society Institute which may be of interest. Please note that I am unable to attach the OSCE document as it is too large to send.

References

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

Sources consulted

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Freedom House

Google

Human Rights Watch

Immigration and Refugee Board of Canada

International Crisis Group

IRIN News

Lexis Nexis

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Refugee Documentation Centre Databases

UNHCR Refworld

United Kingdom Home Office

United States Department of State