FROM WORDS TO DEEDS

Addressing Discrimination and Inequality in Moldova

Equal Rights Trust
in partnership with Promo-LEX Association

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IN PARTNERSHIP WITH PROMO-LEX

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The Equal Rights Trust Country Report Series: 7
London, June 2016

The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

Cover photos from top to bottom:
Xiius/Bigstock.com; GenderdocM; www.ziare.com;
and UN Women Moldova/Dorin Goian.
Design: Dafina Gueorguieva
Layout: Istvan Fenyvesi
Printed in the UK by Stroma Ltd

ISBN: 978-0-9573458-8-1

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The Equal Rights Trust is a company limited by guarantee incorporated in England, and a registered charity. Company number 5559173. Charity number 1113288.

This report has been prepared with the financial assistance of the European Union. The contents of this report are the sole responsibility of the Equal Rights Trust and can in no way be taken to reflect the views of the European Union.

Oamenii nu se deosebesc atât prin ceea ce zic, cât prin ceea ce fac.

Mihai Eminescu

People are not different by what they say, but by what they do.

Mihai Eminescu

Mihai Eminescu (15 January 1850 – 15 June 1889) was a Romantic poet, novelist and journalist. He wrote extensively about the socio-political climate of minorities working within the Austro-Hungarian Empire. He is regarded as one of the most famous and influential poets in Moldova and Romania.

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ACKNOWLEDGEMENTS

This report is published by the Equal Rights Trust, in partnership with Promo-LEX. The report is published in both an English-language and a Romanian-language version. The conceptual framework, structure and research methodology were developed by the Equal Rights Trust as part of its Country Report Series on addressing discrimination and inequality in different countries around the world.

Jim Fitzgerald and Joanna Whiteman at the Equal Rights Trust and Olga Manole at Promo-LEX oversaw the production of the report. The first draft of the report was prepared in English by a team comprising Olga Manole, Eduard Scutaru, Dumitru Sliusarenco and Vadim Vieru from Promo-LEX and Tayyiba Bajwa, Sam Barnes, Ben Smith and Dan Zwi from the Equal Rights Trust. The draft report was subjected to review by a team of Moldovan experts and Saphieh Ashtiany, Chair of the Equal Rights Trust Board of Trustees. Following this review, Jim Fitzgerald and Joanna Whiteman revised, finalised and authorised the report for publication in English and translation into Romanian. Olga Manole finalised and authorised the Romanian-language version for publication.

Field research was central to the identification and description of patterns of inequality and discrimination. This research was undertaken by a number of civil society organisations and independent researchers, coordinated and managed by Olga Manole at Promo-LEX and Richard Wingfield at the Equal Rights Trust. The members of the research team were: Association AFI, Ion Bucur, Ion Ciobanu, Lilia Cravcenco (Zaharia); Angela Frolov; Svetlana Gheorghieva; Centrul Media; Elena Nofit; Violeta Odagiu; Vitalie Popov and Vitali Rabinciuc. The Equal Rights Trust and Promo-LEX are immensely grateful to these researchers for their work.

Thanks are also due to the group of experts who reviewed and provided comments on the draft chapters of the report. For Part 2 of the report, focused on patterns of discrimination and inequality, these reviewers were: Natalia Duminica, Roma rights activist and Dumitru Sliusarenco from Promo-LEX (race and ethnicity), Dumitru Sliusarenco (disability), Angela Frolov from GENDERDOC-M (sexual orientation and gender identity), Ala Iaţco from the Union for HIV/AIDS Prevention and Harm Reduction and Svetlana Doltu from Association AFI (health status), Lilia Potîng, Cornelia Călin and Dumitru Sliusarenco from Promo-LEX (gender), Alexandru Postica from Promo-LEX

(religion) and Olesea Perean, human rights expert (age). Part 3 of the report, focused on the legal and policy framework, was reviewed by Sorina Macrinici from the Legal Resources Centre from Moldova, Andrei Brighidin from the Council for the Prevention and Elimination of Discrimination and Ensuring Equality, Dumitru Russu from the Non-Discrimination Coalition and Olesea Perean, human rights expert.

The Equal Rights Trust is grateful to secondees, interns and volunteers who undertook desk-based research and provided editorial assistance in the development of the report. Thanks are due in particular to Sam Barnes and Ben Smith. Thanks also go to Ashurst LLP, a number of whose trainees and lawyers supported the Equal Rights Trust in completing the report on a pro bono basis.

Charlotte Broyd of the Equal Rights Trust oversaw the final editorial stages including the proofreading and layout of the report.

Very special thanks go to Istvan Fenyvesi and Krisztina Fenyvesi who worked on the design of the cover and who laid out the report.

This report is an outcome of a partnership between the Equal Rights Trust and Promo-LEX, in the context of project aimed at empowering civil society to promote equality and combat discrimination in Moldova. This project was funded by the European Union. Both the Equal Rights Trust and Promo-LEX are very grateful to the European Union for the financial support provided. However, the contents of this publication are the sole responsibility of the Equal Rights Trust and can in no way be taken to represent the views of the European Union. The European Union has not interfered in any way whatsoever with the research or contents of this report.

In the process of producing this report, the partners conducted interviews, sought information or consulted a number of Moldovan experts and organisations, many of whom are cited in the report. The Equal Rights Trust and Promo-LEX wish to thank all individuals and organisations who responded to queries, gave feedback on the draft report, provided information and advice, or met with us, Promo-LEX and our researchers.

Finally, we wish to thank all persons who shared their stories with us. This report is dedicated to them and all other persons in Moldova who have suffered – and those who continue to suffer – discrimination and exclusion.

ACRONYMS AND ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
AESM	Academy of Economic Studies of Moldova
BOC	Bessarabian Orthodox Church
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEC	Central Election Commission
CED	International Convention for the Protection of All Persons from Enforced Disappearances
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CIS	Commonwealth of Independent States
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CESCR	Committee on Economic, Social, and Cultural Rights
CPEDEE	Council on the Prevention and Elimination of Discrimination and Ensuring Equality
CPT	Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
EU	European Union
FCNM	Council of Europe Framework Convention for the Protection of National Minorities
FPD	Family Protection Department
GDP	Gross Domestic Product
HDI	Human Development Index
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights

ILO	International Labour Organization
IPP	Institute for Public Policy
LGBT	Lesbian, gay, bisexual and transgender
MASSR	Moldavian Autonomous Soviet Socialist Republic
MCB	Metropolitan Church of Bessarabia
MDL	Moldovan Leu
MLSPF	Ministry of Labour, Social Protection and Family
MOC	Moldovan Orthodox Church
MRT	Moldavian Republic of Transnistria
MSSR	Moldavian Soviet Socialist Republic
NGEP	National Gender Equality Programme
NGOs	Non-governmental organisations
NHRAP	National Human Rights Action Plan
NMPCD	National Mechanism of Prevention and Combating Discrimination
OSCE	Organization for Security and Co-operation in Europe
PCRM	Party of Communists of the Republic of Moldova
PLWHIV	Persons Living with HIV
PLWHIVA	Persons Living with HIV/AIDS
PMAP	Programme for Mainstreaming Ageing in Policies
TB	Tuberculosis
TPCs	Temporary Placement Centre for Foreigners
UN	United Nations
UNDP	United Nations Development Programme
UPR	Universal Periodic Review
WHO	World Health Organization
2011 APSRP	2011–2015 Action Plan for the Support of Roma People from the Republic of Moldova
2007 NSCASC	2007–2014 National Strategy on Community-Based Actions to Support Children in Difficulty
2007 NSEP	2007–2015 National Strategy for Employment Policies
2011 NSMA	2011–2020 National Strategy on Migration and Asylum
2014 NYS	2014–2020 National Youth Strategy and Action Plan
2010 SSIPD	2010–2013 Strategy on Social Inclusion of People with Disabilities

EXECUTIVE SUMMARY

Moldova has undertaken significant legal and policy reform on equality and non-discrimination in recent years, largely driven by a desire to demonstrate convergence with European Union standards. Laws on gender and disability discrimination, enacted in 2006 and 2012 respectively, both have shortcomings. However, the Law on Ensuring Equality, also enacted in 2012, has brought the legal framework broadly into line with European Union – if not international – standards.

On paper, Moldova has a legal framework which provides a starting point for combating discrimination and promoting equality. Its words offer promise. However, this report finds that the Moldovan rallying cry – "we want deeds not words" – is particularly pertinent in addressing equality and non-discrimination. Words, even legally binding ones, are not enough.

Our research identifies countless gaps between the "words" of Moldova's most recent legislation and the "deeds" of both state and private actors. Thus, despite the adoption of the Law on Ensuring Equality, the state has not acted to amend or repeal discriminatory legal provisions affecting groups such as lesbian, gay, bisexual and transgender (LGBT) persons and persons with disabilities. The police continue to use ethnic profiling against Roma, one of many symptoms of the widespread prejudice faced by the group. In one of the biggest stains on Moldova's collective conscience, people with mental disabilities are systemically denied legal capacity and institutionalised in often cruel and inhumane conditions; our research uncovered instances of abuse including rape and other forms of mistreatment. The authorities have not been effective in enforcing laws which prohibit discriminatory violence, particularly against women and have failed to take positive measures to improve protection for victims of domestic violence, despite numerous rulings against it before the European Court of Human Rights. In the private sphere, despite clear legal prohibitions, employers and service providers continue to discriminate – often overtly – on grounds ranging from race to gender and health status to age.

Other deeds disappoint. Of much promise was the state's establishment of the Council on the Prevention and Elimination of Discrimination and Ensuring Equality. The Council has, among other functions, considered hundreds

of discrimination cases in the few years since its establishment. However, its impact continues to be limited by the deeds of state authorities. The Council was not imbued with the power to impose sanctions for perpetrators of discrimination and the courts, to date, seem reticent to follow the Council's lead.

Ultimately, this report concludes that if Moldova is to effectively address discrimination and inequality, it must work to eliminate the barriers to the proper enforcement of its equality laws and policies. After a rapid period of legal reform, the state has many of the tools required to address the patterns of discrimination and inequality identified in this report. Now it must focus its efforts on implementing and enforcing these laws, by tackling prejudice and changing the practice of state and private actors, and so ensuring that its deeds correspond to its words.

Part 1: Introduction

Purpose and Structure

The purpose of this report is to highlight and analyse discrimination and inequality in the Republic of Moldova (Moldova) and to recommend steps aimed at combating discrimination and promoting equality. The report explores long-recognised human rights problems, while also seeking to shed light upon less well-known patterns of discrimination in the country. The report brings together – for the first time – evidence of the lived experience of discrimination and inequalities of many different forms with an analysis of the laws, policies, practices and institutions established to address them.

The report comprises four parts. **Part 1** sets out its purpose and structure, the conceptual framework which has guided the work and the research methodology. It also provides basic information about Moldova, its history and the current political and economic situation. **Part 2** discusses the principal patterns of discrimination and inequality affecting different groups in Moldova. **Part 3** analyses the legal and policy framework as it relates to non-discrimination and equality. **Part 4** contains recommendations, drawn from an analysis of both the patterns of discrimination and inequality examined in Part 2 and the gaps, weaknesses and inconsistencies in the legal and policy framework identified in Part 3.

Conceptual Framework and Research Methodology

The conceptual framework of this report is the **unified human rights framework on equality**, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each type of inequality and the overarching aspects of different inequalities. The unified framework brings together:

a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;
b) types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, and provision of goods and services, among others; and
c) status inequalities and socio-economic inequalities.

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, adopted in 2008, signed initially by 128, and subsequently by hundreds more, experts and activists on equality and human rights from all over the world.

This report is one of the results of a partnership between the Equal Rights Trust and the Moldovan non-governmental organisation Promo-LEX, who have been working together to advance equality in Moldova since 2009. The report is one of the outcomes of a two-and-a-half-year project to combat discrimination and inequality in the country.

During this period, the partners had extensive opportunities to consult and conduct research on patterns of discrimination and inequality in Moldova. We commissioned research by non-governmental organisations and individuals on different patterns of discrimination, and engaged with representatives of these groups directly. We also independently reviewed existing literature on discrimination and inequality on different grounds, and analysed and assessed the country's legal and policy framework related to equality. Prior to publication, this report was the subject of a consultation, in which its findings and conclusions were exposed to scrutiny by experts. We believe that as a result, the report's findings and conclusions have been significantly strengthened.

Country Context, History, Government and Politics

As part 1.3 elaborates, the Republic of Moldova (Moldova) is located in central Europe in the north-eastern Balkans. Moldova borders Ukraine to the North, South and East and Romania to the West. The capital city of Moldova is Chișinău, which has a population of approximately 814,000 people. The country is divided into 32 districts (*rayons*) as well as the autonomous territorial units of Gagauzia and Transnistria, which have a special legal status. Moldova is a unitary state with a uniform system of laws throughout the country.

Moldova has a population of approximately 3.55 million people. Since the early 1990s, this has decreased by around one million, mainly as a result of the high death rate and high levels of emigration due to political, economic and social crises. The 2004 census shows ethnic Moldovans as the majority ethnic group (75.8%). Smaller minorities of Ukrainians (8.4%), Russians (5.9%) and Romanians (2.2%) predominate in urban areas, with the majority of ethnic Moldovans, Gagauz (4.4%) and Bulgarians (1.9%) more highly represented in rural settings. The 2004 census revealed that the great majority of the population are Orthodox Christian (93.3%), divided between Russian Orthodox and Bessarabian Orthodox (part of the Romanian Orthodox Church). Other Christian denominations make up most of the remaining population, with small numbers of Catholics, Muslims and Jews.

Moldova's official language is stated to be Moldovan in its Constitution but is identified as Romanian in the Declaration of Independence, which has been declared by the Constitutional Court to hold precedence. In the 2004 census, 58.8% of the population identified themselves as Moldovan speakers and a significant minority as primarily Romanian speakers (16.4%). In practice, there is little difference beyond the Cyrillic script used in Moldovan, and identification as either a Moldovan or Romanian speaker is often linked with a person's view of their ethnicity or nationality. Sixteen percent of the population identify Russian as their primary language, with smaller numbers speaking Ukrainian, Gagauz and Bulgarian.

In 2014, Moldova's Gross Domestic Product (GDP) was USD $7.6 billion, ranking it lower middle in the world. The GDP per capita adjusted by purchasing power parity was $4,754 in 2014, equating to 27% of the global average and the lowest in Europe. In 2015, the United Nations Human De-

velopment Index for Moldova was 0.693, placing it 107th in the world out of 188 countries. Moldova's Gini Income coefficient for the period 2003-2012, measuring inequality in the distribution of wealth, was 33. The ratio of the average earnings of the richest 20% to those of the poorest 20% in the same period was 5.3.

The territory comprising modern-day Moldova has been controlled by a succession of powers over recent centuries. Claimed from the Ottomans by the Russian Empire in the early nineteenth century, Moldova unified with Romania in 1918 after the First World War. In 1939, Moldova fell under the ambit of the Soviet Union as part of a non-aggression pact with Germany, until the declaration of its independence on 27 August 1991.

In September 1991, the regional parliament of Transnistria voted to join the Soviet Union. This resulted in the Transnistrian War, fought by the region's forces against the Moldovan government over four months in 1992, and with support from Russian and Ukraine. A ceasefire was agreed and still continues at the time of writing. The Moldovan government does not exercise authority in the region and Russia continues to support the government of the Moldavian Republic of Transnistria.

The Constitution of the Republic of Moldova was adopted on 27 July 1994 and established a semi-presidential system. In 2000, the Moldovan Parliament amended the Constitution to become a parliamentary republic in which the president is elected by Parliament rather than by direct popular vote. Vladimir Voronin of the Party of Communists of the Republic of Moldova (PCRM) was elected President for two terms between 2001 and 2009. With the election of Voronin, Moldova became the first post-Soviet state to elect an unreformed Communist party to power.

The April 2009 elections saw allegations against the PCRM of electoral fraud, interference with the press and misuse of public funds. Violent protests followed in the capital and a recount was called. Parliament was dissolved and series of elections failed to secure a majority vote for the role of President, until the politically neutral Nicolae Timofti crossed the line to become President on 16 March 2012. The most recent parliamentary elections were held on 30 November 2014, in which the pro-Russian Party of Socialists of the Republic of Moldova won a majority.

Recent years have been a period of significant unrest in the office of the Prime Minister, with numerous allegations of corruption and fraud being levelled, and four role holders between 2010 and 2015. In 2015, the former Prime Minister, Vladmir Filat was detained on charges of bank fraud and bribery. Mass protests erupted across the country, and in October 2015, the government led by Prime Minister Valeriu Strelet was dismissed following a vote of no-confidence. On 20 January 2016, the appointment of Pavel Filip as Prime Minister was met by further protests in the capital.

On 4 March 2016, the Constitutional Court ruled that the 2000 amendment providing for the indirect election of the President was unconstitutional. As a result, there was a reversion to the original constitutional provision that the President is to be elected directly by citizens. Direct Presidential elections are due to be held on 30 October 2016.

At the local level, on 2 February 2014, a referendum held in the autonomous territory of Gagauzia voted overwhelmingly for its right to declare independence in the event that Moldova loses or surrenders its independence, including in the event of EU accession. The Moldovan government rejected the referendum as illegitimate.

At the regional level, since 1994, European integration has been a priority for Moldova. In 2005, all major political parties listed accession to the European Union as a major objective; however, the current political landscape is divided between those in favour and those opposed.

The general human rights situation in Moldova is mixed. In 2015, Freedom House considered Moldova to be "partly free", receiving an overall freedom rating of 3.0 (with specific ratings of 3 for civil liberties and 3 for political rights). As a result of ineffective implementation, recent reforms have not significantly improved the human rights situation. There are overarching concerns about endemic corruption and the lack of independence of the judicial system and the impact these have upon Moldova's ability to respect, protect and fulfil human rights.

Part 2: Patterns of Discrimination

This part of the report presents evidence of discrimination and inequality because of (i) nationality, race and ethnicity, with a focus on the Roma

ethnic group; (ii) sexual orientation and gender identity; (iii) health status; (iv); gender (v) disability; (vi) religion and belief; (vii) age; and (viii) language. As a result, it is not an exhaustive picture but instead an insight into some of the most significant patterns of discrimination in the country. In respect of each ground covered, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws, the action of state actors carrying out public functions, exposure to discriminatory violence, and discrimination and inequality in areas such as employment, education and access to goods and services.

With respect to discrimination on the basis of **nationality, race and ethnicity**, discussed in section 2.1, the testimony that we have collected shows clearly that Roma in Moldova experience direct discrimination, frequently blatant and overt, rooted in deep-seated prejudice and stereotypes that are freely shared. The lack of disaggregated data, while making it difficult to establish with precision the relative position of Roma, does not undermine this finding. Roma experience discrimination, and its resulting inequalities, in all areas of life regulated by law. The development of the Action Plan in Support of the Roma Population in Moldova is encouraging but suffers from a lack of implementation as a result of limited resources and insufficient political will to take decisive action. Other racial minorities, in particular those with darker skin, are also subject to prejudice and discrimination, including violence and limited access to employment and housing. This situation is worsened by the lack of an effective remedy for victims of discrimination and often hostile reception by the authorities to claims of discrimination.

In section 2.2, the report finds that discrimination on the basis of **sexual orientation and gender identity** for LGBT persons in Moldova is routine and severe, accompanied by stigma throughout society. The weak response by law enforcement to allegations of hate speech and hate crimes against LGBT persons, the inadequacy of the legislative framework providing protection from discrimination, and the frequency of discriminatory statements made by public and religious officials all contribute to the vilification and denigration of sexual and gender minorities. Recent surveys reveal markedly low societal acceptance of gender and sexual minorities. There has been some evidence of progress on LGBT rights over recent years, for example the repeal of "gay propaganda" laws and regional anti-LGBT ordinances, and the relaxation

of the requirements concerning Pride Marches. Nevertheless, these advances are limited and LGBT persons still face significant discrimination in many areas of life.

Section 2.3 of the report, examining discrimination on the basis of **health status**, finds that there are particular concerns about discrimination against persons with HIV/AIDS and tuberculosis (TB) in Moldova. While the Moldovan Constitution does not expressly prohibit discrimination on the basis of health status, there are a number of legal protections for persons living with HIV (PLWHIV). Nevertheless, PLWHIV continue to experience stigmatisation and discrimination in all areas of life. Particularly concerning are widespread reports of the medical profession both failing to maintain patient confidentiality and discriminating against PLWHIV in providing treatment. Women and children living with HIV are especially vulnerable to multiple discrimination in both education and healthcare. Persons with TB are subject to considerable stigmatisation and ill-treatment, accompanied by limited access to services and employment. The Regulation on Coercive Hospitalisation compounds the vulnerability of people with TB in allowing the state to enforce certain treatments, with no clear means to review or challenge the approach taken.

With respect to discrimination on the basis of **gender**, section 2.4 finds that Moldova has made progress in developing legal provisions, policy and a regulatory framework to protect gender equality, including maternity and equality in education, employment, healthcare and other areas. However, inadequate implementation, monitoring and assessment by the state, coupled with insufficient resourcing, means that women continue to face discrimination. This manifests as significant societal discrimination against women, reaching across employment, education, governance and underrepresentation in politics. For example, gender stereotypes underpin discriminatory laws, such as one which prohibits women from undertaking certain forms of dangerous work. At the same time, a weak legislative framework and application result in wholly inadequate protection for women suffering from prevalent and grossly under-reported sexual abuse and domestic violence.

Section 2.5 of the report examines discrimination on the basis of **disability**, finding that while Moldova is a signatory of the Convention on the Rights of Persons with Disabilities and despite increasing legal provisions enacted to recognise and regulate the rights of persons with disabilities, persons with disabilities continue to face stigmatisation and discrimination. Although Mol-

dovan law provides for the legal capacity of persons with disabilities, as of February 2015, 4,000 persons with disabilities had been deprived of their legal capacity under the Civil Code. A number of studies, including by the Moldovan Ombudsman, recognise that persons with disabilities face active discrimination and limited access with respect to a spectrum of public services, including: health and social care; education; use of public spaces and infrastructure; access to justice; and political participation. Discrimination also extends to access to transport, employment, and goods and services. As a result, persons with disabilities routinely face social exclusion and a lower standard of living, and sometimes abuse. Women with disabilities are particularly vulnerable to multiple discrimination, and the low incidence of births among women with disabilities has been attributed by some Moldovan NGOs to poor access to healthcare services. A number of policy and legal reforms have been recommended or are underway – notably a 2013 Action Plan – but there is little evidence of tangible progress.

Section 2.6 examines discrimination on the basis of **religion and belief**, and finds that while the Moldovan legal system guarantees freedom of religion and prohibits discrimination on the basis of religion, there are many examples of disadvantage faced by minority religious communities. The Moldovan Orthodox Church receives a privileged status under national law not enjoyed by other religious groups. In particular, minority religious groups face difficulty in securing the legal registration necessary to exercise certain rights, obtaining land and permits to build places of worship, and achieving restitution of church property. The simplification of the registration process has increased the registration of minority religious groups in recent years. In spite of these modest improvements, both the Moldovan Orthodox Church and the government have failed to effectively prevent intolerance, hate speech, and violence by members of the Church against minority religious groups.

With respect to discrimination on the basis of **age**, section 2.7 of the report finds that discrimination against older persons in Moldova is perpetuated through discriminatory laws and policies, particularly in the area of employment. Retirement age is a legal basis in Moldova for dismissal from employment and regulations continue to be introduced which restrict access to work for those over the age of retirement, yet the courts have failed to recognise these as discriminatory. Combined with an inadequate state pension and restricted access to employment places, older persons face a disproportionate risk of falling into poverty and suffering from associated health and social impacts.

Finally, section 2.8 examines **language**, a deeply contentious issue in Moldova, a country of considerable linguistic diversity. The two most prevalent languages, Moldovan and Romanian, are distinguished only by their association with different ethnic, cultural and geographic identities rather than any linguistic divergence. Speakers of Russian, despite being the language of interethnic communication, face considerable difficulty in accessing justice. This is due to inadequate provision of translation services and unclear legislation on the use of languages other than Romanian (and Moldovan by association) in accessing the court system. More widely, persons who do not speak Romanian language have provided evidence of discrimination in accessing public services more widely, exacerbated by claims of poor teaching of Romanian in the education system.

Part 3: Legal and Policy Framework Related to Equality

This part examines both Moldova's international legal obligations and the domestic legal and policy framework which protects the rights to equality and non-discrimination. It also considers the extent to which there is adequate enforcement of the legal and policy framework and effective access to justice for victims of discrimination.

Section 3.1 of the report assesses Moldova's **participation in international and European instruments**. It finds that Moldova has a mixed record of participation in the UN human rights treaty system. While it has ratified seven of the nine core UN human rights treaties – omitting only the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearances – State Party Reports are often late, with one currently outstanding. Moldova has made declarations to first and second Optional Protocols to the International Covenant on Civil and Political Rights and the second Optional Protocol to the Convention on the Rights of the Child, which limit their application to its Transnistrian region.

Moldova has a good record in relation to other international treaties which have a bearing on the rights to equality and non-discrimination. It has ratified the key Conventions relating to refugees and statelessness. It has also ratified all eight of the fundamental International Labour Organisation (ILO) Conventions and the 1960 UNESCO Convention against Discrimination in Education. However, Moldova has made reservations to the UN Convention

against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, stating that these will only be applied to state-controlled territory until full territorial integrity has been established to include the Transnistrian region.

Moldova also has a number of important obligations under **regional human rights instruments**. It has ratified the European Convention on Human Rights (ECHR), the European Social Charter (revised), and the European Convention on Nationality. As with other international instruments, the state has made declarations to restrict the application of rights to the Transnistrian region. Significantly, Moldova has not yet ratified Protocol 12 of the ECHR (which provides a free-standing right to non-discrimination), the European Charter for Regional or Minority Languages, or the Convention on Preventing and Combating Violence against Women and Domestic Violence.

With respect to matters of human rights law, international and regional treaties that Moldova has ratified take precedence over domestic legislation, although courts do not always correctly adopt this approach. In respect of matters which fall outside the remit of human rights, the status of international law in relation to domestic law is less clear.

Section 3.2 explores Moldova's domestic legal system, looking first at its **Constitution**, adopted in 1994. The Constitution guarantees the right to equality through Article 16, both as a positive and negative duty on government, and through other provisions throughout regarding equality and non-discrimination. However, there are some shortcomings. The list of protected grounds in Article 16 of the Constitution is shorter than lists found in international instruments to which Moldova is a party; for example, omitting prohibition of discrimination on ground of colour and language and the open-ended "or other status", which are explicitly protected in Article 14 of the European Convention on Human Rights. Article 16 also omits a number of other grounds of discrimination, which Part 2 evidences are in need of better protection in Moldova including disability, sexual orientation, HIV/AIDS status and gender identity. The Constitution does not explicitly provide for positive action by the state but does propose measures to protect sections of society traditionally associated with disadvantage. For example, Article 43 refers to protective measures for the working conditions of woman and young people; however, these can risk paternalism and certain measures, such as the prohibition on pregnant and postnatal women working overtime (Article 105), need to be repealed.

Section 3.2.2 assess the major pieces of anti-discrimination legislation in Moldova. The Law on Ensuring Equality is the primary non-discrimination statute in Moldova. It prohibits discrimination on a number of grounds and in all spheres of life, subject to limited exceptions. It establishes the regulatory body charged with hearing complaints of discrimination and promoting equality: the CPEDEE. The law applies to the actions of both public authorities and private actors, and benefits all persons in Moldova's jurisdiction. However, it is not a completely comprehensive anti-discrimination law – it expressly excludes discrimination in the areas of family (including marriage), adoption relations and religious institutions. While the law does not explicitly protect people from discrimination on a number of important grounds, including citizenship, place of domicile, gender identity, sexual orientation, health and HIV/AIDS status, the list of characteristics protected under the law is non-exhaustive. The law refers to "any other similar criteria", such that further grounds of discrimination may be protected insofar as they can be shown to be similar to the included grounds.

Additionally, Moldova has two **specific anti-discrimination laws**: the Law on Ensuring Equal Opportunities between Women and Men, and the Law on Social Inclusion of Persons with Disabilities. Both laws have shortcomings. The former promotes gender equality, primarily through the imposition of duties on public bodies to make decisions and policies consistent with the notion of equal opportunities between women and men. However, the Law does not include any enforcement mechanisms or remedies for breach of duty, and is therefore primarily a statement of principle. To an extent, the subsequently enacted Law on Ensuring Equality mitigates some of these shortcomings but it remains difficult to see how an aggrieved person would obtain relief under the provisions of the Law. The Law on Social Inclusion of Persons with Disabilities was intended to make major progress in the protection of the rights of persons with disabilities and to bring the law in line with Moldova's obligations under international law and most notably the Convention on the Rights of Persons with Disabilities. It creates ostensibly robust and far-reaching protections of persons with disabilities, including provisions on access to education, healthcare and employment, the prohibition of discrimination, legal capacity, and social and political participation of persons with disabilities. In practice, however, it is difficult for persons with disabilities to benefit from these protections, and there are a number of significant unresolved conflicts with other areas of Moldovan law.

Further to these pieces of legislation, section 3.2.3 reviews a number of **non-discrimination provisions in other legal fields**, which impact the equality and non-discrimination legislation that regulates several specific fields of activity, including civil, criminal and civil procedure codes; labour, education, family law, broadcasting, mental health and religion. The Civil Code plays a crucial supportive function in setting out remedies available where has been a finding of unlawful discrimination using another statute. The Civil Procedure Code is concerned with non-discrimination in access to justice, and specifies a broader list of protected characteristics than any other Moldovan legislation, including citizenship, job, domicile, and place of birth. However, the Civil Procedure Code has some problematic provisions and gaps in protection, in some cases in apparent violation of the Constitution. Amongst these is the fact that there is no right to appeal in cases where persons are forcefully referred to psychiatric care by judicial order.

Government policies are examined in section 3.3. The Moldovan government has put in place a number of public policies that seek to translate legislative protections into substantive outcomes, for example by providing guidance to public servants on how to fulfil their functions in a non-discriminatory manner. There is no public policy with respect to equality and non-discrimination generally. However, there are a number of policies which focus on discrimination in a particular sphere, such as employment. The governmental priority and degree of implementation of these policies varies significantly and limited resources are often cited as a barrier to effective realisation together with vague success criteria. Many of the measures proposed in the National Human Rights Action Plan of 2011–2014, for example, were only partially implemented. Nevertheless, poorly implemented policies have still been used as effective advocacy tools by civil society organisations.

Finally, the **enforcement and implementation of laws and policies** related to equality is analysed in section 3.4. It finds that, while there is a relatively comprehensive constitutional and legal framework protecting the rights to equality and non-discrimination in Moldova, their implementation and enforcement need to be strengthened. Critically, the CPEDEE, established under the Law on Ensuring Equality and tasked with examining the complaints of persons who consider themselves discriminated against, is not imbued with judicial power. That is, it can refer cases of unlawful discrimination to the relevant public body and propose disciplinary steps, but it is unable to impose sanctions directly. To adequately promote equality and protect against dis-

crimination, Moldova must increase the institutional capacity of CPEDEE, the courts and other authorities in order to guarantee victims of discrimination effective access to justice and appropriate remedies.

Our analysis of Moldovan **jurisprudence** identifies a number of trends emerging in the case law which are inconsistent with international best practice or otherwise require addressing, notably concerning discrimination in relation to sexual orientation and religion. For example, the Constitutional Court has declined to confirm that sexual orientation is a prohibited ground under the Law on Ensuring Equality (with the exception of employment), despite the fact that it is provided for under the catch-all phrase "or any other similar criteria" in Article 1(1). Elsewhere, the courts have displayed a reluctance to censure the discriminatory acts of religious institutions, such as hate speech and incitement to discriminate against homosexuals or display clarity in protecting anti-discrimination standards in the often complex conflict of rights of religious freedom and freedom from discrimination. There have been four cases in the European Court of Human Rights in which Moldova was found to have breached the right to freedom from discrimination in Article 14 of the European Convention on Human Rights. Three of these cases, discussed in part 3.4.3 involved gender discrimination – in particular the lack of effective measures in response to domestic violence – and one case related to the right to freedom of assembly.

This report concludes that the system of laws, policies and practices in place to prevent discrimination in Moldova, while meritorious in some respects, is incomplete with much left to progress. Moldova has made particular progress in aligning its domestic legal framework with international standards, albeit with a number of outstanding omissions and inconsistencies. The most urgent attention must be given to improving poor enforcement and implementation.

Part 4: Recommendations

Part 4 of this report makes recommendations to the Moldovan government. The purpose of these recommendations is to strengthen protection from discrimination and to enable Moldova to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality. All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best

practice which consolidates the most essential elements of international law related to equality.

The report makes recommendations (see pages 331–346) in nine areas:

- Strengthening of international commitments related to equality;
- Constitutional and legislative reforms to amend or repeal discriminatory laws;
- Implementation and enforcement of the Law on Ensuring Equality;
- Implementation and enforcement of other laws aimed at prohibiting discrimination;
- The implementation of national policies;
- Actions to address discrimination against specific groups;
- Data collection on equality;
- Education on equality; and
- Prohibition of regressive interpretation of protections against discrimination.

1. INTRODUCTION

1.1 Purpose and Structure of This Report

The purpose of this report is to highlight and analyse discrimination and inequality in the Republic of Moldova (Moldova) and to recommend steps aimed at combating discrimination and promoting equality. The report explores long-recognised human rights problems, while also seeking to shed light upon less well-known patterns of discrimination in the country. The report brings together – for the first time – evidence of the lived experience of discrimination and inequality in Moldova with an analysis of the laws, policies, practices and institutions established to address them.

The report comprises four parts. **Part 1** sets out its purpose and structure, the conceptual framework which has guided the work, and the research methodology. It also provides basic information about Moldova, its history and the current political and economic situation.

Part 2 presents patterns of discrimination and inequality, highlighting evidence of discrimination and inequality on the basis of a range of characteristics: race and ethnicity (with a focus on discrimination against Roma persons), disability, sexual orientation and gender identity, health status, gender, religion, language and age (with a focus on the disadvantages faced by older persons).

Part 3 begins by reviewing the main international legal obligations of Moldova in the field of equality and non-discrimination, within the frameworks of the UN and Council of Europe human rights systems. It then discusses Moldovan national law related to equality and non-discrimination, starting with the Constitution before examining both specific anti-discrimination legislation and non-discrimination provisions in other legislation. Part 3 also reviews state policies relevant to equality. The potential for the realisation of the rights to equality and non-discrimination is illustrated through a review of judicial practice and a review of the operation of government and independent bodies responsible for the implementation of human rights laws.

Part 4 contains the report's recommendations, which are based on the analysis of patterns of inequality and discrimination examined in Part 2 and the assessment of Moldovan legislation and state policies in Part 3.

1.2 Conceptual Framework and Research Methodology

The conceptual framework of this report is the unified human rights framework on equality, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome fragmentation in the field of equality law and policies. The unified human rights framework on equality is a holistic approach which recognises both the uniqueness of each type of inequality and the overarching aspects of different inequalities. It brings together:

a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others;
b) types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education, and provision of goods and services, among others; and
c) status inequalities and socio-economic inequalities.

The Unified Human Rights Framework on Equality

The unified human rights framework on equality is expressed in the Declaration of Principles on Equality, adopted in 2008, signed initially by 128 and subsequently by thousands of experts and activists on equality and human rights from all over the world. The principles formulated and agreed by the experts are based on concepts and jurisprudence developed in international, regional and national legal contexts.

Since its adoption, the Declaration has guided efforts to develop equality legislation in a number of countries and has received increasing support at the international and regional levels. In 2008, the Committee on Economic, Social and Cultural Rights (CESCR) made use of a number of key concepts from the Declaration in its *General Comment 20: Non-discrimination in economic, social and cultural rights*. In 2011, the Parliamentary Assembly of the Council of Europe adopted a Recommendation calling on the Council of Europe member states, including Moldova, to take the Declaration into account when developing equality law and policy.

Principle 1 of the Declaration defines the **right to equality**:

> *The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.*[1]

Thus defined, the right to equality has a broad scope, and its content is richer than that of the right to non-discrimination, as traditionally understood. The right to equality has among its elements the equal enjoyment of all human rights, as well as the equal protection and benefit of the law. Most importantly, it encompasses equal participation in all areas of life in which human rights apply. This holistic approach to equality recognises the intersections of disadvantages arising in different contexts, which makes it necessary to take a comprehensive approach to inequalities in all areas of life.

This report takes the right to equality, as expressed in the Declaration, as the baseline against which it assesses the presence or degrees of inequality. It goes beyond poorer notions of equality found in many legal systems, by understanding equality not only as a right to be free from all forms of discrimination, but also as a right to substantive equality in practice. As discussed below, this motivates our analysis of disadvantages affecting different groups beyond those which arise as a result of discernible acts of discrimination. From this perspective, many societal inequalities relevant to human rights are seen as a consequence of historic disadvantage, while insisting that the right to equality requires states to address unfair inequalities, however "innocuous" their cause. Thus, the unified human rights framework on equality makes *de facto* inequalities, whether or not they result from discrimination, a relevant subject for this report.

The Declaration construes the right to non-discrimination as subsumed in the right to equality.[2] Thus, when examining the situation of a particular group of persons, the report looks both at examples of discrimination and at inequality in participation in areas such as employment or public life, differential access to goods and services and socio-economic disadvantage.

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1 *Declaration of Principles on Equality*, the Equal Rights Trust, London, 2008, Principle 1, p. 5.

2 *Ibid*., Principle 4, p. 6.

The unified human rights framework on equality makes it desirable and possible to provide a general legal definition of discrimination covering all types of discrimination. Principle 5 of the Declaration offers such a definition:

> *Discrimination must be prohibited where it is on grounds of race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness or a combination of any of these grounds, or on the basis of characteristics associated with any of these grounds.*
>
> *Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.*
>
> *Discrimination must also be prohibited when it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.*
>
> *Discrimination may be direct or indirect.*
>
> ***Direct discrimination** occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct dis-*

> *crimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.*
>
> ***Indirect discrimination** occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.*
>
> ***Harassment** constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.*
>
> *An act of discrimination may be committed intentionally or unintentionally.*[3]

This definition takes a broad view regarding the list of **protected characteristics**. It contains both a list of explicitly prohibited grounds of discrimination and criteria for the inclusion of further grounds, according to which "candidate grounds" should meet at least one of three listed criteria.[4] Thus, the definition provides a foundation for tackling the full complexity of a person's lived experience of discrimination. It recognises that a single person may experience discrimination on a "combination" of subtly interacting grounds, or

3 *Ibid*., Principle 5, pp. 6–7.

4 Petrova, D., "The Declaration of Principles on Equality: A Contribution to International Human Rights", in *Declaration of Principles on Equality*, the Equal Rights Trust, London, 2008, p. 34: "The definition of discrimination in Principle 5 includes an extended list of 'prohibited grounds' of discrimination, omitting the expression 'or other status' which follows the list of characteristics in Article 2 of the Universal Declaration of Human Rights. While intending to avoid abuse of anti-discrimination law by claiming discrimination on any number of irrelevant or spurious grounds, the definition nonetheless contains the possibility of extending the list of 'prohibited grounds' and includes three criteria, each of which would be sufficient to recognise a further characteristic as a 'prohibited ground'. This approach is inspired by the solution to the open versus closed list of 'prohibited grounds' dilemma provided by the South African Promotion of Equality and Prevention of Unfair Discrimination Act (2000)."

on grounds not previously recognised as "prohibited", and that the cumulative impact of discrimination on different grounds can be bigger than the sum of its parts. The unified human rights framework on equality acknowledges that the phenomenon of discrimination must be addressed holistically, if it is to be effectively challenged.

The definition of discrimination, reflecting best practice in outlawing discrimination on grounds that have come to be regarded as unfair in modern society, provides the basis for our consideration of the range of identity-based groups included in the report. Thus, the report examines discrimination on grounds of gender; sexual orientation or gender identity; disability; health status; ethnicity, national origin and colour; nationality and citizenship; language; religion; and age. Furthermore, the report examines some patterns of discrimination – such as the discrimination suffered by Romani women – which do not fall within one specified ground, but which it is felt need to be covered because they are important forms of multiple discrimination.

The Declaration defines three forms of **prohibited conduct** which constitute discrimination: direct discrimination, indirect discrimination and harassment. All three concepts reflect current expert opinion on the definitions of the different forms of discrimination in international human rights and equality law[5] and European Union Law.[6] They are used throughout Part 2 to assess the patterns of discrimination identified by the research against the state's obligation to respect, protect and fulfil the right to non-discrimination, and in Part 3 the report explores the extent to which national law provides protection for these forms of prohibited conduct.

5 See, for example, United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, Para 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 10.

6 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 2; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Article 2; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, Article 4; and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Article 2.

The report also relies on a number of other important concepts and definitions contained in the Declaration of Principles on Equality. Thus, the report employs the definition of **reasonable accommodation** provided in Principle 13 of the Declaration:

> *To achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds.*
>
> *Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.*[7]

In line with international law in this area, the approach taken in the report is that a denial of reasonable accommodation constitutes discrimination.[8] Reflecting an emerging international consensus on this issue, the concept of reasonable accommodation "is extrapolated to cover other forms of disadvantage beyond disability, as well as, more generally, differences which hamper the ability of individuals to participate in any area of economic, social, political, cultural or civil life".[9] Thus, in the context of this report, it is accepted that the duty of reasonable accommodation can arise in respect of grounds other than disability.

Similarly, the report employs the understanding of **positive action** provided in Principle 3 of the Declaration. As with other principles in the Declaration,

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7 See above, note 1, Principle 13, p. 10–11.

8 See, for example, Convention on the Rights of Persons with Disabilities, G.A. Res. A/RES/61/106, 2006, Article 2; CESCR, *General Comment No. 5: Persons with Disabilities*, UN Doc. E/1995/22, 1995, Para 15: "disability-based discrimination" includes the denial of "reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights".

9 See above, note 4, p. 39.

this principle draws upon emerging approaches in international and regional human rights law, in this case with regard to the concepts of special measures in the various instruments,[10] whereby "it should be noted that the Declaration captures the growing tendency of interpreting "special measures" as part of, rather than an exception to, equal treatment".[11] Principle 3 states:

> *To be effective, the right to equality requires positive action.*
>
> *Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.*[12]

The notion of positive action plays an important role in the unified human rights framework on equality, and, therefore, in the approach taken by this report. As previously discussed, the right to equality extends beyond a right to be free from discrimination and contains an element of participation on an equal basis with others in all areas of life regulated by law. Positive action is key to addressing those inequalities which are not attributable solely to discrimination and the report identifies and analyses positive actions measures in Moldova.

In reviewing Moldova's legal and policy framework the **obligations of the state** with regard to the rights to equality and non-discrimination including in particular Principle 11 of the Declaration, are central. In this regard, the Declaration applies the understanding of state obligations in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as explained, *inter alia*, in General Comment No. 3 of the CESCR and General Comment No. 31 of the Human Rights Committee. As stated in the commentary on the Declaration:

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10 See, for example, International Convention on the Elimination of All Forms of Racial Discrimination, GA Res. 2106 (XX), 1965, Article 1(4); and the Convention on the Elimination of All Forms of Discrimination against Women, GA Res. 34/180, 1979, Article 4(1).

11 See above, note 4, p. 32.

12 See above, note 1, Principle 3, p. 5.

> *By analogy with the interpretation of States' obligations set out in General Comment 3 of the UN Committee on Economic, Social and Cultural Rights, States are required to take all necessary steps, including legislation, to give effect to the right to equality in the domestic order and in their international cooperation programmes. The right to full and effective equality may be difficult to fulfil; however, the State does not have an excuse for failing to take concrete steps in this direction. The requirement to take such steps is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to cultural, economic, political, security, social or other factors.*[13]

Application of the Unified Human Rights Framework on Equality

Applying the unified human rights framework on equality has a number of implications for the content, structure and methodology of this report. The **first implication** is reflected in the subject and scope of the report – the presentation of discrimination and inequality on a number of grounds in the same study. While it is clearly beyond the scope of the report to provide a detailed analysis of discrimination and inequality arising on every ground, the aim has been to present what appear to be the most significant patterns of discrimination and inequality found in the Moldovan context. In respect of certain grounds, it has not been possible to include every group vulnerable to discrimination and inequality on that ground. For example, the section on national and ethnic minorities does not examine the situation affecting all national or ethnic minorities but focuses on the groups which have historically suffered the most severe forms of discrimination, such as Roma.

Presenting patterns of discrimination and inequality alongside each other also requires a specific weighing of the sources of evidence. To some extent, Part 2 of the report relies on pre-existing research into inequalities affecting particular groups and disaggregated data on the position of different groups in particular areas of life, which was available for some areas, but limited for others. For example, there is a lack of precise statistical data on the number of

13 See above, note 4, p. 38.

Roma living in Moldova, and more broadly a lack of data disaggregated by ethnicity. In this and other areas where pre-existing research was unavailable, the Equal Rights Trust has relied more heavily on direct testimony from individual victims or interviews with professionals working on behalf of particular groups. The evidence obtained through field research has been assessed and contextualised, with a view to presenting patterns of discrimination and disadvantage in a way which is as representative of Moldovan reality as possible. In doing so, the report also illuminates the links between inequalities on different grounds, through identifying overarching issues, instances of multiple discrimination and common experiences.

The **second implication** of applying the unified human rights framework on equality relates to the material scope of application of the right to equality, which encompasses all areas of life regulated by law. The report seeks to cover, in respect to the selected groups and grounds of discrimination, the experience of inequality across a range of areas of life, such as interactions with the state authorities, employment, education and healthcare. The report also looks at legislative provisions which are discriminatory, or which have a discriminatory impact upon particular groups of people. However, in some cases there is little evidence of discrimination or inequality in particular areas of life for certain disadvantaged groups, either because persons within these groups do not experience disadvantage in a particular area of life, or because evidence of such disadvantage was not forthcoming in the course of the research. For example, the report contains little evidence of discrimination against older persons in areas other than employment, as no such evidence was identified during the development of the report.

The **third implication** of applying the unified human rights framework on equality is to require an analysis of both violations of the right to non-discrimination and the right to equality. The report takes the right to equality, as defined in the Declaration of Principles on Equality, as the standard against which it assesses the degree of inequality. Thus, the report investigates historically-generated patterns of substantive inequality by looking at the element of "participation on an equal basis with others in economic, social, political, cultural or civil life", thereby extending beyond experiences of discrimination.

The **fourth implication** of this approach is the presentation of factual patterns of discrimination and inequality alongside an analysis of the legal and

policy framework related to equality, which results in the report's basic logical structure. The existence and enforcement of laws and policies prohibiting discrimination and promoting equality is a critical factor – though by no means the only one – in ensuring enjoyment of these rights. As protecting people from discrimination by enacting such laws is a key state obligation in respect of these rights, we seek to match an assessment of the lived experience of discrimination and inequality with a review of Moldova's legal and policy framework.

The analysis of patterns of discrimination in Part 2 of the report makes it clear that Moldova is not adequately tackling discrimination and inequality in the country at present. Part 3 of this report discusses elements of Moldova's legal and policy framework which relate to discrimination and inequality as well as exploring access to justice for discrimination victims, evidence and proof in discrimination proceedings, and other elements of enforcement of equality rights. While the necessity of effective enforcement of the rights to non-discrimination and equality is illustrated by the findings in Part 2 of this report, the extent to which this achieved in Moldova is discussed in more detail in Part 3, and Part 4 formulates recommendations about legal and policy reform, implementation and enforcement.

Research Methodology

This report is the result of a lengthy collaboration between the Equal Rights Trust and Promo-LEX. Since 2013, the Equal Rights Trust and Promo-LEX have worked in partnership on a project designed to combat discrimination and inequality in Moldova. This report, which is one of the outcomes of this project, was developed in several stages.

In Spring 2014, a short study was prepared by Promo-LEX in accordance with guidance provided by the Equal Rights Trust. This study provided a preliminary outline of the major patterns of discrimination and inequality in Moldova and an initial overview of the legal and policy framework, based upon a review of existing research and reports. In Spring 2015, the Equal Rights Trust and Promo-LEX enlisted a number of researchers who were tasked with undertaking research in relation to the grounds identified through the preliminary study as being the most significant in terms of discrimination in Moldova (sexual orientation and gender identity, gender, race and ethnic-

ity (including in particular the treatment of Roma), age, health status (HIV/AIDS, TB), religion, disability). The members of the research team were: Angela Frolov who covered discrimination on the basis of sexual orientation and gender identity; Svetlana Gheorghieva whose research focused on discrimination on the basis of sexual orientation and gender identity, age, health status and disability; Centrul Media which examined discrimination on the basis of gender, age, health status, religion, disability and race; Violeta Odagiu who focused on discrimination on the basis of gender, age, health status, religion, disability and race; Elena Nofit who researched discrimination on the grounds of gender, disability and race; Ion Bucur who examined discrimination against Roma, Refugees and ethnic minorities; Lilia Cravcenco (Zaharia) who focused on discrimination on the basis of age, health status, disability, and race; Vitalie Popov who researched discrimination on the grounds of age, religion, disability and race; Association AFI which examined discrimination on the basis of health status; Vitali Rabinciuc who also focused on discrimination on the basis of health status; and Ion Ciobanu who researched discrimination against racial and ethnic minorities. The researchers undertook interviews, focus groups and roundtables with organisations working for those exposed to discrimination in Moldova as well as with victims of discrimination themselves.

Research for Part 2 of the report also included desk-based research of existing published sources, helping to identify and elaborate the major patterns of discrimination in Moldova. This involved a review of relevant literature on discrimination and inequality in Moldova, including reports by both the government and NGOs to UN treaty bodies and the Universal Periodic Review process; government and intergovernmental data and reports; and research published by international and national NGOs, academics and media institutions. Wherever possible, statistical data was relied on to improve understanding of inequalities.

Thus, Part 2 of the report relies on a variety of data sources. Relevant first-hand testimony gathered through the interviews and focus groups is complemented by review and analysis of the research and publications produced by others, together with statistical data. Throughout the report, in presenting the first-hand testimony of victims of discrimination, certain names have been withheld out of respect for their wishes for anonymity. Information on the identities of all persons whose names have been withheld is kept on file by the authors.

Legal research on law and policy for Part 3 was undertaken by Promo-LEX, with some editorial support from the Equal Rights Trust. Research on Moldova's international legal obligations benefited from the United Nations treaty collection database[14] and the website of the Office of the High Commissioner for Human Rights.[15] Research on Moldovan laws, including the Constitution and national legislation, consisted of reviewing the primary sources, accessed via the Moldovan State Register website, http://lex.justice.md/. Research on government policies was undertaken through review of state reports to the UN treaty bodies and documents gathered from government websites.

In order to ensure the accuracy of the report's findings and conclusions, a draft of this report was presented to independent experts who were asked to critically evaluate the findings and conclusions. Part 1 of the Report was reviewed by Vadim Poleshchuk. For Part 2, the expert reviewers were as follows: Natalia Duminica, Roma rights activist and Dumitru Sliusarenco from Promo-LEX (race and ethnicity); Dumitru Sliusarenco from Promo-LEX (disability); Angela Frolov from GENDERDOC-M (sexual orientation and gender identity); Ala Iațco from the Union for HIV/AIDS Prevention and Harm Reduction (UOHR) and Svetlana Doltu from Association AFI (health status); Lilia Potîng, Cornelia Călin and Dumitru Sliusarenco from Promo-LEX (gender); Alexandru Postica from Promo-LEX (religion); and Olesea Perean, human rights expert (age). Part 3 was reviewed by Sorina Macrinici from the Legal Resources Centre from Moldova, Andrei Brighidin member of the Council for the Prevention and Elimination of Discrimination and Ensuring Equality, Dumitru Russu from the Non-Discrimination Coalition and Olesea Perean, human rights expert. Following expert review, the draft was amended to address the feedback from these stakeholders.

Scope and Limitations of this Report

In respect of the report's time frame, Part 2 is limited to approximately the last ten years, and the emphasis is on more recent events and cases, as much as possible. Part 3 captures the status quo related to laws and policies as of May 2016 and it should be noted that as frameworks on equality are evolving

14 United Nations, *United Nations Treaty Series Online Collection*, available at: https://treaties.un.org/pages/ParticipationStatus.aspx.

15 Office of the High Commissioner for Human Rights, available at: http://www.ohchr.org/EN/Pages/WelcomePage.aspx.

fast globally as well as in Moldova, the presentation of the Moldovan framework, while not ephemeral, will become obsolete within less than a decade, in particular as a result of developing judicial practice.

It is not possible for any report to provide an exhaustive account of discrimination and inequality in a given country, and this report is no exception. The reality of discrimination and inequality is such that experiences are as many and varied as the population of Moldova itself. Each person will have their own experiences of discrimination and inequality, arising in different areas of life, in different circumstances, in interaction with different persons, institutions or organisations and as a result of any aspect of their identity, or any combination of these aspects. For these reasons, the aim of Part 2 of this report is to provide a broad overview of the principal patterns of discrimination and inequality felt to be most significant in the Moldovan context.

As is often the case when researching discrimination, the research for this report was constrained, to some extent, by the lack of disaggregated statistical data pertaining to the situation of certain groups and in certain areas of life. Consequently, certain issues which would usually fall within the scope of a report addressing inequality and discrimination do not feature in the report at all.

These omissions should not be interpreted as an indication that there is no disadvantage in the omitted areas, or in respect to the omitted groups. Rather, the decision not to include an assessment of discrimination or inequality in a particular area or for a particular group was motivated simply by lack of evidence during the desk and field research stages of producing this report. Indeed, a lack of evidence in respect of a particular group could in itself indicate a gap in protection and/or missing articulation of experience of inequality.

1.3 Country Context

Moldova is located in central Europe in the north-eastern Balkans.[16] Moldova borders Ukraine to the North, South and East and Romania to the West. The country is divided into 32 districts (*rayons*) as well as the autonomous territorial units of Gagauzia and Transnistria, which have a special legal status. In addition to the 32 *rayons*, there are five municipalities – Chișinău,

16 Official Website of Moldova, *Geography*, available at: http://www.moldova.md/en/geografie.

Bălți, Bender, Comrat and Tiraspol. The latter two are the capitals of the autonomous territorial units of Gagauzia and Transnistria, respectively. The capital city of Moldova is Chișinău, which has a population of approximately 814,000 people.[17] Moldova is a unitary state with a uniform system of laws throughout the country.

The total population of Moldova is approximately 3.55 million people.[18] Since the early 1990s, the population of Moldova has decreased by approximately 1 million[19] mainly as a result of the high death rate[20] and high levels of emigration[21] caused by political, economic and social crises.[22] In 2014, the birth rate was 10.9 births per 1,000 people and the death rate was 11.1.[23] The emigration process has been underway since the late 1990s. Between 2000 and 2010, the number of Moldovans working abroad increased from almost 140,000 to over 310,000.[24] At the same time, according to the Border Guard Service, in the two years since the liberalisation of visas regime with EU, approximately 80,000 Moldovans left and have not returned.[25]

17 National Bureau of Statistics of Moldova, *Number of resident population in Moldova on 1 January 2016, in territorial, on average, genders and age groups*, available at: http://www.statistica.md/newsview.php?l=ro&id=5156&idc=168.

18 *Ibid.*

19 National Bureau of Statistics of Moldova, *Stable population*, available at: http://statbank.statistica.md/pxweb/Dialog/varval.asp?ma=POP0101&ti=Populatia+stabila+pe+sexe+si+medii%2C+la+inceputul+anului%2C+1970-2015&path=../Database/RO/02%20POP/POP01/&lang=1.

20 National Bureau of Statistics of Moldova, *Demographic situation in the Republic of Moldova in 2014*, 3 June 2015, available at: http://www.statistica.md/newsview.php?l=ro&idc=168&id=4787.

21 National Commission of Population and Development, *Bulletin of information and analysis in demography No. 2 (14) of September 2013*, available at: http://demografie.md/files/files/Populatie&Dezvoltare%20Nr%201-2013.pdf.

22 National Commission of Population and Development, *Green Paper on population of the Republic of Moldova* http://demografie.md/files/9876_cartea_verde_a_populatiei_rm.pdf.

23 See above, note 20.

24 Decision approving the 2011–2020 National Strategy on Migration and Asylum (Government Decision No 655 of 8 September 2011), available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=340066.

25 Border Guard Service, *Two years after the liberalization of visa regime with the EU, in figures*, 28 April 2016, available at: http://www.border.gov.md/index.php/ro/2921-doi-ani-de-la-liberalizarea-regimului-de-vize-cu-ue-in-cifre.

Life expectancy at birth is 71.5 years, although there is a significant gap between life expectancy for men (67.5 years) and women (75.4 years).[26]

According to the 2004 census,[27] ethnic Moldovans are the largest ethnic group, comprising 75.8% of the total population. A number of small ethnic minority groups make up the remainder of the population, the largest of which are Ukrainians (8.4%), Russians (5.9%), Gagauz (4.4%), Romanians (2.2%), and Bulgarians (1.9%).[28] The majority of the rural population is composed of Moldovans, Gagauz and Bulgarians, while the urban population is predominantly composed of Russians, Romanians and Ukrainians.[29]

There are two autonomous territories in Moldova, Gagauzia and Transnistria, which have a special legal status.[30] Gagauzia (formally known as the Autonomous Territorial Unit of Gagauzia (Gagauz-Yeri)) is an autonomous territorial entity with a special status.[31] The capital city of Gagauzia is Comrat. The population of Gagauzia is 161,876.[32] The Transnistrian region, located on the left bank of the Nistru River, is *de jure* part of Moldova, but under the *de facto* control of the regional separatist administration. The capital city of the Transnistrian region is Tiraspol. The total population of the Transnistrian region is 509,439.[33] The main ethnic groups are ethnic Moldovans (31.9%), Russians (30.4%) and Ukrainians (28.8%).[34] There was a census in the Transnistrian region in 2015, but the data has not been made publicly available.

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26 See above, note 17.

27 Interethnic Relations Bureau of Moldova, *Population Census*, 2004, available at: http://www.bri.gov.md/files/files/7_Populatia_pe_nation_localit_ro.xls.

28 *Ibid.*

29 National Bureau of Statistics of Moldova, *On the results of the 2004 Population Census*, 7 April 2006, available at: http://www.statistica.md/newsview.php?l=ro&idc=168&id=2358.

30 For details on the status and administration of these regions, see below section 1.4.

31 Law on Special Legal Status of Gagauzia (Law No. 344 of 23 December 1994).

32 See above, note 17.

33 Ministry of Economic Development of the Pridnestrovian Moldavian Republic, *Press release on the demographic situation in the Pridnestrovian Moldavian Republic for* 2013, 1 January 2014, available at: http://mer.gospmr.org/gosudarstvennaya-sluzhba-statistiki/informacziya/o-demograficheskoj-situaczii-v-pmr/press-vypusk-qdemograficheskaya-situacziya-v-pridnestrovskoj-moldavskoj-respublike-za-2013-godq.html.

34 State Statistics Service of Pridnestrovian Moldavian Republic, *Socio-Economic Development in Pridnestrovian Moldavian Republic*, 2014, available at: http://mepmr.org/zip/gss/doclad.pmr.pred.13.zip.

The predominant religion in Moldova is Orthodox Christianity, with 93.3% of the population stating that they are Orthodox Christian.[35] There are two Orthodox groups: the Moldovan Orthodox Church, which is part of the Russian Orthodox Church, and the Bessarabian Orthodox Church, which is part of the Romanian Orthodox Church. Other Christian denominations make up the majority of the remaining population (1% of the population are Baptists, 0.4% are Seventh-Day Adventists, 0.3% are Jehovah's Witnesses, 0.15% are Russian Orthodox Old Rite Believers and 0.15% are Evangelists).[36] Approximately one percent of the population belong to other religious communities, including 4,645 Catholics, 700 Muslims and 1,667 Jews.[37]

In the Transnistrian region, an estimated 80% of the population belong to the Moldovan Orthodox Church.[38] Other religious groups in the region include Catholics, followers of Old Rite Orthodoxy, Baptists, Seventh-Day Adventists, evangelical and Charismatic Christians, Jews, Lutherans, Muslims, and Jehovah's Witnesses.[39]

According to Article 13 of the Constitution, the official language of Moldova is Moldovan. However, in 2013, the Constitutional Court of Moldova ruled that the Declaration of Independence,[40] which declares the official language to be Romanian, takes precedence over the Constitution and that therefore the state language should be referred to as Romanian.[41] Moldovan and Romanian are essentially the same language, with the difference between them likened to that between British and American English. Nevertheless, in the 2004 census, 58.8% of the population identified themselves as Moldovan speakers, while

35 See above, note 29.

36 *Ibid*.

37 Council of Europe, *Third report submitted by Moldova pursuant to article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities*, ACFC/SR/III(2009)001, 24 February 2009, p. 25, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008b7cb.

38 United States Department of State, *International Religious Freedom Report for 2014: Moldova*, 2015, p. 2, available at: http://www.state.gov/documents/organization/238622.pdf.

39 See above, note 37.

40 Declaration of Independence of the Republic of Moldova.

41 Decision of the Constitutional Court of Moldova regarding the official language of the Republic of Moldova, available at: http://www.constcourt.md/download.php?file=cHVibGljL2NjZG9jL2hvdGFyaXJpL3JvLWhfMzZfMjAxMy5wZGY%3D.

significant numbers identified as primarily Romanian speakers (16.4%).[42] The identification as either a Moldovan or Romanian speaker is often linked with a person's view of ethnicity or nationality; for example, Moldovan citizens who also hold Romanian citizenship may identify as Romanian speakers.

Among the population which do not identify as speaking Moldovan or Romanian, the primary languages are Russian (16%), Ukrainian (3.8%), Gagauz (3.1%), and Bulgarian (1.1%).[43] Levels of multilingualism in Moldova are high; for example, the majority of ethnic Ukrainians, Gagauz, and Bulgarians in Moldova state that their primary language is that of their ethnicity, but 50% of Ukrainians, 33% of Bulgarians and 25% of Gagauz state that their primary language is Russian.[44] Russian is a language of particular importance in Moldova, as it is frequently used in public institutions and is the "language of interethnic communication".[45] Article 13 of the Constitution provides that "[t]he State shall acknowledge and protect the right to the preservation, development and use of the Russian language and other languages spoken within the territory of the State".[46] In the autonomous regions, linguistic diversity varies somewhat from the rest of Moldova. The official languages of Gagauzia are Gagauz, Moldovan (based on Latin script) and Russian.[47] However, Russian is the most commonly used language in all spheres of life, including at the official level in public institutions in Gagauzia.[48] The official languages of the Transnistrian region are Russian, Moldovan (based on Cyrillic script) and Ukrainian.[49]

The Moldovan Leu (MDL) is the national currency of Moldova. The World Bank estimated Moldova's GDP in 2014 to be $7.6 billion (in current USD),[50]

42 See above, note 29.

43 *Ibid.*

44 *Ibid.*

45 Law on the Functioning of Spoken Languages in the Territory of Moldovan SSR, Article 3 (Law No. 3465 of 1 September 1989).

46 Constitution of the Republic of Moldova, 29 July 1994, Article 13.

47 Law No. 344 on Special Legal Status of Gagauzia, 23 December 1994.

48 See for example the official website of Gagauzia which defaults to the Russian translation, available at: http://www.gagauzia.md/pageview.php?l=ru&idc=98.

49 Constitution of the Transnistrian region, 17 January 1996, Article 12.

50 World Bank, *Data: Moldova*, 2015, available at: http://data.worldbank.org/country/moldova.

which places it in the lower middle income group. The GDP per capita adjusted by purchasing power parity was $4753.55 in 2014, equating to 27% of the global average.[51] Moldova has one of the lowest GDP per capita figures among the Commonwealth of Independent States (CIS) countries; the country's GDP per capita is the lowest in Europe.[52] In 2015, the United Nations Human Development Index for Moldova was 0.693 (medium human development), placing it 107th in the world out of 188 countries.[53]

During the first decade following independence, the Moldovan economy suffered a strong decline, but from 2000, the economy began to register notable growth. This can partly be attributed to large remittances from Moldovan migrants working abroad;[54] by 2003, official estimates were that gross inflows of workers' remittances had reached almost 25% of GDP, a very large proportion when compared to neighbouring countries.[55]

The Moldovan economy was severely affected by the global financial crisis of 2007–2008, which resulted in declining output, a deteriorating fiscal position and rising external financing needs.[56] The Moldovan economy rebounded from the 2008 crisis strongly and in 2010–2011, GDP growth averaged around 7% per annum.[57] However, in the second half of 2015, the economy went into recession, due to a confluence of factors, including: a negative weather shock in agriculture, weak external flows, the repercus-

51 Trading Economics. *Moldova GDP per capita PPP*, available at: http://www.tradingeconomics.com/moldova/gdp-per-capita-ppp.

52 Expert-Grup, *Moldova Economic Growth Analysis*, Issue No 1, 2009, available at: http://expert-grup.org/en/biblioteca/item/download/706_8febab62a06dca59e794ea94e41d0ebc.

53 United Nations Development Programme, *Human Development Report 2015*, 2015, p. 210, available at: http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf.

54 See above, note 52.

55 International Monetary Fund (IMF), *Moldova: Selected Issues*, February 2005, available at: http://www.imf.md/press/SIP-cr0554.pdf.

56 European Commission, Economic and Financial Affairs, *European Neighbourhood Policy, Economic and Financial Affairs*: *Moldova*, 3 May 2016, available at: http://ec.europa.eu/economy_finance/international/neighbourhood_policy/moldova_en.htm.

57 European Commission, *Ex-post Evaluation of the EU's Macro Financial Assistance to Moldova (2010–2012)*, October 2013, p. 5. available at: http://ec.europa.eu/dgs/economy_finance/evaluation/pdf/mfa_moldova_evaluation_executive_summary_en.pdf.

sions of a large-scale bank fraud, tight monetary policy,[58] endemic corruption, monopolisation of state institutions by wealthy individuals, the presence of suspicious foreign capital in the country's financial sector, and perceived weaknesses in governance.[59]

In 2014–2015, the Moldovan banking system fell victim to a large scale banking fraud, with more than $1 billion (12% of GDP) disappearing from Moldova's three largest banks – Banca de Economii, Unibank and Banca Sociala.[60] All three banks were shut down in 2015 by the National Bank of Moldova, and the Office of the Prosecutor General launched an investigation into the fraud.[61] As of May 2016, that investigation was ongoing. This situation has proved a stumbling block to EU integration and resulted in rapid and significant depreciation of the value of the national currency – between November 2014 and May 2015, the MDL lost 17% of its value.[62]

Moldova remains one of the poorest countries in Europe. In 2015, 41.9% of the population was living on less than $5 per day calculated at 2005 purchasing power parity.[63] The United Nations Development Programme ranked Moldova in 114 place in its Human Development Index (HDI) for 2014, with an HDI of 0.663. Moldova's Gini Income coefficient for the period 2003–2012, measuring inequality in the distribution of wealth, was 33.[64] The ratio of the average earnings of the richest 20% to those of the poorest 20% in the same period was 5.3.[65] Low levels of income and the high cost of household utilities

58 World Bank, *Country Overview: Moldova*, available at: http://www.worldbank.org/en/country/moldova/overview.

59 Expert-Grup, *State of Country Report: The Republic of Moldova 2015*, 10 July 2015, p. 5, available at: http://www.expert-grup.org/en/biblioteca/item/download/1382_f24b151f9281855ee740b7a1ca5b7800.

60 *Ibid.*

61 AGORA, *Procuratura Generală anunță ample investigații. Ce acțiuni vor fi întreprinse în cazul fraudelor bancare*, 29 May 2015, available at: http://agora.md/stiri/9307/procuratura-generala-anunta-ample-investigatii--ce-actiuni-vor-fi-intreprinse-in-cazul-fraudelor-bancare.

62 See above, note 59.

63 World Bank. *Moldova Economic Update*, 7 April 2016, available at: http://pubdocs.worldbank.org/pubdocs/publicdoc/2016/4/262511460011446842/MoldovaEconomicUpdate2016SpringEN.pdf.

64 United Nations Development Programme, *Human Development Report 2014: Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, 2014, p. 161.

65 *Ibid.*

and other goods and services have driven down the purchasing power and living standards of the population.[66]

In 2015, the economically active population of Moldova amounted to about 1.35 million people.[67] At the start of 2016, the official number of registered unemployed was 26,900 people.[68] Of the total number of unemployed, 49% are women.[69]

1.4 History, Government and Politics

1.4.1 History

Moldova has been said to be located at the crossroads of three cultures – Slav, Latin and Turkic – and three major religions – Orthodox Christianity, Catholicism and Islam.[70] It has been characterised as a "typical borderland", its ethnic identities moulded by the influence of strong neighbouring countries.[71]

The origins of present-day Moldova can be traced to the medieval period, with the formation of the Principality of Moldova in the middle of the 14th Century. The Principality was centred in what is today Romania[72] but included the region of what came to be known as Bessarabia, an area covered by modern-day Moldova and the south-west tip of Ukraine.[73] The Principality was conquered

66 Office of the Ombudsman, *Activity Report*, 2015, p. 30, available at: http://www.ombudsman.md/sites/default/files/document/attachments/report_2015_engl.pdf.

67 National Bureau of Statistics *Annual Report for 2015*, p. 60, available at: http://www.statistica.md/public/files/publicatii_electronice/Raport_trimestrial/Raport_2015.pdf.

68 *Ibid.,* p.61

69 *Ibid.*

70 Burian, A., "The Transnistrian Conflict – the Prospects of its Resolution. A view from Kishinev", *ICEUR Insight Studies*, Vol. 2, 2012, p. 10.

71 Skvortsova, A., "'The Cultural and Social Makeup of Moldova: A Bipolar or Dispersed Society?" in Kolstø, P. (ed), *National Integration and Violent Conflict in Post-Soviet Societies*, Rowman & Littlefield Publishers, 2002, p. 159.

72 *Ibid.,* p. 160.

73 Mitrasca, M., *Moldova: A Romanian Province Under Russian Rule: Diplomatic History from the Archives of the Great Powers*, Algora Publishing, 2002, p. 17.

and fell under the control of the Ottoman Empire in the early 16th Century.[74] However, a conflict running from 1806 to 1812 saw the Russian Empire claim Bessarabia from the Ottomans.[75]

Over the remainder of the 19th Century, the Russian Empire moved in thousands of Russians, Ukrainians, Bulgarians, Gagauz, Germans and people from other European countries to settle, such that the population rose from 300,000 in 1812 to almost two million by the time of the 1897 census of the Russian Empire;[76] with Moldovans representing approximately 47.6%[77] of the total population. Through the 19th Century, Bessarabia was increasingly 'russified': Russian administrators and officials were inserted; Russian was introduced as the only official language in 1856; and education in Romanian was banned from 1867.[78]

In 1918, Bessarabia united with Romania.[79] While there is consensus that the emergence of national movements across the Russian Empire at the start of the 20th Century was a significant factor underpinning the unification,[80] there is disagreement over the nature of nationalism behind the drive for unification in Moldova, for example, whether it was Moldovan, Romanian, Moldovan-Romanian, Bessarabian or Moldovanian.[81] A Moldovan intelligentsia, formed as a product of the significant social change over this period and familiar with the latest ideas of nationalism and nationhood, started to develop the idea of Moldova as a nation.[82] However, some scholars have argued that the sense of national identity held by the wider Moldovan population had been shaped by

74 Vahl, M., and Emerson, M., "Moldova and the Transnistrian Conflict" in Bruno Coppieters (ed), *Europeanization and Conflict Resolution: Case Studies from the European Periphery*, Academia Press, 2004, p. 149.

75 *Ibid.*, p. 151.

76 See above, note 71, p. 161.

77 Rusnac, M., *Recensăminte și mărturii în Basarabia Țaristă (1812–1918*), available at: http://www.istoria.md/articol/446/Recens%C4%83minte_%C5%9Fi_m%C4%83rturii_%C3%AEn_Basarabia_%C5%A2arist%C4%83.

78 See above, note 74, p. 151.

79 *Ibid.*, p. 153; see also Heintz, M., "Republic of Moldova Versus Romania: The Cold War of National Identities", *Journal of Political Science and International Relations*, 1, Vol. II, 2005, p. 72.

80 See above, note 73, p. 28.

81 *Ibid.*, p. 28.

82 See above, note 71, p. 161.

the Russian influence since the annexation of 1812, and had not been subject to the significant political, cultural and linguistic reforms experienced by Romania over the same period.[83] As a result, there existed two distinct ethnic identities in the population – Moldovan and Romanian.[84]

The Soviet Union, despite a number of bilateral negotiations with Romania, never recognised its unification with Bessarabia.[85] It made several unsuccessful claims to reoccupy Moldova, eventually establishing the Moldavian Autonomous Soviet Socialist Republic (MASSR) in 1924, on the territory of modern day Transnistria. The MASSR had a population of over 500,000, including Ukrainians, Russians, Jews, Germans, Bulgarians, Poles and approximately 30% ethnic Moldovans.[86]

Following the conclusion of the 1939 Ribbentrop-Molotov non-aggression pact between Germany and the Soviet Union, and an ultimatum which forced the Romanian authorities out of Bessarabia, the Soviet Union moved in.[87] The MASSR was dissolved and replaced with the Moldavian Soviet Socialist Republic (MSSR), constituted a part of Bessarabia and a part of the former MASSR.[88]

In the early post-war period, a process of "Sovietisation" saw around half a million people, mostly ethnic Moldovans, deported to Siberia.[89] Victims of deportations included affluent landlords or *kulaks*, those accused of collaboration with the Nazis, members of the Romanian bourgeois parties, members of illegal religious denominations (in particular, Jehovah's Witnesses), politicians, teachers, doctors, soldiers, lawyers, priests, farmers, etc.[90] As a result of the deportations, several regions of Moldova were denuded of their administrative and intellec-

83 *Ibid.*, pp. 165–166.

84 *Ibid,*, pp. 165–167.

85 See above, note 74, p. 153.

86 Pantea, C., "The Ethno-Demographic Evolution of Moldavian Autonomous Soviet Socialist Republic", *Codrul Cosminului*, Vol. 14, 2008, p. 170.

87 Heintz, M., "Republic of Moldova Versus Romania: The Cold War of National Identities", *Journal of Political Science and International Relations*, 1, Vol. II, 2005, p. 72.

88 Kolstø, P., National Integration and Violent Conflict in Post-Soviet Societies: The cases of Estonia and Moldova, 2002, p. 202.

89 See above, note 74, p. 154.

90 *Ibid.*

tual elite.[91] The liberation of these deportees from "special settlements" started after Stalin's death in 1953 and continued until the mid-1960s.

A further key plank of "Sovietisation" was the differentiation of the Moldovan language from Romanian by using Cyrillic rather than later characters.[92] During the period of Soviet control, Moldova and Romania were largely cut off from each other and in each the dissemination of information relating to their shared past was prohibited.[93] The Soviet Union focused the economy of Western Moldova on agriculture, while developing industry in the Transnistrian region.[94] During this time the Soviet Union also provided significant funding to develop Moldova's industry, principally in the Transnistrian region.[95]

On 23 June 1990, amidst the collapse of the Soviet Union, Moldova proclaimed independence. On 23 May 1991, the state changed its name to the Republic of Moldova; and on 27 August 1991 the Moldovan Parliament adopted the Declaration of Independence of the Republic of Moldova.

Following Moldova's declaration of independence in 1990, a "Moldavian Republic of Transnistria" (the "MRT") was proclaimed in Tiraspol, Moldova's second largest city, on the left bank of the Nistru River. On 2 September 1991 the Supreme Soviet of the "MRT", the effective Parliament of MRT, voted to join the Soviet Union.[96] This resulted in the war of Transnistria which was fought over four months in 1992 with Moldova on one side and Transnistrian forces – supported by Russia and Ukraine – on the other.

The fighting caused several hundred deaths and resulted in approximately 100,000 refugees fleeing for Moldova.[97] On 21 July 1992 the President of Moldova, Mircea Snegur, and Russian President Boris Yeltsin signed a cease-

91 *Ibid.*

92 See above, note 87, p. 74.

93 *Ibid.*, p. 75.

94 See above, note 74, p. 154.

95 Promo-LEX, *Study on Liberty and security of the person in regions of conflict*, 2009, p. 197, available at: http://www.promolex.md/upload/publications/en/doc_1257437050.pdf.

96 Organisation for Security and Cooperation in Europe (OSCE), *The Transdniestrian Conflict in Moldova: Origins and Main Issues*, 10 June 1994, p. 2, available at: http://www.osce.org/moldova/42308?download=true.

97 *Ibid.*

fire agreement. Under this agreement, a Joint Control Commission was set up to implement the cease fire agreement, composed of representatives of Moldova, the Russian Federation and Transnistria. The agreement also provided for a peacekeeping force charged with ensuring observance of the ceasefire and security arrangements.[98] The Transnistria conflict, although arguably a "frozen conflict" since the ongoing ceasefire began in 1992, is nevertheless one of the shortest and least bloody of several separatist actions in the post-Soviet area.[99]

1.4.2 Government and Politics

Constitutional Framework

The Constitution of the Republic of Moldova was adopted on 27 July 1994. Under the Constitution the president is the head of state.[100] The president is the commander in chief of the armed forces and his powers include appointing the prime minister, representing Moldova in foreign relations, and appointing judges.[101] The president serves for a four-year term.[102]

Under Article 66 of the Constitution legislative power is vested in parliament which consists of 101 members. Members of parliament are elected by universal, equal, direct, free and secret suffrage for a term of four years.[103] Parliament has the power to: pass laws; provide legislative interpretation; ensure the executive branch exercises its power in accordance with the constitution; approve internal and external policy of the executive; ratify, terminate, suspend and repeal international treaties; and to approve and control the state budget.[104]

98 *Catan and Others v. Moldova and Russia*, Applications no. 43370/04, 8252/05 and 18454/06, 19 October 2012, Para. 21.

99 Baban, I., "The Transnistrian Conflict in the Context of the Ukranian Crisis", *NATO Defense College*, December 2015, available at: http://www.isn.ethz.ch/Digital-Library/Articles/Detail/?id=195538.

100 See above, note 46, Article 77.

101 *Ibid.*, Articles 86, 87, 98, 116.

102 *Ibid.,* Articles 86–88.

103 *Ibid.,* Articles 60–61.

104 *Ibid.,* Article 66.

The executive branch of the Moldovan government is led by the prime minister who appoints a cabinet of ministers to support him.[105] The appointment of both the prime minister and ministers is subject to parliamentary approval.[106] The executive branch implements internal and external policy (as approved by the parliament) and is responsible for public administration.[107]

The Constitution establishes an independent constitutional court whose mandate is to ensure compliance with the constitution. The court has power of judicial review over all acts of parliament, presidential decrees, executive decisions and international treaties.[108] The court consists of six judges appointed for a six year term; two judges are appointed by parliament, two by the executive and two by the superior council of magistrates.[109] The superior council of magistrates is an independent body, created to supervise the organisation and functioning of the judicial system and to ensure the independence of the judiciary.[110]

Recent Developments

The 1994 Constitution established a semi-presidential system in Moldova. In 2000, the Moldovan Parliament amended the Constitution to move from a semi-presidential system to a parliamentary republic with the result that the president was to be elected by parliament rather than by direct popular vote.

Under the electoral system as established in 2000, Vladimir Voronin of the Party of Communists of the Republic of Moldova (PCRM) was elected President for two terms between 2001 and 2009. With the election of Voronin, Moldova became the first post-Soviet state to elect an unreformed communist party to power.[111]

105 *Ibid.,* Articles 97–98, 101.

106 *Ibid.,* Article 98.

107 *Ibid.,* Article 96.

108 *Ibid.,* Article 135.

109 *Ibid.,* Article 136.

110 Law on the Superior Council of Magistracy, Article 1 (Law No. 947 of 19 July 1996).

111 Mazo, E., *Post-Communist Paradox: How the Rise of Parliamentarism Coincided with the Demise of Pluralism in Moldova*, 2004. pp. 31–33, available at: https://fsi.stanford.edu/sites/default/files/Post_Communist_Paradox.pdf.

During the 2009 elections, serious allegations of electoral fraud, interference with the press and misuse of public funds were lodged against PCRM.[112] As a result, in April 2009 there were widespread protests throughout the country. On 7 April 2009, approximately 30,000 people gathered to protest in Chisinau; the protest rapidly became violent and law enforcement did not prevent or manage this violence.[113] Following this, approximately 200 people were arrested and detained.[114] The due process rights of many of those arrested were violated; three people died and many of those detained were subject to ill-treatment.[115]

On 12 April 2009, the Constitutional Court ordered a recount of votes;[116] following the recount the results were confirmed and validated by the Constitutional Court on 22 April 2009.[117] PCRM secured 60 out of a possible 101 votes. Notwithstanding PCRM's majority, there were two failed attempts to elect a president as no candidate was able to secure the required 61 votes. As a result, Parliament was dissolved and further elections held on 29 July 2009. In these elections, no party was able to secure a majority sufficient to secure the election of a president, and parliament was once again dissolved.

On 5 September 2010, Moldova held a referendum on whether to amend the Constitution to allow for the direct election of the president. The results of this referendum (which came out strongly in favour of direct election) were not valid as a result of insufficient voter turnout. [118] A further parliamentary election was held on 28 November 2010; once again no candidate was able to secure a sufficient majority to be elected to the presi-

112 E-Democracy, *Elections in f,* available at: http://www.e-democracy.md/en/elections.

113 Promo-LEX, *Human Rights and Democratic Institutions in the post-election period in Moldova/ April 6th - July 1st, 2009*, 2009 p. 140 and p. 143 available at: https://promolex.md/upload/publications/en/doc_1258617640.pdf.

114 E-Democracy, *Election Courier of 8 April 2009*, available at: http://www.e-democracy.md/elections/parliamentary/2009/electoral-news/20090408/#c5.

115 See above, note 113, pp. 159–165 and p. 160.

116 Central Election Commission, Decision No. 2515 of 13 April 2009, available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=331310.

117 Constitutional Court, Decision No.7 of 22 April 2009, available at: http://www.constcourt.md/public/files/file/Actele%20Curtii/acte_2009/h_7.pdf.

118 Freedom House, *Nations in Transit – Moldova*, 2011, p.371, available at: https://freedomhouse.org/sites/default/files/inline_images/NIT-2011-Moldova.pdf.

dency until 16 March 2012, when the politically neutral Nicolae Timofti, was elected President.[119]

The most recent parliamentary elections were held on 30 November 2014. Following these elections, the pro-Russian Party of Socialists of the Republic of Moldova won the most seats (25).[120]

On 4 March 2016, the Constitutional Court ruled the 2000 constitutional amendment providing for the indirect election of the President unconstitutional; as a result the original constitutional provisions apply and the President is to be elected directly by citizens.[121] Direct Presidential elections will be held on 30 October 2016.[122]

There has been significant recent turmoil in the office of the prime minister. Between 2010 and 2015, Moldova had four Prime-Ministers: Vladimir Filat, Iurie Leanca, Chiril Gaburici and Valeriu Strelet. Vladimir Filat was dismissed by Parliament following allegations of corruption in March 2013.[123] Chiril Gaburici was the Prime-Minister for only 4 months and resigned in June 2015, following a criminal investigation into allegations of forgery made against him.[124] In 2015, the former Prime Minister Vladmir Filat was detained on charges of bank fraud and bribery in connection with USD $1 billion banking fraud scandal described in section 1.3 above.[125] This corruption scandal led to mass protests across the country.[126] In the wake of this scandal, in October 2015 the government, led by

119 BBC News, "Nicolae Timofti finally elected Moldova President", 16 March 2012, www.bbc.co.uk/news.

120 Central Election Commission of the Republic of Moldova, *Membership of Parliament*, 30 November 2014, available at: http://www.cec.md/index.php?pag=page&id=1506&l=ro.

121 Constitutional Court, Decision No. 48b of 4 March 2016, available at: http://www.constcourt.md/libview.php?l=ro&idc=7&id=759&t=/Prezentare-generala/Serviciul-de-presa/Noutati/Curtea-Constitutionala-a-restabilit-dreptul-cetatenilor-de-a-si-alege-Presedintele.

122 OSCE, *Elections Calendar*, available at: http://www.osce.org/what/elections.

123 Decision of Moldovan Parliament regarding the vote of no-confidence in the government, Decision No. 28 of 5 March 2013, available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=346975.

124 Ziarul e Gardă, „Premier cu diplomă falsă. Prima declarație a directorului Gimnaziului cu diploma căruia, Gaburici a ajuns la Universitate", 7 May 2016, available at: http://www.zdg.md/editia-print/politic/premier-cu-diploma-falsa.

125 IMF, *Country Report: Moldova*, 2016, p. 9, available at: http://www.imf.org/external/pubs/ft/scr/2016/cr1619.pdf.

126 *Ibid.*

Valeriu Strelet was dismissed following a vote of no-confidence.[127] On 20 January 2016, Pavel Filip was appointed Prime Minister; his appointment was met with mass protests in Chisinau because of the general mistrust in the political class.[128]

The general human rights situation in Moldova is mixed. In 2015, Freedom House considered Moldova to be "partly free", receiving an overall freedom rating of 3.0 (with specific ratings of 3 for civil liberties and 3 for political rights).[129] As a result of ineffective implementation, recent reforms have not significantly improved the human rights situation.[130] Consistently with previous years,[131] the main human rights concerns in 2015 were: the number of persons arbitrarily deprived of their liberty; the number of detainees; the use of torture against detainees; inhuman conditions of detention and overcrowded prisons; failure of the state to ensure the right to a fair trial; widespread domestic violence; inefficient and ineffective investigation into allegations of sexual abuse, including against minors; discrimination against persons with disabilities, Roma, persons with HIV/AIDS and lesbian gay bisexual and transgender (LGBT) individuals.[132] There are overarching concerns about endemic corruption and the lack of independence of the judicial system and the impact these have upon Moldova's ability to respect, protect and fulfil human rights.[133]

Transnistrian Region

As noted above, the Transnistrian region has been under a system of *de facto* self-government since Moldova's declaration of independence. To date, the Moldavian Republic of Transnistria has not been recognised as a state by the international community. The Moldovan government does not exercise authority in the region, and a self-proclaimed Transnistrian administration gov-

127 *Ibid.*

128 AGORA, Protestele de la Parlament după votul acordat Guvernului Filip", 20 January 2016, available at: http://agora.md/live/1077/live--protestele-de-la-parlament-dupa-votul-acordat-guvernului-filip.

129 Freedom House *Freedom in the World 2015: Moldova*, 2015, available at: https://freedomhouse.org/report/freedom-world/2015/moldova.

130 Promo-LEX Association, *Report Human Rights in Moldova - 2014 Retrospective*, 2015, p.6, available at: https://promolex.md/upload/publications/en/doc_1444027212.pdf.

131 *Ibid.*

132 *Ibid.,* pp. 6–7.

133 *Ibid.*

erns through parallel administrative structures.[134] Although the Moldovan government does not have *de facto* control over the region, in two cases before the European Court of Human Rights, the Court ruled that the region is under the jurisdiction of both Moldova and Russia, meaning both countries have obligations to observe and protect human rights in the Transnistrian region.[135]

At the Organisation for Security and Cooperation in Europe's (OSCE) Sixth Summit in Istanbul in November 1999, 54 Member States signed the Istanbul Summit Declaration, paragraph 19 of which included *inter alia* the commitment of the Russian Federation to withdraw its forces from Transnistria by the end of 2002.[136] In 2002, during an OSCE Ministerial Conference in Lisbon, Russia was granted a one-year extension to December 2003 for the removal of troops. Russia has yet to comply with these commitments;[137] it continues to support the local authorities of the Moldavian Republic of Transnistria and has military forces stationed there.[138]

The observance of human rights in the Transnistrian region is very poor. Major problems include: arbitrary arrest and detention; forced enrolment, ill-treatment and suspicious deaths in regional paramilitary structures and the "army"; unlawful deprivation of property; violation of due process rights; violation of the rights to freedom of expression, association and assembly.[139] In addition, in recent years, there has been an increase in reported cases of harassment and intimidation against human rights activists and media outlets.[140]

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134 United States Department of State, *Country Reports on Human Rights Practices for 2014: Moldova,* 2015, p. 2, available at: http://www.state.gov/documents/organization/236766.pdf.

135 *Mozer v Moldova and Russia*, Application no. 11138/10, 23 February 2016, Paras 99–11; *Catan and Others v. Moldova and Russia*, Applications no. 43370/04, 8252/05 and 18454/06, 19 October 2012, Paras. 109–122.

136 *Catan and Others v Moldova and Russia*, Applications no. 43370/04, 8252/05 and 18454/06, 19 October 2012, Para 25.

137 *Catan and Others v Moldova and Russia*, Applications no. 43370/04, 8252/05 and 18454/06, 19 October 2012, Paras 25–26.

138 International Federation for Human Rights, *Assessing Human Rights protection in Eastern European Conflict and disputed entities*, 2013, available at: https://www.fidh.org/en/issues/international-justice/16197-disputed-entities-in-eastern-europe-human-rights-sacrificed.

139 Promo-LEX, *Observance of Human Rights in the Transnistrian Region of the Republic of Moldova*: *2015 Retrospect*, 2016, p. 3, available at: https://promolex.md/upload/publications/en/doc_1456905480.pdf.

140 Promo-LEX, "The Parliamentary Assembly of the Council of Europe asks for a more Effective Protection of Human Rights Defenders and NGOs", 29 January 2016, https://promolex.md.

Gagauzia

Gagauzia is an autonomous territory in southwest Moldova.[141] The majority of the population is ethnically Gagauz, Turkic-speaking and Orthodox Christian.[142] Gagauzia has its own representatives, executive bodies and governor. The governor of Gagauzia is a member of the government of Moldova and is elected by free, universal, equal, direct, and secret suffrage for four-year term. This election is confirmed by the president of Moldova. The current governor is Irina Vlah, elected on 22 March 2015.[143]

On 2 February 2014, a referendum was held in Gagauzia. The results of the referendum showed that 98.9% of voters supported Gagauzia's right to declare independence in the event that Moldova loses or surrenders its independence, including in the event of EU accession.[144] The results also showed that 98.4% of voters prefer closer relations with the ***Customs Union*** of Belarus, Kazakhstan, and Russia, while 97.2% are against EU integration.[145] The Moldovan government stated that the referendum lacked legitimacy as Gagauzia does not have the authority to call referenda which have the potential to affect Moldova's territorial integrity.[146]

Foreign Policy

In the early years of its independence, Moldova's foreign policy was oriented towards other post-Soviet states. However, since 1994 European integration

141 Law on Special Legal Status of Gagauzia (Law No. 344 of 23 December 1994).

142 Gagauzia, History of Gagauzia, available at: http://www.gagauzia.md/pageview.php?l=ru&idc=98.

143 E-Democracy, *Election of Governor (Bashkan) of Gagauzia (Gagauz Yeri) of March 22, 2015,* available at: http://www.e-democracy.md/elections/bascan/2015.

144 Radio Free Europe Radio Liberty, "Gagauzia Voters Reject Closer EU Ties for Moldova", 4 May 2016, http://www.rferl.org.

145 *Ibid.*

146 Unimedia, Instanța a decis. Inițiativa de referendum în UTA Găgăuzia este ilegală, 7 January 2014, available at: http://unimedia.info/stiri/instanta-a-decis--initiativa-de-referendum-in-uta-gagauzia-este-ilegala-70427.html.

has been a priority for the country,[147] in 2005 all major political parties, including PCRM, listed accession to the EU as a major objective. However, the current political landscape in Moldova is divided between those in favour of and those opposed to accession.[148]

On 22 February 2005, the EU and Moldova signed the EU-Moldova Action Plan.[149] In November 2013, Moldova signed an Association Agreement with the EU, which was ratified by the Moldovan Parliament on 2 July 2014.[150] The Association Agreement focuses on support for core reforms, democracy and human rights, economic recovery, governance, sectoral cooperation and far-reaching liberalisation of Moldova's trade with the EU.[151]

147 In 1994, Moldova signed the Partnership and Cooperation Agreement with the EU; in 2004 Moldova acceded to the European Neighbourhood Policy Instrument which allowed closer cooperation with the EU.

148 Institute for Public Policy, *Moldova on the way to the European Union: Distance covered and next steps to be done,* p.3, available at: http://www.ipp.md/public/biblioteca/83/en/MoldovaWayEU.pdf.

149 E-Democracy, *Moldova and EU in the European Neighbourhood Policy Conte*xt: *Implementation of the EU-Moldova Action Plan (February 2005 – January 2008),* p. 13, available at: http://www.e-democracy.md/files/realizarea-pauem-en.pdf.

150 Law on Ratification of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States (Law No. 112 of 2 July 2014), available at: http://lex.justice.md/md/353829.

151 European Union External Action, *Fact Sheet: Georgia and Moldova one step closer to enhanced political and trade relations with the EU*, 2 December 2013, available at: http://eeas.europa.eu/statements/docs/2013/131202_01_en.pdf.

2. PATTERNS OF DISCRIMINATION AND INEQUALITY

This part of the report discusses the principal patterns of discrimination and inequality in the Republic of Moldova (Moldova). It seeks to identify the typical manifestations of discrimination and inequality as they are experienced by people in Moldova. It is based on original direct testimony collected from a wide range of individuals, together with analysis of research undertaken by authoritative sources in the last decade. We have sought to corroborate all facts and provide accurate attribution of all statements.

This part of the report does not seek to provide an exhaustive picture of all the observed patterns of discrimination. Rather, it aims to provide an insight into what appear to be the most important issues pertaining to the most significant discrimination grounds in the country. In respect of each ground, the report discusses the ways in which people experience discrimination and inequality in a range of areas of life, including as a result of discriminatory laws, the action of state actors carrying out public functions, exposure to discriminatory violence, and discrimination and inequality in areas such as employment, education and access to goods and services.

The research for this report found substantial evidence of discrimination and disadvantage arising on a range of different grounds. Thus, this part of the report discusses discrimination and inequality arising on the basis of: (i) race and ethnicity, with a particular focus on discrimination experienced by Roma; (ii) sexual orientation and gender identity; (iii) health status; (iv) gender; (v) disability; (vi) religion; (vii) age; and (vii) language.

2.1 Discrimination on the Basis of Nationality, Race and Ethnicity

The Republic of Moldova is required to prohibit discrimination against persons on the basis of their race, colour and national origin in the enjoyment of all civil, political, economic, social and cultural rights guaranteed under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) by virtue, respectively, of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. In addition, Moldova is also required by Article 26 of the ICCPR to ensure that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground", including on

the basis of race, colour and national origin. The UN Committee on Economic, Social, and Cultural Rights (CESCR) has also stated that Article 2(2) of the ICESCR extends to a prohibition of discrimination on the basis of ethnic origin.[1] In addition, as a state party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Moldova is required to prohibit all forms of discrimination on the basis of race, colour, descent, national, and ethnic origin. Further, the European Convention on Human Rights (ECHR) requires Moldova to prohibit discrimination based on race, colour and national origin in respect to all Convention rights, by virtue of Article 14.

According to the most recent census, the ethnic composition of Moldova is as follows: Moldovans (75.8%), Ukrainians (8.4%), Russians (5.9%), Gagauz (4,4%,) Romanians (2.2%), and Bulgarians (1.9%), while the remaining ethnic groups each constitute less than 1% of the population.[2] The situation of Moldova's different minority ethnic groups varies significantly ranging from those (such as the Roma) who suffer significant discrimination and disadvantage to those (such as the Russians) who are essentially integrated into the population and reportedly suffer little, if any, discrimination or disadvantage. According to a *Study on Equality Perceptions and Attitudes in the Republic of Moldova*, over half of respondents stated that they would accept minority groups such as ethnic Russians and Romanians as a member of their extended family,[3] thus indicating a relatively high level of social acceptance. A majority of respondents had a positive view of ethnic Russians living in Moldova.[4]

During the Soviet period, questions of ethnicity raised complex issues. The identification of an ethnic group was a construction exercise by academics serving political expediency. As explained by Anatoly Khazanov:

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1 Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20, 2009, Para 19.

2 Bureau of Interethnic Relations of the Republic of Moldova, *Population Census*, 2004, available at: http://www.bri.gov.md/files/files/7_Populatia_pe_nation_localit_ro.xls.

3 Council on the Prevention and Elimination of Discrimination and Ensuring Equality and Office of the High Commissioner for Human Rights, *Study on Equality Perceptions and Attitudes in the Republic of Moldova*, 2015, *Study on equality perceptions and attitudes in the Republic of Moldova*, 2015, p. 19, available at: http://md.one.un.org/content/dam/unct/moldova/docs/pub/ENG-Studiu%20Perceptii%202015_FINAL_2016_Imprimat.pdf.

4 *Ibid*., p. 43.

> *In the Soviet Union not only the status of ethnic minority but also sometimes even the official recognition of the very existence of one were matters of arbitrary decision by the state. The all-union and republic powers abolished and created nationalities. The number of nationalities figuring in the Soviet population census and therefore receiving official recognition was constantly decreasing. There were 194 nationalities in 1929, 109 in 1939, 106 in 1970, and 101 in 1979. However, for the 1989 census, the Institute of Ethnography of the Academy of Sciences of the USSR proposed a list of 128 existing nationalities.*[5]

As this statement indicates, the determination of what was considered a "nationality" in Soviet Moldova was a political one, rather than an assessment based on self-identification. During this period, a person's "nationality" was not a free choice but was determined by the "nationality" of their parents. If both parents had the same "nationality", their children would be designated as having this "nationality"; if the parents were of different "nationalities", the child would choose, at age 16, between the two.[6] Once determined, a person's "nationality" would be recorded on their internal passport and was usually fixed for life. The internal passport was a compulsory document introduced in 1934 for all Soviet citizens. The "nationality" recorded in one's internal passport was considered one of the "three aspects of the structure and functioning of the neo-Stalinist state" in ethnic relations, whereby "internal passports [were] used by the regime in order to maintain almost impassable boundaries between nationalities".[7] A person's "nationality" was also reflected in official state records regarding birth, education and employment.[8]

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5 Khazanov, A., *After the USSR: Ethnicity, Nationalism, and Politics in the Commonwealth of Independent States*, University of Wisconsin Press, 1995, p. 98.

6 *Ibid*., p. 16.

7 Zaslavsky, V., *The Neo-Stalinist State: Class, Ethnicity, and Consensus in Soviet Society*, Routledge, 1994, p. 92.

8 Arel, D., *Fixing Ethnicity in Identity Documents: The Rise and Fall of Passport Nationality in Russia*, 2001, available at: https://www.ucis.pitt.edu/nceeer/2001-815-01g-2-Arel.pdf, p. 4.

Initially, this system of ethnic registration was used to promote the rights and career advancement of members of certain national minorities,[9] and, indeed, during the 1930s individuals were encouraged to declare non-Russian identities.[10] However, starting in the 1930s and 1940s, the position of the Soviet authorities changed: whole "nationalities" began to be viewed with suspicion. With a system of strict national/ethnic registration already in place, it was relatively straightforward for the state to subject entire groups, for example Germans and Jews, to repression.[11]

According to the current legislation of the Republic of Moldova, passports[12] and identity cards[13] include information about citizenship, but there is no obligation to declare ethnicity. As such, in modern Moldova, ethnicity is determined by self-identification.

Legal and Policy Framework

As discussed in detail in Part 3 of this report, in 2012 Moldova enacted the Law on Ensuring Equality which prohibits discrimination on the grounds of *inter alia* race, colour, ethnic origin and language.[14]

Article 6(1) of the Contravention Code provides that persons who have committed offenses (contraventions) are equal before the law and public authorities and are subject to liability irrespective of *inter alia* race.[15] At the same time, the Contravention Code does not establish contraventions committed on the basis of bias associated with race or other characteristics as aggravating circumstances.[16] Article 77 of the Criminal Code provides that the commission of a crime due to social, national, racial, or religious hatred shall be considered an aggrevating circumstance. The European Commis-

9 *Ibid*., p. 10.

10 *Ibid*., p. 5.

11 *Ibid*., p. 14.

12 Law on Identity Documents of the National Passport System (Law No. 273 of 9 November 1994), Article 2(2)(i).

13 *Ibid*., Article 3(5)(i).

14 Law on Ensuring Equality (Law No. 121 of 25 May 2012), Article 1(1).

15 Contravention Code (Code No. 218 of 24 October 2008).

16 *Ibid*., Article 43.

sion against Racism and Intolerance (ECRI) has expressed its concern that grounds of colour, language and national or ethnic origin are omitted from Article 77.[17] Several other provisions of the Code provide for an aggravated sentence if the relevant offence was motivated by national, racial or religious hatred.[18] Article 346 of the Criminal Code prohibits incitement to racial hatred.

Furthermore, Article 176 of the Code prohibits any violation or restriction of an individual's rights on the basis of *inter alia* race, nationality and ethnicity, where the relevant violation was either committed by a person holding a position of responsibility, or resulted in considerable prejudice.[19] Neither Article 176 nor Article 346 includes the grounds of colour or national origin.

Since 2007, there have been no convictions for racial discrimination brought under Articles 176 and 346 of the Criminal Code.[20] Racially motivated criminal incidents are not investigated as hate crimes but rather tend to be prosecuted under the hooliganism provisions of the Criminal Code (Article 287) or under the Code of Administrative Offences.[21] This appears to be because police are "reluctant to register complaints of discrimination."[22]

In addition, as the state has noted in its reporting to CESCR, Moldova has attempted "to harmonise interethnic relations and eliminate all forms of discrimination based on race, colour, national or ethnic origin"[23] through the adoption and implementation of targeted policy measures.

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17 European Commission against Racism and Intolerance, *ECRI Report on the Republic of Moldova (Fourth Monitoring Cycle)*, 2013, Paras 26 and 31.

18 See Criminal Code of the Republic of Moldova (Code No. 985 of 18 April 2002), Articles 145 (intentional homicide), 151 (serious bodily injury), 152 (moderate bodily injury), 197 (intentional damage to or destruction of property), and 222 (desecration of tombs).

19 See section 3.2.3 below for discussion of the criminalisation of acts of discrimination under Article 176 of the Criminal Code.

20 See above, note 17, Para. 28.

21 *Ibid*.

22 *Ibid*., Para. 42.

23 Committee on Economic, Social and Cultural Rights, *Second Periodic Report: Moldova*, UN Doc. E/C.12/MDA/2, 27 January 2009, Para 14.

2.1.1 The Roma

The Roma are an ethnic group found mostly in Europe, who have lived in the territory making up modern-day Moldova since the 15th century.[24] There is a lack of official and contemporary data on the number of Roma living in Moldova. The 2004 census indicated there were 12,271 Roma in the state,[25] but data collected by the Bureau of Interethnic Relations in 2012 suggests that the figure is closer to 20,000,[26] while Roma leaders claim that the figure could be as high as 250,000.[27] Thus, there is an enormous disparity between official records and the self-assessment of the Roma community. Although Roma are dispersed across the entire country, populations are concentrated in the cities of Chişinău, Otaci, Soroca, Bălţi, Edinet, Drochia, Riscani, Orhei, Calarasi, Straseni, Nisporeni, Comrat, Ceadir-Lunga and Tiraspol.[28]

The Committee on the Elimination of Racial Discrimination has articulated concerns about the lack of precise and reliable data on the actual ethnic make-up of the population in Moldova, in particular with regard to the Roma minority.[29] There is also a notable absence of disaggregated data on the effective realisation of rights under ICESCR for marginalised groups such as the Roma.[30] One major cause of the absence of official statistics is that data collection methodol-

24 Academy of Science of the Republic of Moldova. *Roma/Gypsies In Moldova: Social Ethno, Multicultural, Traditional Historical Community (1414-2014)*, 2014, p. 42, available at: https://www.academia.edu/11168487/romii_%c5%a2iganii_din_republica_moldova_comunitate_etnosocial%c4%82_multicultural%c4%82_istorico-tradi%c8%9aional%c4%82_1414-2014_.

25 See above, note 2.

26 Ad-Hoc Committee of Experts on Roma Issues (CAHROM), *Thematic Report on the Role of Central, Local and Regional Authorities in Implementing National Roma Inclusion Policies*, 2012, p. 6, available at**:** http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800890fa.

27 UN Women, United Nations Development Programme, and Office of the High Commissioner for Human Rights, *Study on the Situation of the Romani Women and Girls in the Republic of Moldova*, 2014, p. 17, available at: http://www.un.md/publicdocget/126.

28 Roma National Centre, *Submission to the Committee on the Elimination of Racial Discrimination for Moldova*, 2011, p. 1, available at: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/MDA/INT_CERD_NGO_MDA_78_9588_E.pdf.

29 Committee on the Elimination of Racial Discrimination, *Concluding Observations: Moldova*, UN Doc. CERD/C/MDA/CO/8-9, 6 April 2011, Para 8.

30 Committee on Economic, Social and Cultural Rights, *Concluding Observations: Moldova*, UN Doc. E/C.12/MDA/CO/2, 12 July 2011, Para 6.

ogy either does not allow for self-identification as Roma, with Roma instead being allocated to the "other" category[31] or being forced to identify as "*Tsigan*" ("Gypsy").[32] The absence of such data is concerning as it is not possible to develop and implement policies to ensure the equal participation of Roma without accurate data on the number and situation of the population.

Social Attitudes towards Roma

Historically, Roma have been subject to prejudice, stigma and associated high levels of discrimination. Thousands of Roma were victims of the Holocaust[33] and during World War II there were mass expulsions of Roma from Romania to Transnistria and parts of modern-day Ukraine.[34] Following World War II, "extensive efforts were made to assimilate the Romani minority throughout the former Soviet Union".[35] Nevertheless, there was systematic underdevelopment of Roma-dominated areas and public opinion about Roma remained largely negative, with stereotypes about "the Wild Gypsy" remaining prevalent.[36] Following the collapse of the Soviet Union, the privatisation of land resulted in further disadvantage to Roma living in rural areas, as they frequently lived in informal settlements without ownership rights.[37] The government has stated that more than half (56%) of Roma households located in rural areas did not receive agricultural land during the privatisation of collective farms.[38]

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31 See above, note 29.

32 *Ibid*. This report uses the term "Roma" throughout, except where citing others. The word Tsigani (gypsy) is often used pejoratively. Whilst some Roma may refer to themselves as such, the term "Roma" is a self-ascribed term, adopted "by the majority of groups generally ascribed as Tsigani". See Bunescu, I., *Roma in Europe: The Politics of Collective Identity Formation*, Routledge, 2016, p. 18.

33 International Organisation for Migration, *No More Lifeline to Survival - Assistance for Roma Holocaust Victims Ends*, 2006, available at: https://www.iom.int/migrant-stories/no-more-lifeline-survival-assistance-roma-holocaust-victims-ends.

34 See above, note 27, p. 18.

35 *Ibid*.

36 *Ibid*.

37 United Nations Development Programme, *Roma in the Republic of Moldova*, 2007, p. 73, available at: http://www.undp.md/publications/roma%20_report/Roma%20in%20the%20Republic%20of%20Moldova.pdf.

38 Decision approving the 2011-2015 Action Plan for the Support of Roma from the Republic of Moldova (Government Decision No. 494 of 8 August 2011), Para. 1.4, available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=339319.

Today, negative social attitudes and stereotypes about Roma persist;[39] in a 2014 study, nearly two thirds of respondents applied stereotypes including "gypsy", "black", "swarthy", "thieves", and "liars" to Roma.[40] In society at large, to be called "Roma" or "Gypsy" is a term of abuse. For example, in 2014, the Consiliul Pentru Prevenirea şi Eliminarea Discriminării şi Asigurarea Egalităţii (CPEDEE, Council on the Prevention and Elimination of Discrimination and Ensuring Equality) considered whether comments by politician Renato Usatîi that politician Vlad Filat was a "dirty and stinky Gypsy" and a "finished Gypsy" amounted to discrimination. Mr Usatîi argued that the right to freedom of expression should protect speech even if it "insults, shocks or bothers".[41] The CPEDEE found that freedom of expression may be restricted where the expression constitutes "racism, homophobia, xenophobia, anti-Semitism (…) impeding (…) ethnic, linguistic, national and social pluralism."[42] In this case the CPEDEE concluded that Mr Usatîi's statements were intended to "humiliate the ethnicity of his political opponent showing his own ethnic superiority."[43]

In part as a result of these persistent stereotypes, Roma are particularly excluded in Moldova, suffering high levels of disadvantage and discrimination.[44] According to civil society organisations, Roma in Moldova face discrimination and disadvantage in employment, education, healthcare and access to social

39 See above, note 29, Para 17.

40 Malcoci, L. and Barbarosie, A., *The Phenomenon of Discrimination in Moldova: Perceptions of the Population: A Comparative Study*, 2015, p. 31, available at: http://www.soros.md/files/publications/documents/The%20Phenomenon%20of%20Discrimination%20in%20Moldova_0.pdf.

41 *Decizie din 13.10.20142014 în cauza pornită prin autosesizare privind declaraţiile rasiste în discursul politic a domnului Renato Usatîi, liderul formaţiunii politice,PaRus",* (*Compatibility analysis of Moldovan legislation with the European standards on equality and non-discrimanation*), 2015, p. 109, Consiliul Pentru Prevenirea şi Eliminarea Discriminării şi Asigurarea Egalităţii (Council on the Prevention and Elimination of Discrimination and Ensuring Equality, CPEDEE), Dosar No. 159/14, 13 octombrie 2014, Para 4.3, available at: http://crjm.org/wp-content/uploads/2015/07/LRCM-Compatib-MD-EU-nondiscrim-legisl-2015-07.pdf).

42 *Ibid*., Para. 6.2.

43 *Ibid*., Para. 6.3.

44 Equal Rights Trust, ""No Jobs for Roma": Situation Report on Discrimination against the Roma in Moldova", *The Equal Rights Review*, Vol. 15, 2015, p. 130, available at: http://www.equalrightstrust.org/ertdocumentbank/%E2%80%9CNo%20Jobs%20for%20Roma%E2%80%9D%20Situation%20Report%20on%20Discrimination%20against%20the%20Roma%20in%20Moldova.pdf.

assistance.[45] Roma are consistently under-represented in decision-making at local and national levels and experience high levels of unemployment and illiteracy.[46] As one elderly Roma person told Equal Rights Trust researchers:

> *I am already old but know what life is about. I have children and grandchildren (…) Roma have nowhere to work, do not have money to sustain themselves, are illiterate (…) I see that my children, the grandchildren are looking for work – but nobody employs them. As soon as employers see a Roma, they tell them that they do not have any vacancy. I do not know why people bypass all Roma.*[47]

Legal and Policy Framework

Roma persons benefit from the general protections against discrimination, hate crime and hate speech on the basis of race and ethnicity provided in the Law on Ensuring Equality, the Contravention Code, and the Criminal Code. In addition, the Moldovan authorities have adopted a number of specific policy measures targeted at improving the position of Roma in the country. Unfortunately, these measures have been largely ineffective as a result of poor implementation, inadequate resourcing and the lack of an evaluation mechanism.

The government created an *Action Plan in Support of the Roma Population in Moldova for 2007–2010,* which aimed to improve the situation of the Roma in employment, health, culture and education.[48] However, as a result of a lack of resources, this Action Plan was not effectively implemented.[49]

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45 Roma National Centre, *Submission to the Committee on Economic, Social and Cultural Rights for Moldova*, 2011, p. 1, available at: http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/MDA/INT_CESCR_NGO_MDA_46_9576_E.doc; Human Rights Committee, *Concluding Observations: Moldova*, UN Doc. CCPR/C/MDA/CO/2, 4 November 2009, Para 27.

46 Joint Submission, *Submission to the Committee on Economic Social and Cultural Rights for Moldova*, 2011, p. 7, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fNGO%2fMDA%2f46%2f9578&Lang=en.

47 Equal Rights Trust interview with U., 17 August 2015, Danu Village, Glodeni District.

48 See Roma National Centre, above, note 45.

49 See above, note 29, Para. 15.

Similarly, the *Action Plan in Support of the Roma Population in Moldova 2011–2015* ("the 2011–2015 Action Plan") has largely failed to achieve its goals as a result of inadequate resources and ineffective implementation.[50] For example, the government set out plans to introduce socio-community mediators across the country whose role would be to facilitate access to public services for Roma, but, due to lack of resources, by 2013 only 15 mediators had been appointed under this scheme.[51] Despite targeting the employment of 48 mediators in 44 communities with the highest Roma density, at the conclusion of the Action Plan only 12 mediators were employed. A 2013 government decision stated that the community mediators were to be paid from local public administration budgets,[52] yet by 2015 some community mediators were still not remunerated by local public administration.[53] As a result of decentralisation reforms, local authorities took responsibility for hiring Roma mediators; following these reforms the numbers of hired Roma mediators decreased from 21 to 12.[54] In 2016, an evaluation of the 2011–2015 Action Plan was produced, which concluded that very few activities had been carried out by state institutions directly responsible for the successful implementation of the Action Plan.[55] The evaluation also noted the serious and persistent problems in coordination between the central and local administration in implementing the Action Plan.[56] The evaluation makes recommendations on seven areas of intervention closely linked to improving the situation of the Roma population for the years 2016–2020,[57]

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50 Government of the Republic of Moldova, *Evaluation Report on the Implementation of the 2011–2015 Action Plan for the Support of Roma People from the Republic of Moldova*, 2016, p. 40, available at: http://www.bri.gov.md/files/3849_Studiu-HG-56_18.01.16.pdf.

51 Committee on the Elimination of Discrimination against Women, *Concluding Observations: Moldova*, UN Doc. CEDAW/C/MDA/CO/4-5, 29 October 2013, Para. 35.

52 Decision approving the Framework Regulation on the Organisation of Community Mediator's Activity, (Government Decision No. 557 of 17 July 2013), Para. 3, available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=348861.

53 See above, note 50.

54 Resource Centre for Human Rights and Roma National Centre, *Joint Submission to the Universal Periodic Review for the Republic of Moldova*, 2016, p. 12, available at: http://www.credo.md/site-doc/UPR-Moldova_CReDO_CNR_24.03.2016_final(5).pdf.

55 *Ibid*., p. 41.

56 *Ibid*., p. 18.

57 Specifically, promotion of the community mediator service; education; work and economic well-being; heath and social security; culture and mass media; public administration, order and documentation; and housing.

in order to provide the basis for initiating a new five year Action Plan in support of the Roma population.

The 2016–2020 Action Plan in support of the Roma population in Moldova was approved by the government on 20 April 2016.[58] However as with the previous iterations, insufficient resources have been allocated for its effective implementation.

Treatment by Law Enforcement Agencies

The Ministry of Internal Affairs was tasked with monitoring cases of discrimination and abuse of Roma by police officers under the *2011–2015 Action Plan*.[59] However, in 2012, the Ministry was not able to provide the Council of Europe's Ad-Hoc Committee of Experts on Roma issues with any figures on the incidence of discrimination against Roma by police.[60] Research conducted for this report indicates that Roma are often subject to discrimination by state agents, including in particular the police.

In a case[61] considered by the CPEDEE in 2015, and discussed in detail in the case study overleaf, the Council concluded that a Roma woman had been subjected to ethnic profiling and subject to discrimination contrary to the Law on Ensuring Equality.[62]

58 Bureau of Interethnic Relations, "Action Plan in support of the Roma population in Moldova 2016–2020", 21 April 2016, available at: http://www.bri.gov.md/index.php?pag=noutati&opa=view&id=902&start=20&l=.

59 See above, note 38, Para. 1.1.

60 See above, note 26, p. 15.

61 Promo-LEX Association, *The Equality Council Found that Racial Profiling is a Major Form of Discrimination*, 2015, available at: https://promolex.md/index.php?module=press&cat=0&item=1886.

62 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 239/15 of 28 May 2015, p. 10, available at: http://egalitate.md/media/files/files/decizie_239_2015_depersonalozat_6318337.pdf.

Case Study: Cosmina Novacovici

In February 2015, while shopping, Ms Novacovici was apprehended by two persons who identified themselves as police officers. She was informed that she matched the description of a suspect of a crime. The description was "Gypsy woman, height 160–165cm, hair put tightly in a bun and black jacket." The police officers spent 30 minutes questioning Ms Novacovici inside the shop. Ms Novacovici felt afraid and humiliated. She agreed to the police officers' demands that she accompany them to the police station to be formally identified and provide her account of where she was at the time of the alleged crime.

In the police station, Ms Novacovici was subject to further examination. She attested that she was treated with contempt. She was further interrogated by the police officers, who refused to provide her with any further information about why she was being detained.

In March 2015, Ms. Novacovici submitted a complaint to the CPEDEE. In September 2015, the Council found that Ms. Novacovici had suffered racial discrimination under Articles 1, 2, 4(a), in conjunction with Article 8(h) of the Law on Ensuring Equality.

The CPEDEE ruled that the Internal Protection and Anti-Corruption Service of the Ministry of Internal Affairs should conduct an internal investigation on this case and should apply disciplinary sanctions to the police officers reflecting the gravity of their actions, according to Article 12(1)(j) and Article 15(6) of the Law on Ensuring Equality.

The Buiucani Police Inspectorate appealed this decision. However, on 9 December 2015, the Buiucani Court of Law dismissed the application for annulment of the CPEDEE decision.[63] On 24 March 2016, the Chişinău Court of Appeal upheld the decision of the Buiucani Court of Law.

Roma persons interviewed for this report gave examples of apparent ethnic discrimination by police officers when dealing with complaints. In one par-

63 See above, note 61.

ticularly shocking case, narrated below, Botezatu Pavel stated that police had fined him after he lodged a complaint of racially-motivated physical violence against him by a neighbour.[64]

Case Study: Botezatu Pavel

For a long period, I have been in conflict with my neighbour, who constantly insults me, accusing me of stealing his chickens. There were cases where he and his father entered my yard with a gun late at night, and threatened me. There was a case when he entered my yard and, while I had my child in my arms, (…) he punched me in my face. I told him that I would go to police. He replied that he has money, that he does not fear police and that he will beat me even worse.

I think that he discriminates against me because I am Roma. He insulted me many times, with words like "smelly gypsy" and many other ugly words that I am too embarrassed to say. He is a rich man who recently came from abroad who thinks he can do whatever he wants.

On 28 March 2014, I went shopping in the local market with my mother. He saw me, approached me and started to insult me in front of everyone, and then he punched me in the face. I could not resist and went to the police to make a complaint. The policeman received my complaint and told me to go home, because he will take action. Two weeks later, I received a document stating that I had to pay a fine of 400 lei [€18 Euro]. I took the document and went to the policeman. He told me that I am guilty, that I insulted my neighbour. He even told me to pay the fine because the situation will get worse and this is because of my ethnicity.

T., another interviewee who preferred to be interviewed on condition of anonymity, testifed about the police failing to deal with his complaints about a neighbour. He stated:

> *I tried many times to make complaints to the police about the fact that my neighbour's dog ate my chick-*

64 Equal Rights Trust interview with Botezatu Pavel, 24 April 2015, Cărpineni village, Hîncești region.

> *ens. But the policeman never wants to receive my complaints, because he says that I am the one who is guilty. Every time there is a problem in the village, he suspects me. He first comes to my house, and investigates to see whether I did it. I constantly live in fear.*[65]

Roma focus group participants in Hancesti town described experiences of harassment and ethnic discrimination by the police when trying to sell goods at the local market. In particular, they stated that police officers fine only Roma because they do not have necessary documents for selling goods, despite the fact that people of Moldovan ethnicity without these same documents are not fined.[66] Harcomit Oxana told Equal Rights Trust researchers that:

> *I went out one day to the market to sell my paint for Easter eggs. I saw a policeman coming so I hid, in case he saw me and forced me to leave the market. When he left, I returned and prepared to sell the paint. Suddenly he came back. He started to insult me and asked me to leave. I made a remark regarding his role to protect the country and its citizens, not insulting people with such dirty words.*[67]

Another interviewee, Luminita Matvei, stated that the police had subjected her to extortion attempts:

> *A police officer told us that if we will not pay him daily percentage of our sales he will not allow us to sell in the local market. And if we do not agree with him, he will make photos of us while selling and will send home fines as he did earlier.*[68]

P., an interviewee who asked not to provide his name, explained the impact which police harassment and discrimination at the market place has on his family:

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65 Equal Rights Trust interview with T., 24 July 2015, Duşmani village, Glodeni region.

66 Equal Rights Trust focus group with 20 Roma, 10 April 2015, Hîncești , Hîncești region.

67 Equal Rights Trust interview with Harcomit Oxana, 10 April 2015, Hîncești, Hîncești region.

68 Equal Rights Trust interview with Luminita Matvei, 10 April 2015, Hîncești, Hîncești region.

> *Currently I am retired, and I find it very difficult to sustain myself and my family. Like all Roma who are unemployed and do not have what any source of income, me and my wife sell second hand clothes at the local marketplace. I want to complain about the police, because despite the fact that I paid for a place in the local market where I could sell goods, the police (…) tell us that other people who also sell goods fear that we, Roma, will steal from them. Sometimes, without any evidence, the police takes our goods and allow us to trade only near the toilets (…) They humiliate us a lot (…) The police discriminate against us on ethnic criteria, because of stereotypes about Roma being thieves and so on.*[69]

Identification Documents

According to the ECRI, there are considerable numbers of Roma who meet the requirements for either Moldovan nationality or identity documents but have not yet obtained them.[70] Under the 2011–2015 Action Plan, the government undertook to conduct a survey monitoring the prevalence of Roma without identity documents,[71] but the report on the implementation of the Action Plan does not mention any such data.

In addition to being a problem in itself, the absence of identification and other legal registration documents can cause significant problems in accessing other services for Roma. In a 2014 study, which included a survey of social workers involved in providing assistance to victims of domestic violence, 29% of respondents indicated that lack of identification documents was a problem when dealing with Roma victims of violence. In the official evaluation of the 2011–2015 Action Plan, 15.2% Roma representatives stated that the biggest problem when dealing with the local authorities is lack of documentation.

69 Equal Rights Trust interview with P., 19 September 2015, Orhei, Orhei region.

70 See above, note 17, Para 15.

71 *Ibid*., Para 16.

Education

Although there is limited data on levels of education disaggregated by ethnicity, statistics indicate that Roma children have lower levels of education than non-Roma children. In total, 43% of Roma children between the ages of seven and 15 do not attend school, compared to only 6% of non-Roma children.[72] Literacy levels for Roma children are well below the national average[73] and only very low numbers of Roma go on to obtain a higher education degree.[74] The reasons for poor attendance by Roma children include seasonal work,[75] early marriage,[76] poverty, homelessness, change of residence and parents' refusal to permit attendance.[77] The CESCR has articulated concerns about the limited availability and accessibility of schooling for Roma children living in remote rural settlements.[78]

Furthermore, Roma women and girls face particular inequalities in education; 45% of Roma women have no formal education compared with 2% of non-Roma women and 33% of Roma men.[79] In addition, only 52% of Roma girls are enrolled in primary education as compared with 84% of non-Roma girls and 55% of Roma boys; this difference widens at the secondary education stage, with only 14% of Roma girls enrolled as compared with 78% of non-Roma girls and 17% of Roma boys.[80]

Poverty plays a key role in limiting Roma access to education. Although primary and secondary education is free of charge and the *2011–2015 Action Plan* provided for free teaching materials and manuals for Roma children, the practice of informal payments for schooling is widespread.[81] As a result of

72 See above, note 27, p. 30.

73 See above, note 38, Para 1.1.

74 See above, note 30, Para 29.

75 See above, note 26, p. 16.

76 See above, note 27, p. 3.

77 Committee on the Elimination of Racial Discrimination, *Tenth and Eleventh Periodic Reports: Republic of Moldova,* UN Doc. CERD/C/MDA/10-11, 2 March 2016, Para. 173.

78 See above, note 74.

79 See above, note 27, p. 30.

80 *Ibid*.

81 *Ibid*., p. 31.

these indirect costs, large numbers of Roma children are forced to drop out of school before completion of compulsory education.[82]

In addition to the statistical evidence of disparity in access to education, research for this report identified examples of direct discrimination against Roma. One woman told the Trust about the case of her daughter, Loghin Valentina Ivanovna. The woman stated that in 2013, her daughter went to submit the necessary document for kindergarten. The registrar told her that there were no free places in the kindergarten, and that she must wait a year; the registrar stated that in urgent cases, a place could be found, at a cost of €100. Ms Ivanonvna's mother testified:

> *My daugher paid €100 for her 4-year-old daughter, but for her 3-year-old daugher, she had no money. Since then, two years have passed, but my daugher could not enroll her second daughter in the kindergarten. The reigstrar keeps telling her to come only when my daughter will have money. I think that they did not enroll the child because my daughter is Roma, and they think that Roma have money and will pay the necessary informal fee. I don't think that they insist on these informal payments with Moldovan families, because all Moldovans who went to the registrar have their children enrolled in kindergartens. I know that there are free places, because my granddaughter attends kindergarten and we know.*[83]

In 2015, the UN Special Rapporteur on Extreme Poverty and Human Rights raised concerns that Roma children were being segregated in schools, even in areas with a predominantly Roma population.[84] Some teachers are opposed to teaching Roma alongside non-Roma children because Roma children are frequently absent, fall behind and require a special curriculum that will provide "basic proficiency in writing, reading and how to count money".[85]

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82 *Ibid.*

83 Equal Rights Trust interview with Loghina Elena, 17 June 2015, Durleşi town, Chişinău.

84 Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona*, *Addendum,* UN Doc. A/HRC/26/28/Add.2, 2014, Para. 57.

85 See above, note 17, Para. 84.

This segregation contributes to the social isolation of Roma children.[86] For example, in Otaci, a town whose school segregates Roma students, only 10 Roma have completed secondary schooling since 1954.[87]

According to a report produced in 2014 by the Human Rights Information Centre, covering the period September-December 2013, there were cases of segregation of Roma children between schools (where Roma and non-Roma children study in different schools), classes (where Roma and non-Roma children study in different classes) and in the classroom (where Roma children stay in the last rows and non-Roma children stay in the first rows of tables.[88] This latter problem was corroborated by Equal Rights Trust interviews with Roma community members, one of whom stated:

> *Roma children in school stay in the last benches. For many years, my child stays in the last bench and he is still in the fourth. The teacher gives him a paper and a pencil and does not even look at him. If the teachers would pay more attention to him, my kid would be as smart as Moldovans, but he is not because there is no one who teaches him (…) I asked the teacher to put my child in the first bank with the Moldovan children, but the teacher said that the other children do not want to sit near my child.*[89]

Another Roma interviewee, who chose to remain anonymous, narrated a story with some strong similarities, indicating how widespread these problems may be:

> *I am Roma. I want to explain a discriminatory situation that I experienced with my children. I have two children, and between them is a one-year age gap. They study at school Gr. Vieru in Orhei. Starting with the first grade until*

86 See above, note 37, p. 67.

87 Promo-LEX Association, *Human Rights in Moldova, 2012-2013*, 2014, p. 206, available at: https://promolex.md/upload/publications/en/doc_1403007820.pdf.

88 Human Rights Information Center, *Preliminary Findings of Study on Discrimination in the School System in Moldova*, 2014, p. 3, available at: http://drepturi.md/sites/default/files/materials/raport_edu.pdf.

89 Equal Rights Trust interview, 24 July 2015, Danu village, Glodeni region.

> *today, when they are in the fifth grade, my children sit in the last benches. There are other Roma children in the class who also sit on the last benches. My children told me that the teacher does not pay any attention to them. Any trouble that happens in the class, the teacher blames my children. I had a discussion with the teacher and told her to change her attitude towards Roma children, to mix them in different rows and benches, so that Roma children could learn from non-Roma. Unfortunately, the situation remained the same. The teacher explained that the parents of non-Roma do not want their children to sit with Roma children on the same benches. Also, my children often tell me that they feel humilited and do not want to attend the school, because the teacher does not motivate and encourage them. Early in the Spring 2015, a phone was stolen between children. The teacher did not call police but blamed my children. I suppose it is because of prejudices and stereotypes about Roma. Later that phone was found, but the teacher did not even apologize for offending my children.*[90]

In 2015, the UN Special Rapporteur on Extreme Poverty has called on the Government of Moldova to take rapid steps to increase the effective inclusion of Roma children in education.[91] The evaluation report on the implementation of the 2011–2015 Action Plan identified that the Ministry of Education and other relevant institutions had taken insufficient measures designed to create an inclusive and efficient educational system, based on the principles of equality, non-discrimination, and respect for diversity.[92]

Employment

Notwithstanding the lack of disaggregated data on employment levels among Roma,[93] a 2015 study concluded that Roma are widely discriminated against

90 Equal Rights Trust, Interview with T, 19 September 15, Orhei, Orhei region.

91 See above, note 84, Para 57.

92 See above, note 50, p. 42.

93 In its statistical report for 2014, the National Agency for Employment (NAE) did not publish the number of Roma registered as unemployed and being employed in the labour market. See Legal Resources Centre, above, note 41, p. 99.

in the labour market.[94] Recent studies indicate that Roma of working age are more likely to be unemployed than non-Roma. Although the 2011–2015 Action Plan sought to increase the employment rate among Roma, the National Employment Agency found that, as of 2015, of 1,100 Roma registered with the employment agencies, only 70 people were employed.[95] A civil society study from 2011 found that the employment rate for Roma was 21% of the employable population, compared with 46% of the non-Roma population.[96] In 2013, the ECRI found that difficulties in finding regular employment meant many Roma are forced either to accept jobs without signing a labour contract, to open their own businesses or to seek employment abroad.[97]

Although Moldova has made efforts to increase employment rates among Roma, data produced by the state indicates that these have been limited in their impact. In its recent report to the Committee on the Elimination of Racial Discrimination, Moldova stated that of 638 Roma registered at employment agencies in 2013, only 6% were employed,[98] while in 2014 only 528 Roma were registered as unemployed at the territorial employment agency.[99]

Roma are disproportionately likely to be employed as unskilled or informal workers; a study conducted in 2012 found that 60% of Roma employees were working as labourers and only 5% were employed as skilled workers.[100] As a result of the low levels of employment and the basic nature of work for which many Roma are employed, the average monthly income of a Roma family is about 1,000 lei (apprxomiately €45 Euro), 40% less than the average income of 1,597 lei (approximately €70 Euro) of a non-Roma household.[101]

The case of Zapescu Grigore – the first case of discrimination on the basis of race or ethnicity in employment to be considered by the Moldovan courts,

94 See above, note 40, p. 30.

95 National Employment Agency, *Activity Report for 2015*, 2016, p. 16 available at: http://anofm.md/files/elfinder/Raport%20de%20activitate%20ANOFM%202015%20final.docx.

96 United Nations in Moldova, *Roma in the Republic of Moldova: In Communities Inhabited Mainly by Roma,* 2013, p. 36, available at http://www.unicef.org/moldova/ro/Raport_ROMA_rom2013.pdf.

97 See above, note 17, Para 128.

98 See above, note 77, Para 180.

99 *Ibid*., Para 181.

100 See above, note 96.

101 See above, note 27, p. 37.

which is currently awaiting consideration by the Committee on the Elimination of Racial Discrimination – exemplifies the discrimination faced by Roma when seeking employment.

Case Study: Zapescu Grigore

Zapescu Grigore is a young Roma man who, in 2012 applied for a job as a waiter at a chain of pizza restaurants, *Andy's Pizza*, in response to a job announcement placed on the company's web page. The announcement did not include any requirements related to specific abilities or previous relevant experience. After a phone conversation with the company, he was invited to a job interview.

On 12 November 2012 he attended the interview, where he was asked to complete a form and had a short conversation with the human resources manager. Mr Grigore noted the reserved attitude towards him and considered this was on the basis of his ethnicity. He was told that a decision would be made by the end of the week and that if he were successful that someone would contact him. The restaurant did not contact him, however, he later learned that another young man, an ethnic Moldovan, who was interviewed immediately after him, was offered the job at the interview.

On February 6, 2013, Mr Grigore initiated a lawsuit against the restaurant alleging discrimination in employment on the grounds of ethnicity. The Central Court in Chişinău dismissed his complaint on 27 June 2014 and the Court of Appeal Chişinău dismissed the case on 22 January 2015.[102] Mr Grigore appealed both decisions at the Supreme Court of Justice. On 16 September 2015, the Supreme Court of Justice declared his appeal inadmissible on the grounds that previous Courts had examined the cases and issued their decision in compliance with legal procedure.[103]

102 Chisinau Court of Appeal, Decision No. 2a-3692/14 of 22 January 2015, available at: http://cac.instante.justice.md/apps/hotariri_judecata/inst/cac/get_decision_doc.php?decision_key=839655AF-7FAC-E411-8112-005056A5D154&case_title=Dosar-02-2a-15181-26082014-29671.

103 Supreme Court of Justice, Decision No. 2ra-2038/15 of 16 September 2015, available at: http://jurisprudenta.csj.md/search_col_civil.php?id=22032.

On 4 April 2016, the case was submitted to the Committee on the Elimination of Racial Discrimination. The lawyer who represented Mr Grigore in the domestic proceedings alleges that the courts failed to reverse the burden of proof as required by the Law on Ensuring Equality, instead requiring Mr Grigore to bring evidence to prove the discrimination he experienced.

Interviews with Roma conducted for this report found evidence of direct discrimination for those seeking employment. While the Law on Ensuring Equality has been in force for a number of years, these interviewees provided evidence of blatant, overt discrimination by potential employers. For example, Liudmila Raiu, told Equal Rights Trust researchers about her experience seeking employment through the National Employment Agency:

> *Two months ago, I registered with the National Employment Agency, so I could get a job and somehow feed my children. The Agency sent me to one company which did sewing and tailoring, but there was no interview and the boss of the company said as soon as he saw me that they did not take Roma to work there. This happens very often to Roma. We are told to our faces that "We don't give jobs to Roma". The companies take others – Moldovans, Russians – but not Roma. This is very hard for us. How should we raise our children? Become burglars? Or what? It feels very bad to be rejected so often – it is offensive.*[104]

Similarly, Eduard, a 24-year-old Roma man, told Equal Rights Trust researchers about his experience of direct discrimination:

> *My whole family is Roma. We have a very respectable family. My mother and father work at a construction site in Moscow, and I remained in Moldova with my grandmother, helping her around the house, because she is elderly (…) I do not have a profession because I only completed the ninth grade. So I thought that it is necessary to find an unqualified job. Through acquaintances, I found out that Моройка bar in the village need waiters. I went*

104 Equal Rights Trust interview with Liudmila Raiu, 20 August 2015, Hîncești , Hîncești region.

> *to see them. The manager saw me and told that I cannot be a waiter because I would scare all the customers. He offered me a job as a porter. Of course, I agreed, because it was important for me to find a job. Then, the manager promised to talk with the owner and asked me to come on the second day. When I came on the second day, the manager told that the owner does not want to employ me, because I am Roma, and all Roma steal. I was very offended and sad then, but could not do anything. He turned and walked away. I think it will be very difficult to find work because I am Roma. People treat us like second hand, as thieves and brawlers. However, not all are the same.*[105]

Another interviewee, Victoria, told the Trust's researchers about her experience of being refused employment by a company that processed walnuts, because of her Roma ethnicity:

> *When we went there, they said they cannot hire us. My husband was supposed to work as a freight handler and I was supposed to pick the walnut kernels out. The head of the company turned me down and told me and my husband to our faces that he was not going to hire us because we were Roma. I asked them whether Roma aren't humans as well. And they said that they won't hire us. They did hire Moldovans, though. Then I returned to the unemployment office. They told me to look for a job elsewhere. I asked where else can I look for one? I told them there was no other place I could go to. And that was it.*[106]

In August 2015, Z., from Danu in the Glodeni region, recounted an incident in which an employer hired one of three persons – a Moldovan – telling the two Roma persons that he would not employ them:

> *For a long period of time I have been registered at the employment agency. They often call me and tell that some*

105 Equal Rights Trust interview with D., 23 July 2015, Congaz village, Gagauz autonomous region.

106 Equal Rights Trust interview with Victoria, 20 August 2015, Hîncești, Hîncești region.

> *employers need workers in our village. The Agency told us that we must go to the employers and ask for work. I took two more boys – one Gypsy and one Moldovan – and went to an employer to ask for work. He chose only one person, the Moldovan one. He told us that he does not employ Roma because he has no time to guard us from stealing from him.*[107]

16. Multiple Discrimination Faced by Roma Women in Employment

Roma women are subject to multiple discrimination on the basis of their ethnic origin and gender. As a result of lower levels of education, lack of job opportunities, the limited availability of childcare and gender stereotypes from within the Roma community, Roma women have lower levels of employment than both Roma men and non-Roma women;[108] only 15% of Roma women aged over 15 are employed, in comparison with 34% of non-Roma women and 25% of Roma men.[109] Women in rural areas face particular difficulty in finding employment due to the extreme shortage of job opportunities.[110]

Housing

Roma are disproportionately affected by poor quality housing and accommodation. By the government's own admission, over 80% of Roma households do not benefit from basic housing conditions, such as safe drinking water, access to a toilet and sanitation.[111] A study by various UN agencies found that 30% of Roma in Moldova live in housing in a high state of disrepair or other forms of poor housing, as against 7% for the general population.[112] As concerns the availability of basic amenities, the same study found that: 10% of Roma have no electricity (as against 2% for the general population); 42% have no kitchen (as against 17% generally); 88% are not connected to direct

107 Equal Rights Trust interview with Z., 17 August 2015, Danu village, Glodeni region.

108 See above, note 27, p. 37.

109 *Ibid*., p. 36.

110 See above, note 27, p. 37.

111 See above, note 38.

112 See above, note 27, p. 19.

water provision (against 76% generally), 81% are not connected to sewerage (against 60% generally); 81% have no bath in the house (as against 51% generally); and 89% have no toilet at home (against 71% generally).[113]

The evaluation report on the implementation of 2011–2015 Action Plan revealed that access to social housing remained an acute problem for the Roma population,[114] who insisted that they did not secure housing despite the adoption of Government Decision No. 56 in 2012, which amended the Action Plan in this respect.[115] The evaluation found, for example, that when a new housing block was built in Hincești, no Roma benefited from housing.[116] It also criticised the lack of adequate procedures for Roma to access social housing.[117]

Testimony collected for this report corroborates these findings regarding the lack of access to suitable housing for Roma persons. I., interviewed by Equal Rights Trust researchers in July 2015, stated:

> *My child is very sick. He burned in house. Now he lays only in bed. I have nowhere to live. I asked someone to let me live somewhere temporary, as it is warm outside. However, what will I do? Where will I go? I do not know. I went many times to the mayor's office and asked him to let me live in a social apartment. He said he has three left, but he cannot let me live in those social houses because I am a Gypsy. However, he let other people live in those apartments. He permitted to everyone, but not to Gypsies. I found out that those who have received these apartments told the mayor not to let Gypsies live there because we are thieves.*[118]

113 *Ibid*.

114 See above, note 50, p. 39.

115 Decision approving the Amendment of the Action Plan in Support of the Roma Population for 2011–2015 (Government Decision No. 56 of 31 January 2012), available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=342070.

116 See above, note 50, p. 39.

117 *Ibid*.

118 Equal Rights Trust interview with I., 24 July 2015, Glodeni, Glodeni region.

Another interviewee testified:

> *I live in Orhei with my family, in my parents' house. My three brothers and their families also live in the same house. Recently I heard that some neighbours received land for construction of house. I submitted a claim requesting land seven years ago, but with no success. Despite the fact that my neighbours submitted their request much later, they were granted with land. So, in May 2015, I went to went to the City Hall of Orhei to claim my right, because I know that according to paragraph nine of the Action Plan on Support of Roma Population for 2011–2015, Roma have a right to housing. The representatives at City Hall replied in a brute manner that there is no more free land and said that all Roma are just begging for assistance, that we do not work and thus earn money to construct our own houses. I know for sure, that no Roma has obtained any housing or land for construction, because no one pays attention to us as people.*[119]

Healthcare

Roma do not enjoy equal access to healthcare, with lack of financial resources, lack of health insurance, and inaccessibility all contributing factors. Nearly a quarter of Roma households are not insured under the compulsory health insurance scheme.[120] In total, over 58% of Roma are not insured as compared with 24% of non-Roma.[121] The high levels of unemployment and low monthly income of Roma means they are often unable to afford the increasing costs of health insurance.[122] According to a 2014 study by various UN agencies, 65% of adult (16+) Roma with health issues hesitated to consult a doctor over the previous year (compared to 44% of adult non-Roma); of this group, 81% stated that they did not consult the doctor because they could not afford it, and

119 Equal Rights Trust interview with Putinica Andrei, 19 September 2015, Orhei, Orhei region.

120 See above, note 30, Para. 22.

121 See above, note 96.

122 See above, note 27, p. 12.

another 5% because they did not have medical insurance.[123] The CESCR has articulated concerns about the lack of access to healthcare for Roma in rural areas and about reports that emergency ambulance services "have routinely not responded to calls from Roma living in excluded settlements."[124] One expert interviewed for a report produced by the United Nations Development Programme (UNDP) summarised the barriers to health access as follows:

> *Most Roma are reluctant to go to a medical institution. When asked why, they explain that they do not have a health insurance policy (…) they do not trust the medical system (…) the doctor doctors will ask for money, even if services fall within the insurance program. [They say] doctors always ask from them money (…) we do not know our rights and they are using it and ask for money, and we have to give them (…) [There is also] the attitude of medical personnel vis-a-vis the Roma – Roma most often complain on doctors attitude towards them.*[125]

There is some evidence that these barriers to health access may result in poorer health outcomes for Roma than non-Roma. A 2013 study conducted by the United Nations asked respondents to assess their own health status. Over 82% of Roma respondents aged 50 years and older rated their health as bad or very bad; 41% of those aged 30–49 years and 22% of those aged 15–29 stated the same.[126] The study found significant differences in the self-assessment of health status between Roma and non-Roma in all age cohorts. In the 25–29 age group, the proportion of non-Roma individuals who evaluated their health status negatively was approximately a third of the figure for Roma (8%). Approximately twice as many Roma (41%) as non-Roma (21%) stated that their health was bad or very bad, and there was a significant difference even in the upper age bracket (82% of Roma over the age of 50 stated that their health was bad or very bad, compared to 58% of non-Roma).[127]

123 *Ibid*., p. 43.

124 See above, note 30, Para. 22.

125 See above, note 96.

126 *Ibid.*

127 *Ibid*.

Interviews conducted for this report found evidence of direct discrimination inhibiting access to healthcare for Roma persons. A community mediator from *Hîncești* recounted a case involving two Roma women:

> *One evening I was called by two Roma women saying that the doctors from the emergency centre refuse to come and provide healthcare assistance to them. [They] told them to call whenever they want, but they will not come to Roma.*[128]

Vera, a 25-year-old Roma woman, told Equal Rights Trust researches about the treatment she received when trying to access healthcare in 2015:

> *In winter 2015, I caught a bad cold and felt very bad. I registered by phone for a doctor appointment at 9.00. I do not remember the exact date, but somewhere in the middle of February 2015. I went to the clinic and at 9:00am, I was in front of the doctor's door, expecting him to call me into his office. After 20 minutes a nurse came out and called my name, [but on] seeing me, she told me to wait and went back. A few minutes later, she came back and called another man standing in the queue. I said nothing, but after they called a couple more people (…) I decided to ask what was going on.*
>
> *When the man came out, I entered without being called and asked why they do not call me in the office they rudely began to push me out of the room and told to wait, that they will call me in the end. [They said I had to wait] because we Gypsies smell bad, and they would need to refresh the room the whole day and that other patients feel very bad because of our smells. I was terribly offended and humiliated. I decided to go to the head doctor and complain. The head doctor certainly reassured me, saying that the doctor probably was tired, and somehow I did not understand the situation. He took me*

128 Equal Rights Trust interview with Bogdan Elena, 10 April 2015, Hîncești, Hîncești region.

> *to another doctor, who was free. When asked what will happen to that doctor, the head doctor replied that she could not do anything. This is because there are few doctors, but she promised to speak with him.*[129]

Another interviewee spoke about their difficulties in getting appropriate medical assistance for their mother:

> *My mother is very sick. Every time I call an ambulance I get refused. I am forced to take my mother to the home of a Moldovan and call an ambulance because they do not want to come to me because I'm a Roma. No one respects us, the doctors tell us on the phone that they are tired of us! Even if I call a taxi and take my mother to the hospital, they do not treat her properly and her situation worsens. I have the impression that doctors prescribe her drugs randomly without remorse! If you give them a bribe, they maybe they will look at you occasionally. My mother was diagnosed with lung cancer. To verify the diagnosis, we went to Chișinău. The doctors from Chișinău made another diagnosis telling us that the one given in Hancesti was incorrect (…) From that moment, my mother decided not to go anymore to hospital.*[130]

Multiple Discrimination faced by Roma Women in Healthcare

Roma women face many obstacles in obtaining health insurance and accessing health care, meaning they do not make use of the available services. The "lack of jobs, the lack of identity cards and birth certificates prevents Romani women from obtaining health insurance"[131] meaning that many Roma women cannot afford to access healthcare. Roma women have also complained about the long waiting times when they do seek medical attention[132] and reported

129 Equal Rights Trust interview with Vera, 23 June 2015. Bugeac village, Comrat.

130 Equal Rights Trust interview with Leonid, 10 April 2015, Hîncești, Hîncești region.

131 See above, note 27, p. 46.

132 *Ibid*.

discrimination from local authorities in accessing social assistance.[133] The limited access to healthcare and social assistance drives continuing social exclusion of Roma women.[134]

Access to Social Assistance

In a focus group with Roma conducted for this report, participants stated that they are disproportionately affected by poverty and a lack of social assistance provided by the state.[135] Many participants stated they do not receive any social assistance and that they believed that their ethnicity was the reason for this. A participant said whenever he contacted the local City Hall for social assistance or other help, he never received anything; he stated that he was told that the City Hall does not have financial resources, despite providing such assistance to non-Roma.[136] In another case, a woman stated:

> *Not long ago, I decided to go to ask for social assistance, because I do not have anything to feed my children. I have eight children and am seven months pregnant. Do you know what she told me? She told me to not make so many children, if I cannot feed them. Am I guilty that I have so many children? Everyone has as many children as he or she wants. Why does she count my children and make such comments? She said she has a salary of 2,000 lei [€90.4 Euro] and that she works but I stay home and receive 4,000 lei [€180.9 Euro]. Am I guilty because of this?*[137]

Political Life

The Committee on the Elimination of Racial Discrimination, the ECRI and the UN Special Rapporteur on Extreme Poverty and Human Rights have all raised concerns about the low levels of participation in political life by ethnic mi-

133 See above, note 50, p. 33.

134 See above, note 27, p. 12.

135 Equal Rights Trust focus group with 11 Roma, 14 May 2015, Căpresti village, Florești region.

136 *Ibid*.

137 Equal Rights Trust interview with S., 24 July 2015, Glodeni, Glodeni region.

norities, in particular Roma.[138] The Social Political Movement of Roma is the only political party focused on Roma issues, however, as they only received 0.14% of the votes in the 2010 parliamentary elections they failed to secure any seats. The party did not participate in the 2014 or 2015 elections.[139] However, in 2015, for the first time in Moldova, two Roma women were elected to be local councillors in Chetrosu village (Drochia district) and Riscani town. [140]

The Special Rapporteur considered that the exclusion of Roma from political life is a result of the systematic social stigmatisation and exclusion of Roma and also concluded that "[c]ritical challenges that impede Roma enjoyment of the rights to housing, education and work will persist unless they are given opportunities to participate in political life on equal terms".[141] The absence of Roma from public and political life also contributed to the social "invisibility" of the Roma, which adversely impacted the ability to secure public funding to improve their situation.[142]

Access to Goods and Services

Research for this report identified many cases in which Roma were discriminated against when accessing goods and services. For example, Ion Bucur, a Roma man from Drochia whose case is discussed in detail in the case study below, recounted the discrimination he had faced when booking a venue for a family event over the telephone.[143] In December 2014, Mr Bucur filed a complaint with the CPEDEE, which ruled that he had been discriminated against on the grounds of his ethnicity, in violation of Article 8 of the Law on Ensuring Equality.[144]

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138 See above, note 29, Para. 16(b); note 17, Para. 122; note 87, Para. 55.

139 See above, note 54.

140 *Ibid*.

141 See above, note 84, Para. 55.

142 See above, note 54.

143 Promo-LEX Association, *Anti-Discrimination Council Establishes Ethnic-Based Discrimination in Case of Roma Person Denied Services in a Venue*, 2015, available at: https://promolex.md/index.php?module=press&cat=0&item=1695&Lang=en.

144 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 190/14 of 13 February 2015, p. 5, available at: http://egalitate.md/media/files/files/decizie_190_2015__2000159.pdf.

Case Study: Ion Bucur

Ion Bucur is an ethnic Roma citizen of Moldova, from Drochia. In October 2014, he met with the management of a venue in town to discuss organising a family event. According to Mr Bucur, there were no problems during the discussions with the management of the restaurant by phone, but when he attended a meeting as agreed, the venue manager's attitude changed radically.

Mr Bucur was advised to go to another, allegedly more prestigious restaurant, and was told that prices for events involving Roma are double those for other events. Although he agreed to pay double for the restaurant's services, he was then asked to pay an additional fee of 2,000 euros, as, according to the restaurant's management, Roma are heavy smokers and could damage the venue's expensive carpets. Mr Bucur agreed to all conditions, but, after many discussions, the restaurant's owner said he had changed his mind and would not allow the event.

In December 2014, assisted by Promo-LEX lawyers, Mr Bucur registered a complaint with the Council for the Prevention and Elimination of Discrimination and Ensuring Equality (CPEDEE), alleging discrimination in accessing publicly available services on grounds of ethnic origin. The petitioner claimed that he was treated less favourably without objective and reasonable justification. On 13 February, the CPEDEE established that Ion Bucur was discriminated against on the basis of his ethnicity, contrary to Articles 1 and 2 of the Law on Ensuring Equality, read together with Articles 8(g) and 8(h).

Two other cases,[145] from Bălți, indicate that Mr Bucur's experience was not an isolated incident:

145 Promo-LEX, *Two Cases of Discrimination on Grounds of Ethnicity were Settled Amicably*, 2016, available at: https://promolex.md/index.php?module=press&cat= 0&&item=1983&Lang=ro.

Case Study: Discrimination in Accessing Public Services

In early 2016, cases were brought against two bistros in the city of Bălți which had allegedly refused to serve Roma and whose staff had openly discriminated against Roma. The cases were referred to Promo-LEX lawyers for legal assistance. Aliona Curaru, community mediator and representative of the Roma community in Bălți submitted complaints on the illegal actions of "Fontan" and "Vernisaj" bistros, to the Bălți Police Inspectorate and the Bălți Prosecutor. Subsequently, the Bălți Police Inspectorate remitted the case to CPEDEE.

Following discussions, the parties agreed to settle the cases. A mediation agreement was concluded under which the managers of I.C. "I. P. Petrov" and LLC "Steaua de Centru" apologised for the incidents that took place. According to the agreement, the restaurants undertook to comply with the provisions of the Law on Ensuring Equality and to train their staff on equality and non-discrimination. Also, the owners committed to eliminate any discrimination in the hiring process and to facilitate the employment of Roma.

Transnistrian Region

There is very little publically available information about the situation of the Roma in Transnistria as the number of Roma in the region is unknown. The 2004 census indicates that there are 507 Roma in Transnistria, however, other sources place estimates between 5,000 and 6,000.[146] Roma in Transnistria are particularly vulnerable as they are stigmatised, frequently live in poverty and are subject to discrimination in employment and housing.[147] There are also reports of physical abuse of Roma detained by the police, and cases when Roma have been expelled in groups from the territory.[148]

146 Hammarberg, T., *Report on Human Rights in the Transnistrian Region of the Republic of Moldova*, 2013, p. 36, available at: http://www.un.md/publicdocget/41.

147 Human Rights Information Centre, *Monitoring Report on the Progress made by Moldova in Implementing the Recommendations Addressed under the Universal Periodic Review Mechanism of the UN*, 2012, p. 39, available at; http://www.cido.org.md/attachments/article/87/UPR%20Report%20Nov+.pdf.

148 See above, note 146.

Conclusion

While a lack of disaggregated data makes it difficult to establish with precision the relative position of Roma in Moldova, testimony collected for this report clearly indicates that Roma experience direct discrimination, which is frequently overt and blatant, arising from prejudices and stereotypes which are openly discussed. As a result of the persistent negative attitudes towards Roma, they experience discrimination in all areas of life regulated by law, and experience significant substantive inequalities as a result. The development of the Action Plans on Roma Support is to be encouraged, but, as the discussion above indicates, lack of financial resources – and an apparent lack of political will to take strong action – these plans have not been effectively implemented.

2.1.2 Discrimination against Other Ethnic and Racial Groups

As discussed in some detail above, there is a lack of official data on the incidence of discrimination experienced by ethnic and racial minorities in Moldova. Nevertheless, research conducted for this report, and evidence gathered by UN bodies indicate that discrimination against ethnic and racial minorities other than the Roma is prevalent in Moldova.[149]

Racist terms are used in politics and there is evience that racial prejudice remains relatively widespread amongst the general population. On 18 February 2012, the former President of Moldova, and leader of the Community party, made the following remarks about pro-government supporters at a rally: "[t]hey brought a Negro here, who's just climbed down from the trees, and now he's doing politics for them".[150] There is also evidence that ethnic minorities suffer from a degree of social isolation as a result of prejudice amongst the general public: a 2015 study revealed that only 19% of survey respondents would accept a person of African origin as a member and only 33% as a friend.[151]

149 See above, note 29, Para 13. Additionally, the United Nations Committee on the Rights of the Child (CRC) has raised concerns regarding discrimination against children belonging to ethnic minorities. See, Committee on the Rights of the Child, *Concluding Observations: Moldova*, UN Doc. CRC/C/MDA/CO/3, 20 February 2009, Para 25.

150 Amnesty International, *Towards Equality: Discrimination in Moldova*, 2012, p. 6, available at: https://www.amnesty.org/en/documents/EUR59/006/2012/en.

151 See above, note 3, p. 19.

A number of recent cases considered by the CPEDEE illustrate some of the problems with racist language and incitement in Moldova. In 2014, the CPPEDAE started a case on its own initiative, to investigate the potential racist basis for the naming of a new beef burger. The product made use of black bread and was called the "*O.N.O.J.E".* Mr. John Onoje is a black Moldovan citizen, and it appeared that the burger's name had been chosen to reflect his. The product was promoted through social media, leading to public discussions that the Council felt could have violated Mr. Onoje's human dignity. The Council recommended that the firm responsible for the new burger apologise publicly to John Onoje.[152] Also in 2014, the CPPEDAE found incitement to racial discrimination committed by the Moldovan Border Police against two citizens of Nigeria.[153] This case is discussed below.

Case Study: G.B.O. and A.A.A

Two Nigerian students at the Academy of Economic Studies of Moldova (AESM), both with residence permits, claimed that on 17 March 2014 they went to the Chișinău International Airport to leave for Poland on a study program. At the immigration desk, representatives of the Border Police appeared suspicious of the legality of their Schengen visas issued by the Polish Embassy in Moldova, and so checked their documents again and again. Subsequently, both individuals were issued boarding passes, their luggage was registered and they were approved to go through the screening passage.

However, while no irregularities were detected during this inspection, the students were then taken by immigration officers to an interrogation room where their visas and residence permits were again checked repeatedly. This process continued for approximately three hours and eventually they were refused permission to board. In registering their

152 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 180/14 of 16 December 2014, p. 5, available at: http://www.egalitate.md/media/files/files/decizie_180_14_depersonalizat_2982113.pdf.

153 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 139/2014 of 6 October 2014, Para 4.1, available at: http://egalitate.md/media/files/files/dec_cauza_139_deperson_1772168.pdf.

complaint with the CPPEDAE, the two students claimed: "we were denied the right to fly simply because we are Nigerians and we are of another race; this is injustice, intolerance and racism at the highest level".

Discriminatory Violence

Although levels of racially motivated violence are relatively low in Moldova, there are reports of violent attacks against ethnic minorities.[154] The case of Salifou Belemvire, narrated below, is one example of such incidents.[155]

Case Study: Salifou Belemvire

Belemvire Salifou, who is from Burkina Faso and has lived in Moldova since 1985, was the victim of a hate crime. In 2013, he was accosted on a minibus by a young man who made insults to him related to his skin color. He tried to ignore him, but that made the attacker more aggressive.

The aggressor punched Mr. Salifou several time in the head and different parts of the body causing him injuries.

Mr Belemvire sought justice in all courts. The assailant was sentenced to a year and a half in prison for hooliganism. Mr Belemvire was unsatisfied with this sentence, and so complained to the Committee on the Elimination of Racial Discrimination. The case is yet to be considered.

There are grounds for concern that the authorities' response to such attacks is inadequate. For example, of the four people involved in a racially motivated assault on a Nigerian citizen in September 2011, only one was convicted, and this person was only convicted on a minor charge of hooliganism under the Code of Administrative Offences and required to pay a

154 See above, note 17, Para 114.

155 Radio Free Europe, "From Hate to Crime", 22 June 2015, available at: http://www.europalibera.org/a/27086258.html.

fine of 200 lei (approximately €9 Euro).[156] The ECRI has recommended that "the police and the justice system ensure that criminal law is effectively applied in response to all cases of racially motivated violence against persons belonging to an ethnic minority".[157]

Employment, Education and Housing

Research for this report indicated that, despite legal protections and rights, refugees and asylum seekers suffer from discrimination on the basis of their race. Moldovan law provides that refugees and asylum seekers have rights to education, healthcare and social assistance.[158]

Refugees and asylum seekers of African or Asian origin face discrimination in employment, arising from prejudice associated with their race.[159] For example, Salifo, a man who works at Charity Centre for Refugees told Equal Rights Trust researchers that:

> *Some try to find a job, but some employers when they see Africans, they associate them with the Ebola virus and immediately refuse them a job. I am telling the truth. [African] refugees do not enjoy any protection (…) They come here to the Charity Center for Refugees and complain about this situation and expected us to assist them. Whenever they call an employer, the phone calls are suddenly stopped, with references to the Ebola virus.*[160]

R., a person interviewed for this report who preferred to remain anonymous, stated:

156 See above, note 17, Para 115.

157 *Ibid*., Para 119.

158 Law on Asylum in the Republic of Moldova (Law No. 270 of 18 December 2008), Articles 28, 29, 30, 33, and 35.

159 Discriminare Media, "Moldovan Companies Appeal More Often to Racist Actions", 7 February 2015, available at: http://discriminare.md/companiile-moldovenesti-recurg-tot-mai-des-la-actiuni-rasiste.

160 Equal Rights Trust interview with Salifo, 16 September 2015, Chișinău.

> *I have lived in Moldova for more than two years. Each time I wanted to find a job, when people hear that I am from West Africa they call me "Ebola" (…). I live with other refugees from African countries who say that they also encountered similar situations.*[161]

African refugees and asylum seekers also face discrimination in accessing housing. For example Salifo of the Charity Centre for Refugees testified that:

> *When refugees need to rent space for housing, and here I am mean people of African origin, sometimes landlords say they do no want to offer these services because he is African. It is strange that landlords provide such services to some people and not to others. It is quite offensive to be refused such services because of origin or skin colour.*[162]

Refugees participating in a focus group conducted as part of the research for this report indicated that Moldovans frequently refuse to rent housing to them, because of their race, ethnicity or religion.[163] One respondent, Mahgoub Magdi, stated:

> *Every time we – people with darker skin colour (…) – want to rent an apartment or house in any area, the owner asks from the start where we are from. After you tell him your story, he changes his mind and refuses to provide housing for rent. When asked about his refusal, the owner answers that he does not want to deal with such people, in order to avoid problems. This happens all the time, and as a result it's hard to find housing.*[164]

161 Equal Rights Trust interview with R., 16 September 2015, Chișinău.

162 See above, note 159. See also Ghilascu, N., *Moldovan Companies Appeal More Often to Racist Actions*, 2015, available at: https://www.youtube.com/watch?v=417FDHjlfoo.

163 Equal Rights Trust, focus group conducted with 15 refugees, 16 September 2015, Chișinău.

164 Equal Rights Trust interview with Mahgoub Magdi, 22 September 2015, Chișinău.

Conclusion

Beyond the Roma, who are subject to severe stigma and associated discrimination, racial minorities in Moldova are subject to prejudice and associated discrimination. Our research indicates that visible racial minorities – those with darker skin colour than the average Moldovan – are vulnerable to incitement, discriminatory violence and discrimination in the areas of employment and access to housing. Compounding the discrimination suffered by racial minorities is the absence of any effective remedy for victims of discrimination and the negative reception from the authorities in response to claims of discrimination.

2.2 Discrimination on the Basis of Sexual Orientation and Gender Identity

Under Article 2(1) of the ICCPR, Moldova is required to "ensure to all individuals (…) the rights recognised in the (…) Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The same obligation to ensure enjoyment of Covenant rights without discrimination arises under Article 2(2) of the ICESCR. In addition, under Article 26 of the ICCPR, Moldova is required to ensure that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground".

The CESCR has stated that both sexual orientation and gender identity are forms of "other status" within the meaning of Article 2(2).[165] The Human Rights Committee (HRC) in its jurisprudence has held that the prohibition of discrimination under Articles 2(1) and 26 extends to discrimination on the grounds of sexual orientation.[166] While the HRC has not explicitly stated that gender identity is a form of other status within the meaning of Articles 2(1) and 26, the well-established principles of universality and indivisibility mean that the CESCR's interpretation of Article 2(2) ICESCR should apply equally to Article 2(1) ICCPR. Similar rulings have been made by the European Court of Human Rights, which has consistently affirmed that the general prohibition

165 See above, note 1, Para 32.

166 *Toonen v Australia*, Human Rights Committee, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992, 1994, Para. 8.7.

on discrimination contained in Article 14 of the Convention includes discrimination on the grounds of sexual orientation.[167]

Cultural Attitudes and the Position of LGBT Persons in Society

Despite Moldova's obligations under the ICCPR, ICESCR, EHRC and other human rights instruments, discrimination against lesbian, gay, bisexual and transgender (LGBT) persons persists. As a consequence of high levels of social prejudice, stigma and associated discrimination, the total number of LGBT persons in Moldova is unknown. Many individuals are unwilling to report cases of discrimination, either because they do not believe that the issue will be addressed,[168] or for fear of disclosing their identities. As one man interviewed by the Equal Rights Trust testified:

> *My ex-wife refused to let me meet my son. She told me that if I insisted, she would tell all our relatives and acquaintances about my sexual orientation. I became depressed and contemplated suicide. I could not see my child. After some time my son contacted me. We meet sometimes without being noticed, but I'm constantly afraid.*[169]

Social attitudes towards sexual and gender minorities are overwhelmingly negative and LGBT persons face prejudice in many areas of life. Just 1.7% of respondents to a 2014 survey by the Institute for Public Policy (IPP) indicated that they would be willing to accept an LGBT person as a neighbour, friend, co-worker or family member, 0.3% less than 2010.[170] A large proportion of respondents (69%) held negative opinions of LGBT persons, describing them as "immoral" and "perverse".[171] A survey questioning pub-

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167 *S. L. v Austria,* European Court of Human Rights, Application No. 45330/99, 9 January 2003, Para. 37.

168 GENDERDOC-M, *Report on Homophobic and Transphobic Hate Crimes and Incidents in Moldova*, 2013, p. 9, available at: http://www.ilga-europe.org/sites/default/files/Attachments/moldova.pdf.

169 Equal Rights Trust interview with V., 17 July 2015, Bălți.

170 See above, note 40, p. 30.

171 Institute for Public Policy, *The Phenomenon of Discrimination in Moldova: Perception of Citizens*, 2014, p. 24, available at: http://egalitate.md/media/files/files/sondaj_sociologic___fenomenul_discrimin__rii_ain_republica_moldova-_percep_aia_cet___aeanului___3832326.pdf.

lic attitudes toward minority groups in Moldova found that LGBT persons experience discrimination in employment (18%), at the workplace (17%), and in educational and medical institutions (12% and 8% respectively).[172] During interviews conducted by the Equal Rights Trust in 2015 many individuals gave personal testimony supporting this conclusion. One transwoman, from Chișinău told interviewers that she often felt "humiliated and discriminated by colleagues and administration" in her place of work.[173] A lesbian woman described being told by a doctor that her stomach pain was caused by her sexuality:

> *He asked me if I was pregnant. I said I cannot be pregnant because I have relations with a woman, not a man. He then told me: Of course, with such a way of life that you have it and it's normal to have pain. To be healthy, women should have relations with a man.*[174]

A survey conducted in 2015, found that LGBT persons were the most rejected social group in Moldovan society.[175] Over half of those surveyed indicated that they would exclude LGBT persons from the country.[176] During group discussions in this survey, participants expressed extreme anti-LGBT sentiments. One member of the group discussed the adoption of the Law on Ensuring Equality, criticising the EU for making the legal prohibition of discrimination on the basis of sexual orientation a condition for EU membership.[177] Others cited religion and family values in their dismissal of same-sex sexual relations:

> *These are persons who do not want to reproduce themselves. Well, men with men, and women with women. Where for them to take children from, from the orphanage? They would take a boy or a girl from the orphanage, and the child see that the father kisses the father.*

172 *Ibid*., p. 30.

173 Equal Rights Trust interview with C., 12 June 2015, Chișinău.

174 Equal Rights Trust interview with L., 13 July 2015, Tighina.

175 See above, note 3, p. 18.

176 *Ibid*.

177 *Ibid*., p. 31.

> *And what does the boy see in this family, he would follow the example of the parents.*[178]

Prejudice towards the LGBT community has been exacerbated by the words and actions of prominent figures in Moldovan society. In September 2015, Bishop Marchel of the Moldovan Orthodox Church was acquitted of hate speech by the Supreme Court of Justice.[179] The Bishop had suggested that 92% of LGBT individuals have HIV, calling for their exclusion from educational and medical institutions.[180] In 2014, a pastor appearing alongside LGBT rights activists on a televised talk show was quoted as saying "Homosexuality is a manifestation of animality (…) you don't understand the Bible".[181] Likewise, politicians have criticised the LGBT community. As one individual interviewed for this report noted:

> *I work at GENDERDOC-M as a press officer. One of my basic functions is to monitor the media for recordings and material written about LGBT people or the organisation. On 24 May 2015 I saw a party political broadcast of the Socialist Party. The advert, produced in Romanian and Russian, showed the President of the Socialist Party of Moldova, Mr. Igor Dodon, accusing the government of "destroying our values and traditional Christian morality". In the background were videos of the Equality March organised by GENDERDOC-M on 17 May in central Chișinău.*[182]

Tensions concerning the rights of sexual and gender minorities in Moldova were at their highest during the passage of the 2012 Law on Ensuring Equality. In October 2007, a working group was established to create a Draft Law

178 *Ibid*., p. 31.

179 Supreme Court of Justice, Decision No. 2ra-1448/15 of 16 September 2015, available at: http://jurisprudenta.csj.md/search_col_civil.php?id=22002.

180 Amnesty International, *Annual Report: The State of the World's Human Rights*, 2016, p. 254, available at: https://www.amnesty.org/en/latest/research/2016/02/annual-report-201516.

181 Ghilaşcu, N., "A Priest Criticised LGBT Affirming that Homosexuality is a "măgăreală"", *Discriminare Media*, 18 June 2014, available at: http://discriminare.md/un-preot-a-criticat-comunitatea-lgbt-afirmand-ca-homosexualitatea-este-o-magareala.

182 Equal Rights Trust interview with Eugen, 29 May 2015, Chișinău.

on Preventing and Combating Discrimination, which was completed in June 2008.[183] Under Article 1 of the Draft Law sexual orientation was included as a protected characteristic;[184] notably, gender identity was not included in the list of characteristics.

In 2011, as debate around it increased, the Draft Law was attacked by politicians who criticised the inclusion of sexual orientation as a protected ground. Vladimir Voronin, former President of Moldova, argued that the inclusion of sexual orientation in the Law would violate traditional family values and religious beliefs.[185] Likewise, Mihai Ghimpu, a former interim President of the Republic, expressed resentment toward the law:

> *It's better to love a woman than a man, but I voted for decriminalisation of homosexuality because it was one of the conditions to join the Council of Europe. I saw how the eyes of several MPs were shining when it happened. I thought, "Lord! How can I vote for this? (…) Homosexuality is a deviation, nature is nature, but we don't have to put them in the frontline. We don't take patients from psychiatric institutions to bring them on our main square (…) I will not vote for this law.*[186]

In April 2011, co-rapporteurs of the Council of Europe Monitoring Committee published an information note on Moldova that deplored the use of homophobic language in discussions surrounding the Draft.[187] Similarly, the CESCR criticised "opinions expressed by certain sectors in the society,

183 Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *Comments on the Draft Law of the Republic of Moldova on Preventing and Combating Discrimination*, 2008, p. 2, available at: http://www.legislationline.org/documents/id/15353.

184 *Ibid*., p. 8.

185 GENDERDOC-M and ILGA Europe, *Report on Homophobic Speech by Members of Moldova's Parliament*, 2011, p. 11, available at: http://old.ilga-europe.org/home/guide_europe/country_by_country/moldova/report_on_homophobic_speech_by_members_of_moldova_s_parliament.

186 *Ibid*., p. 12.

187 Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, *Honouring of Obligations and Commitments by Moldova*, 2011, Para 70, available at: http://assembly.coe.int/CommitteeDocs/2011/amondoc13rev_2011.pdf.

including public anti-lesbian, gay, bisexual and transgender (LGBT) statements by high-level politicians", following the submission of the Draft Law to Parliament.[188] The CESCR urged Moldova to "take measures to eliminate discrimination against LGBT people", including the adoption of a "comprehensive anti-discrimination bill".[189] On 30 March, the government withdrew the Draft Law from parliamentary consideration to allow for additional public consultations.[190]

The Law on Ensuring Equality was eventually adopted on 25 May 2012,[191] with both sexual orientation and gender identity omitted from the list of protected characteristics under Article 1.[192] The change to exclude sexual orientation from Article 1 was made despite Moldova's acceptance of several recommendations to prevent discrimination and improve protection of LGBT persons during its participation in the Universal Periodic Review in 2011.[193]

Legal and Policy Framework

As noted above, state parties to the ICCPR and ICESCR are obligated to ensure non-discrimination on the grounds of sexual orientation and gender identity. This requirement goes further than the removal of laws that criminalise or otherwise discriminate against LGBT persons: states must adopt measures to ensure that persons are protected from discrimination in the exercise of their rights.[194] Alongside the repeal of discriminatory laws and prevention of discrimination in the enjoyment of other human rights, states should enact "comprehensive anti-discrimination legislation that includes sexual orien-

188 See above, note 30, Para 7.

189 *Ibid*.

190 See above, note 187.

191 See above, note 17, p. 7.

192 See above, note 1, Article 1.

193 United Nations Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Moldova*, UN Doc. A/HRC/19/18, 2011.

194 See for example, (in respect to freedom of association) Human Rights Council, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, *Addendum*, UN Doc. A/HRC/26/29/Add.1, 2013, Para 277; and (in respect to freedom from torture and ill-treatment) Committee against Torture, *General Comment No. 2, Implementation of Article 2 by States parties*, UN Doc. CAT/C/GC/2, 2008, Para 21; See above, note 1, Para 32.

tation and gender identity among protected grounds",[195] in order to ensure LGBT persons equality of access in all areas of life regulated by law, including healthcare, education, employment, housing and social security.

As discussed in Part 3 of this report, Moldova has a poor legal framework protecting LGBT persons from discrimination. Neither sexual orientation nor gender identity is included as a protected characteristic under Article 16 of the Constitution, which provides a right to non-discrimination:

> *All citizens of the Republic of Moldova are equal before the law and the public authorities, without any discrimination as to race, nationality, ethnic origin, language, religion, sex, political choice, personal property or social origin.*[196]

This closed list of grounds necessarily excludes certain groups – including, but not limited to, LGBT persons – from protection, contrary to the requirements of international law and the recommendations of UN Treaty bodies.[197]

The Constitutional guarantee of non-discrimination is supplemented by the 2012 Law on Ensuring Equality. Article 2 of the Law defines "discrimination", extending protection to those grounds listed under Article 1(1); namely, "race, colour, nationality, ethnic origin, language, religion or belief, sex, age, disability, political affiliation or any other similar criteria."[198] As discussed above, references to sexual orientation were removed from Article 1(1) of the Draft Law following extensive debate and criticism from groups within Moldova,[199] while gender identity was never mooted as a protected characteristic.

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195 Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights*: *Discrimination and Violence against Individuals based on their Sexual Orientation and Gender Identity*, UN Doc. A/HRC/29/23, 2015, Para 16.

196 Constitution of the Republic of Moldova, 29 July 1994, Article 16.

197 See above, note 30, Para 7.

198 See above, note 14, Article 1(1).

199 Equal Rights Trust, *Submission of the Equal Rights Trust on the Draft Law on Equal Opportunities,* 2012, available at: http://www.equalrightstrust.org/ertdocumentbank/120517%20Letter%20to%20PM%20Filat%20on%20Law%20on%20Equal%20Opportunities.pdf.

However, unlike the list of protected characteristics contained in Article 16 of the Constitution, the list in Article 1(1) of the Law on Ensuring Equality is left open-ended, by virtue of the words "or any other similar criteria"; as such, it is possible for the Moldovan courts to conclude that grounds which are not explicitly stated in the Law are protected. The Council on the Prevention and Elimination of Discrimination and Ensuring Equality has held that sexual orientation is a protected characteristic within the meaning of Article 1(1).[200]

Article 7 of the Law on Ensuring Equality explicitly recognises the right to non-discrimination on the basis of sexual orientation in the field of employment.[201] To this end, the Law is technically consistent with Council Directive 2000/78/EC,[202] and thus with the requirements of Article 30 of the EU-Moldova Association Agreement.[203] However, this does not go far enough to meet Moldova's obligations under international law. International law recognises the universality and indivisibility of human rights and no Treaty Body has acknowledged the existence of a hierarchy of grounds in respect of the level of afforded protection.[204] On the contrary, under the ICCPR, states are required to ensure the enjoyment of Convention rights "without distinction of any kind". The Declaration of Principles on Equality states that "[l]egislation must provide for equal protection from discrimination regardless of the ground or combination of grounds concerned."[205]

Under Article 77(d) of the Criminal Code, social, national, racial, or religious hatred is to be considered an aggravating factor in the commission of a crime. Neither gender identity nor sexual orientation is included within the scope of this provision. Under Principle 7 of the Declaration of Principles on Equality, any violence committed on the basis of a personal characteristic constitutes a violation of the right to equality. This position has recently drawn support

200 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 028/13 of 21 January 2014, available at: http://www.egalitate.md/media/files/files/decizie_conf_cauza_nr_028_2013_bn_3543907.pdf.

201 There is, however, no explicit reference to gender identity.

202 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

203 European Union – Moldova Association Agreement, 2014, Article 30.

204 See above, note 199.

205 *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 6.

from the Human Rights Committee, which has recommended the application of aggravated circumstances provisions to "violence motivated by the victim's sexual orientation or gender identity."[206]

Specific Laws Affecting Trans Rights

Article 66(2) of the Law on Civil Status Documents provides that:

> *The State Registry Office satisfies the request of modification, correction or completion of a civil status document if there is no litigation between the parties concerned in cases when (…) (c) [an] applicant submits an official document confirming his or her sex change.*[207]

This is the only provision in Moldovan law directly concerning the right to legal gender recognition.[208] A Gender Dysphoria Commission has been established under the Ministry of Health which is responsible for issuing "medical certificates confirming a transsexualism diagnosis" and making recommendations for civil status documents to be amended in line with an individual's recognised gender identity.[209] In 2012, two transgender women won a case in the Chişinău Court of Appeal after the State Registry Office refused to make the necessary changes to their birth certificates, despite an official certificate being issued by the Commission.[210] The Ministry of Justice reportedly placed pressure on the Court, leading to a revision of the ruling on technical grounds.[211] This decision was criticised by the Working Group on the Issue of Discrimination against Women in Law and Practice which, in 2013, noted their concerns:

> *[T]ransgender women (…) are unable to amend identity documents following hormonal therapy or sexual cor-*

206 Human Rights Committee, *Concluding Observations: Russia*, UN Doc. CCPR/C/RUS/CO/7, 28 April 2015, Para 10(a).

207 Law on Civil Status Documents (Law No. 100 of 26 April 2001), Article 66(2)(c).

208 Transgender Europe, *For the Record: Documenting Violence Against Trans People*, 2015, p. 61, available at: http://tgeu.org/wp-content/uploads/2015/11/TGEU_protrans_publication.pdf.

209 *Ibid*., p. 62.

210 Due to its confidentiality the case is not available online.

211 *Ibid*.

> *rection because of court decisions which are reversed due to Government intervention. These actions deny full enjoyment of human rights.*[212]

On 1 November 2012, the Supreme Court of Justice adopted Recommendation No.16 on the procedure of examining requests concerning civil status documents after gender reassignment.[213] According to that recommendation, homosexual and transgender persons are protected under Article 8 of the European Convention on Human Rights. Consequently, the "right to change one's sex and name is a component of the right to respect for private life."[214] Although this is a positive development, civil society organisations report that the Moldovan authorities:

> *[C]ontinue to fail to understand the human-rights implications of transgender issues and lack the political will to implement a transparent, accessible and quick legal gender-recognition mechanism.*[215]

The recommendation of the Supreme Court of Justice is non-binding. Many trans-persons in Moldova therefore face difficulties securing legal gender recognition.

Discriminatory Legal Provisions

Several provisions in Moldovan legislation discriminate against LGBT persons. Article 48 of the Constitution states that "the family is founded on the freely consented marriage of man and women", while Article 1(2) of the Law on Ensuring Equality provides that nothing within the Act is to affect the position that "family that is based on free marriage between man and woman". A

212 Human Rights Council, *Report of the Working Group on the Issue of Discrimination against Women in Law and in Practice*, *Addendum*, UN Doc. A/HRC/23/50/Add.1, 2013, Para 60.

213 Supreme Court of Justice, Recommendation No. 16 of 2012, available at: http://jurisprudenta.csj.md/search_rec_csj.php?id=33.

214 Civil Rights Defenders, *Legal Developments Strengthens the Rights of LGBT People*, 2012, available at: https://www.civilrightsdefenders.org/news/legal-developments-strengthens-the-rights-of-lgbt-people.

215 See above, note 208, p. 63.

similar provision can be found under Article 2 of the Family Code.[216] Further, under Article 15(h) of the Family Code, same-sex marriage is expressly prohibited. Although recognition of same-sex marriage is not strictly required under the ICCPR,[217] the CESCR has urged states to provide legal recognition of same-sex civil unions.[218] Moreover, in *Oliari and Others,* the European Court of Human Rights emphasised that "same-sex couples are in need of legal recognition and protection of their relationship".[219] This recognition is not provided in Moldovan law.

The prohibition of same-sex marriage has negative consequences in a number of other areas of life. According to Moldovan legislation, partners in same-sex relationships can inherit each other's property only based on their will (testamentary succession), because legal succession applies only to married couples (husband and wife).[220] Moreover, joint-property provisions only apply to married couples.[221] Under the Law on Adoption, an adopter is a person or family (interpreted, in line with the Family Code as a man and a woman) which has applied for permission to adopt and has been registered by the competent authorities.[222] This means that same-sex partners cannot adopt a child, as they cannot legally create a family.

The prohibition of same-sex marriage and lack of legislation recognising same-sex civil partnerships can also have serious consequences for non-citizens. Under Article 38 of the Law on Foreigners, "the right to temporary residence may be granted to foreigners married to citizens of the Republic of Moldova residing in the Republic of Moldova". As same-sex couples cannot legally marry, non-Moldovan partners of Moldovan nationals cannot apply for a spousal residency permit. Similarly, as the Law on Citizenship does not provide for the naturalisa-

216 Family Code of the Republic of Moldova, (Code No. 1316 of 26 October 2000), Article 2.

217 *Joslin v New Zealand*, Human Rights Committee, Communication No. 902/1999, UN Doc. CCPR/C/75/D/902/1999, 2002, Para 8.3.

218 See Committee on Economic, Social and Cultural Rights, *Concluding Observations: Bulgaria*, UN Doc. E/C.12/BGR/CO/4-5, 30 November 2012.

219 *Oliari and Others v Italy*, European Court of Human Rights, Application Nos. 18766/11 and 36030/11, 21 July 2015, Para 165.

220 Civil Code of the Republic of Moldova (Code No. 1007 of 6 June 2002), Article 1500.

221 See above, note 216, Articles 19 and 20.

222 Law on Adoption (Law No. 99 of 28 May 2010), Article 2.

tion of same-sex partners of Moldovan nationals,[223] gay couples are forced to seek alternative arrangements. As one interviewee explained:

> *I'm gay. And I have had a boyfriend for almost three years. He lives in another country. We thought that the only option for us was that he comes to Moldova, so we can live together. We have been saving money for almost three years. But the problem is that he is from the Philippines. If he were from somewhere closer to Europe, for example, I think it would be easier. But, unfortunately, it is not. The only Philippine Embassy is located in Romania. We both work and try to save money. If he was a girl, we could get married, and he would have stayed with me, and I do not know what to do. The only way for us is to go to another more tolerant country where we can live together, although it involves some complexity and time. At the moment, we have to spend a lot of money visiting each other to spend little time together.*[224]

Article 172 of Criminal Code states that:

> *[H]omosexuality or satisfying sexual needs in perverted forms committed through the physical or mental coercion of the person or by taking advantage of the person's incapacity to defend him or herself or to express his/her will shall be punished by imprisonment for 3 to 5 years.*[225]

The Government noted during its 2010 Universal Periodic Review that homosexuality among consenting adults is no longer criminalised.[226] However, the rationale for differentiating rape (Article 171) and "homosexual rape" (Arti-

223 Law on Citizenship of the Republic of Moldova (Law No. 1024 of 2 June 2000), Article 17(1)(c), which states that citizenship may be granted upon request to a foreigner having his legal domicile on the territory of the Republic of Moldova who has been married to a citizen of the Republic of Moldova for at least three years.

224 Equal Rights Trust interview with L, 31 March 2015, Chişinău.

225 See Criminal Code, above, note 18, Article 172.

226 See above, note 193, Para. 15.

cle 172) in the Criminal Code remains unclear. Concerns have been expressed that this differentiation exacerbates bias against homosexuality, particularly by law enforcement agencies and in the judicial system.[227]

In recent years, several regional ordinances (such as the one passed in Drochia in 2012, which is cited in the case study below)[228] and a national law prohibiting so-called "homosexual propaganda" have been adopted in Moldova.[229] While these ordinances have subsequently been repealed or struck down,[230] their enactment is a cause for concern.

Case Study: Regional Ordinance on "Propaganda of Non-Tradition Sexual Orientations", Adopted in Drochia, 2012

(Extract, unofficial translation)

Under Decision No. 2/14 of March 27, 2012, the City Council of Drochia, proclaimed "the city of Drochia as a territory of support for the Orthodox Church of Moldova and non-admission of the propaganda of non-traditional sexual orientations."

In accordance with the European Charter of Local Self-Government, (…) the City Council of Drochia decides:

1. *To declare the city of Drochia as a territory of special support for the Orthodox Church of Moldova in the life, history and culture of the community residents.*

227 See above, note 212, Para. 17.

228 Drochia City Council Decision declaring the City Drochia's Support for the Orthodox Church of Moldova and Prohibiting Propaganda of Non-Traditional Sexual Orientations (Council Decision No. 2/14 of 27 March 2012), available at: http://www.primariadrochia.md/files/5373_biserica_ortodox%C4%83.doc.

229 See GENDERDOC-M, *Report on the State of LGBT Peoples' Rights in Moldova*, 2012, p. 1, available at: http://gdm.md/files/untitled%20folder/report-GENDERDOC-M-2012_eng.pdf.

230 European Commission for Democracy Through Law (Venice Commission), *Opinion on the Issue of the Prohibition of so-called "Propaganda of Homosexuality" in the Light of Recent Legislation in some Member States of the Council of Europe*, 2013, Para 17, available at: http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)022-e.

2. *To acknowledge a special importance and primary role of the Orthodox Church of Moldova in the life, history and culture of the residents of Drochia city.*
3. *To interdict in Drochia city, the propaganda of non-traditional sexual orientations in any forms imposed by any organisation.*
4. *To call on other public authorities and non-government organisations to support this initiative.*

On 23 May 2013, the Moldovan Parliament adopted Law No. 117, amending the Contravention Code to prohibit the distribution of public information promoting prostitution, paedophilia, pornography or relationships not specified in the Family Code.[231] Article 90 of the Law, which penalised the "propagation of any relations other than those related to marriage and family in accordance with the Constitution and the Family Code",[232] was severely criticised by NGOs and international bodies who argued that the law would limit the work of LGBT groups and damage freedom of expression.[233] On 11 October 2013, the amendment was repealed; a decision praised by LGBT organisations.[234]

Discriminatory Limitation of the Rights to Freedom of Expression and Assembly

In 2012, the European Court of Human Rights heard the case of *GENDERDOC-M v Moldova*.[235] The case concerned an application made to Chişinău Municipal Council for permission to hold a peaceful demonstration to encourage the adoption of anti-discrimination laws protecting LGBT people. The application was denied. Finding that "the reason for the ban imposed

231 Law Amending the Contravention Code (Law No. 117 of 23 May 2013).

232 *Ibid.*

233 Office of the High Commissioner for Human Rights, *Special Procedures of the Human Rights Council, Joint Urgent Appeal No. MDA 4/2013*, 2013, p. 2, available at: http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2015/02/Correspondence-SR-Moldova-4-2013-eng.pdf.

234 ILGA-Europe, "ILGA-Europe Welcomes the Abolition on 'Homosexual Propaganda' Law in Moldova", 15 October 2013, available at: http://www.ilga-europe.org/resources/news/latest-news/ilga-europe-welcomes-abolition-homosexual-propaganda-law-moldova.

235 *GENDERDOC-M v Moldova,* European Court of Human Rights, Application No. 9106/06, 12 June 2012.

on the event proposed by the applicant was the authorities' disapproval of demonstrations which they considered to promote homosexuality," the Court held that there had been a violation of Article 14 in conjunction with Article 11 of the Convention.[236]

Since the Court's ruling, the right to freedom of assembly in Moldova has been better observed. In 2013, 2014 and 2015 an annual Pride Festival was successfully organised. In 2013, a march consisting of between 100 and 130 participants took place in Chișinău on the International Day against Homophobia, Biphobia and Transphobia. Moldovan civil society responded positively to the actions of the police during the event, reporting that several counter-demonstrators were arrested and that LGBT activists were protected.[237] This was the first time that the location of the LGBT march did not have to be altered.[238] In response to the 2015 Pride Parade, a representative of GENDERDOC-M has reported that the State fulfilled its obligations:

> *[If] we're are talking about the Pride Festival, we must mention what is most important to us in this case. First, the fact that the march took place. The march took place not only because of our will and courage, but also because the state, through its enforcement bodies, fulfilled its obligations towards LGBT citizens, by providing conditions for realisation of their right to freedom of assembly, ie the march for equality. And this, as we know, is more important than any views of any mass-media and their reporters. Everything was well organised and very safe.*[239]

Despite these positive developments, counter-demonstrators still appeared at the march, throwing eggs at participants and shouting homophobic abuse.[240]

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236 *Ibid*., Paras 54–55.

237 GENDERDOC-M, *Report on the Situation with Observance of Rights of LGBT People in the Republic of Moldova*, 2014, p. 8, available at: http://gdm.md/files/untitled%20folder/raport-GENDERDOC-M-2014_english.pdf.

238 *Ibid*.

239 Pagola, A., "The March for Equality", *GENDERDOC*-M, 20 March 2015, available at: http://gdm.md/ro/content/marsul-egalitatii.

240 *Ibid*.

In July 2015, a separate protest was held in Bălți. Although police informed advocates that they would provide protection, several requests were made to modify arrangements, including that participants should not carry a rainbow flag, and that the march be held 200 metres away from the planned location. Both of these requests were rejected, and the march went ahead as planned.[241] Additionally, a GENDERDOC-M staff member told Equal Rights Trust that several mini-vans which had been booked to carry participants were cancelled. When the head of the mini-bus company was contacted, GENDERDOC-M was told that police and anti-corruption staff had threatened the bus company, warning the owner that "he would have big problems" unless the coaches were cancelled.[242]

Discrimination by State Agents

Sexual and gender minorities in Moldova are often subjected to abuse at the hands of state actors, while abuses of the rights of LGBT persons by private actors go unpunished by law enforcement agencies.

Civil society organisations have noted that allegations of hate speech and hate crimes are not taken seriously by the Prosecutor's Office. On the contrary, homophobic and transphobic discourse is common.[243] Where hate crimes are reported, complaints are often rejected for a lack of evidence, or investigated as ordinary offences under the Criminal Code.[244]

Additionally, although homosexuality is legal in Moldova, many LGBT individuals are dissuaded from reporting crimes. In one instance, documented by the LGBT organisation GENDERDOC-M, a gay man who had been beaten and robbed was advised against bringing his attackers to justice:

> *When a gay man named R. was hunted, beaten and robbed because of his sexual orientation by four unknown men in October, he filed a formal complaint to the Buiucani Po-*

241 GENDERDOC-M, *Report on the LGBT Rights Situation in the Republic of Moldova*, 2015, Para 7.2, available at: http://gdm.md/files/untitled%20folder/report-GENDERDOC-M-2015_English.pdf.

242 Equal Rights Trust interview with Elena Mitieva, 24 May 2015, Chișinău.

243 See above, note 168, pp. 10–11.

244 *Ibid*., p. 11.

> *lice Commissariat of Chişinău (…) R. was subjected to secondary victimisation by the police officers who attempted to convince him not to file a complaint against assailants by telling him that the entire investigation would cause him emotional and other distress.*[245]

Amnesty International has reported that LGBT persons in Moldova face difficulties gaining access to justice, with police officers appearing to be primarily concerned with a victim's sexuality rather than any crime committed against them.[246] In the same report, Amnesty found that gay men may be subject to "blackmail and extortion by corrupt police at known gay meeting points," who exploit fears of exposure.[247] In September 2015, a gay man from Tiraspol who arranged to meet with a stranger through a dating website was met by an undercover policeman.[248] Having been taken to the police station, the man was instructed to provide police with a list of his gay contacts as "all gays are paedophiles and should be monitored". The man was threatened and told that his arrest would be broadcast on the TV crime show "Territoriya 102". According to a GENDERDOC-M employee, interviewed by Equal Rights Trust researchers, the man is too afraid to seek legal assistance.[249]

Judicial attitudes toward LGBT persons in Moldova have also been criticised by civil society. In 2015, 13 reported cases of bias-motivated crimes were dismissed by courts, despite the apparent existence of sufficient evidence to warrant prosecution.[250] Even where cases have come to trial, the victim's sexual orientation is not viewed as an aggravating factor.[251] Further allegations have been made concerning political interference with the judicial process. In late 2015, a judge who prohibited a 2013 Pride march was dismissed from his post. He issued the following statement:

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245 *Ibid*., p. 12.

246 See above, note 150, p. 15.

247 *Ibid*.

248 See above, note 241, Para. 2.1.

249 Equal Rights Trust, interview with E., 30 September 2015, Tiraspol.

250 ILGA-Europe, *Annual Review, Moldova*, 2015, p. 118, available at: http://www.ilga-europe.org/sites/default/files/moldova_-_annual_review_2015.pdf.

251 See above, note 168, p. 3.

> The Chairman [of Chișinău Centru Court] invited me to his office and told me in a threatening tone but in informal language that the GENDERDOC-M Information Centre cannot be allowed to hold their march where they wanted to (…) He drew my attention to the fact that the case was under the supervision of the State Information and Security Service and the leadership of Supreme Court of Justice. During this discussion, as well as during other talks, with the Chairman, he would make clear references to certain catastrophic consequences for my career if I didn't execute his orders.[252]

Moreover, the judiciary has at times appeared unwilling to prevent homophobic slurs within the courtroom. During a trial in 2013, a GENDERDOC-M staff member was subjected to derogatory remarks in front of the presiding judge by members of the public attending the hearing.[253] The comments were recorded in the official minutes and a complaint was made to the court, and subsequently the Prosecutor's Office.[254] At time of writing, no information was available on whether the complaint had been considered.

Discriminatory Violence

The Moldovan LGBT community face violence and other forms of hate crime at the hands of members of the public. In 2013, LGBT group GENDERDOC-M documented 17 cases of bias-motivated crimes on the grounds of sexual orientation, with the majority committed against bisexual and gay men.[255] In total, six assaults were recorded, four of which involved men being lured to a private location through gay dating websites where they were subsequently attacked.[256] GENDERDOC-M also recorded public instances of violence. In 2013, two openly gay males were questioned about their sexual orientation before being punched in the face. [257] While the assault was taking place, one of the attackers left in a taxi before coming back with two more men, who joined in the attack. The police only arrived 45 minutes after being called. Two cases of "ex-

252 See above, note 241, Para. 1.2.

253 See above, note 168.

254 *Ibid.*

255 *Ibid*., p. 3.

256 *Ibid*., p. 6.

257 *Ibid*., p. 7.

treme physical violence" were documented.[258] In the first case, a gay man had his jaw broken, after meeting his attacker through a dating website. In the second, a 32-year-old man was assaulted for wearing "gay swimwear". In January 2015, a man was punched in the ribs after being called a sodomite on a bus in Chișinău. The man refused to go to the police, believing that his attacker would not be found.[259] Several individuals interviewed by the Equal Rights Trust in 2015 reported being subject to violence. One man was assaulted while travelling home from university.[260] Another, attacked by the group Occupy Paedophilia recalled: "they beat me, filmed me and uploaded the video to social networks indicating my sexual orientation"; despite the group leader being arrested, the video is still available on the internet.[261] In July 2015, a transgender woman was attending a birthday party with her husband. A man approached her along with several of his friends. After being repeatedly insulted, the woman asked to be left alone. She was subsequently beaten. When her husband intervened he was called a "pederast" and also beaten.[262]

Education

Both the Convention on the Rights of the Child and the Covenant on Economic, Social and Cultural Rights provide for the right to education,[263] to be ensured without discrimination,[264] including on the grounds of sexual orientation or gender identity.[265]

In a 2015 study, 52% of respondents considered LGBT persons to be one of the groups most exposed to discrimination,[266] and research for this report

258 *Ibid*., p. 6.

259 See above, note 241, Para. 3.5.

260 Equal Rights Trust interview with Colin Callisto Antonelli, 25 May 2015, Chișinău.

261 Equal Rights Trust interview with S., 26 March 2015, Chișinău.

262 Equal Rights Trust interview with X., 27 August, Anenii Noi town, Anenii Noi rayon.

263 Convention on the Rights of the Child, 1577 U.N.T.S. 3, 1989, Article 28; International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3, 1966, Article 13.

264 Convention on the Rights of the Child, Article 2; International Covenant on Economic, Social and Cultural Rights, Article 2.

265 Committee on the Rights of the Child, *General Comment No. 15: On the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health*, UN Doc. CRC/C/GC/15, 2013, Para 8; see above, note 1, Para 32.

266 See above, note 40, p. 26.

indicates that this is particularly true in relation to education. Testimony collected by Equal Rights Trust researchers illustrates how social stigma associated with sexuality and gender can lead directly to exclusion from the educational system:

> *When we go somewhere together, I frequently see scornful glances from men directed to my son. As a consequence, he practically does not leave the house at all, does not go to shops or other places where you have to interact with others – because his voice does not match his appearance. My son looks like a girl but his voice is masculine.*
>
> *For the same reason, school attendance has been poor in the last three years. My son left school in the eleventh grade. At school his classmates commented on his appearance. Teachers did not know how to react and did not understand what it was about. He could not concentrate on lessons, could not freely manifest himself because he was being talked about by his classmates (…) he was inhibited (…) Eventually, because of his absences he was expelled. This happened despite the fact that we presented a certificate from a psychologist describing this issue without giving a diagnosis. We discussed alternative methods of study, for example at home, but I was discouraged, being informed that the procedure is complicated and that the school does not have enough resources to provide training at home.*[267]

Prizmac Xenia, a young mother with a transgender child explained to our researchers the difficulties which the child faced in accessing education:

> *My child is trans-woman. She is 15 years old, has long hair and wears makeup regularly. She is very feminine. For this she is constantly harassed in school (…) Nobody wants to be friends with her or even interact. To avoid discrimination, she cannot be herself at school. She wears boy clothes*

267 Equal Rights Trust, interview with X., 20 April 2015, Chișinău.

> *and controls her behaviour. She cannot be how she feels and wants to drop out of school. Her biological father talks about morality and how a real man must act.*[268]

An interview given to a newspaper in November 2015 by the lesbian mother of a school-age child provides another indication of the role which homophobic prejudice can play in limiting educational access for children:

> *We have many gay families in Moldova, but usually they hide their relationship. They prefer that their parents and their neighbors do not know anything about their relationship. They do it primarily because they fear their children will be stigmatised. We, for example, we had to change school because Alexander's teacher found out about my relationship with a woman and, initially, tried to teach him how to talk to his mother so that she returns to his father. After seeing that it does not work, the teacher simply put him on the last bench and began to ignore him, although he was a very good student. We had to leave. It was harassment by the teacher. In the other school we did everything we could so that nobody could find out about my relationship. If in the first school I was an active member of the parents board, in the other school I tried to come only when it was urgently needed, so that my child could not suffer or have problems.*[269]

Access to Goods and Services

As a consequence of discriminatory laws and practices, many LGBT individuals in Moldova face difficulties accessing goods and services, with examples of discrimination noted in the reports of both NGOs and the press. In response to a 2015 survey, only 37.2% of respondents indicated that they thought LGBT persons should have equal access to goods and services.[270]

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268 Equal Rights Trust, interview with Prizmac Xenia, 1 May 2015, Chişinău.

269 Ciurca, A., "The Life of Rainbow Families", *Ziarul de Gardă*, 26 November 2015, available at: http://www.zdg.md/editia-print/social/viata-unei-familii-curcubeu.

270 See above, note 3, p. 33.

In 2012, a gay man was interviewed by the Centre for Information on Human Rights after being thrown out of a nightclub for kissing his boyfriend. Security approached the couple and told them to leave and never return to the club.[271] More recently, a man (A.G) and his gay friend were banned from a nightclub. The owner of the club informed the pair that because of their presence, he was losing business and they would no longer be allowed on the premises. A formal complaint was lodged with the police, who referred the case to the CPEDEE. Following a public hearing, in November 2015, the Council concluded that A.G. had been discriminated against on the basis of sexual orientation in accessing public goods and services.[272]

In 2014, the UN Special Rapporteur on Extreme Poverty and Human Rights noted that transgender persons in Moldova face discrimination and stigmatisation, impeding their ability to access goods and services and lift themselves out of poverty.[273] GEDERDOC-M provided the example of a 36 year old transsexual woman, who was refused access to the notary office and access to credit services.[274] Despite obtaining official documents which showed her name and gender identity, the bank initially refused her service:

> *In Moldova, the personal state identity number is used almost everywhere where people are required to present IDs. This number never changes even if one has changed their name and gender (…) [T]he bank clerk informed her of the fact that the presented personal state identity number belonged to a different person according to their database. The woman was accused of forgery and denied banking services. She had to disclose her transgender status in order to explain the situation.*[275]

271 Scutaru, T., "Driven From a Nightclub for Being Gay", *Discriminare Media*, 10 December 2012, available at: http://discriminare.md/izgoniti-dintr-un-club-de-noapte-pentru-ca-sunt-homosexuali.

272 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 329/15 of 20 November 2015, available at: http://egalitate.md/media/files/files/decizie_329_15_depersonalizat_8041531.pdf.

273 See above, note 84, Para 24.

274 See above, note 237.

275 *Ibid*.

The report notes that after disclosing her transgender status, the woman was "humiliated by the bank employee in front of other customers".[276]

Conclusion

LGBT persons in Moldova experience high levels of discrimination and stigma. A combination of weak law enforcement in response to crimes against them, an inadequate legislative framework providing protection from discrimination and the discriminatory statements of public and religious officials contribute to the vilification and denigration of sexual and gender minorities within the country. Recent surveys indicate extremely low levels of societal acceptance of gender and sexual minorities. As a consequence, legislation has been adopted prohibiting "gay-propaganda". However, Moldova has made some progress in relation to LGBT rights in recent years. The repeal of "gay-propaganda" laws and regional ordinances and relaxation of requirements concerning Pride Marches are positive developments which must be encouraged. However, LGBT persons in Moldova still face significant discrimination in many areas of life.

2.3 Discrimination on the Basis of Health Status

Health status is a well-recognised ground of discrimination in international law. The CESCR has recognised that Moldova and other states party to the ICESCR are required to guarantee all of the economic, social and cultural rights in the Covenant without discrimination on the basis of health status, including HIV status.[277] In addition, the UN Commission on Human Rights has stated that the term "or other status" in non-discrimination provisions in international human rights texts can be interpreted to cover health status, including HIV/AIDS and that therefore "discrimination on the basis of AIDS or HIV status, actual or presumed, is prohibited by existing international human rights standards".[278] As such, Moldova is required to guarantee all of the civil and political rights in the ICCPR without discrimination on the basis of health status, by virtue of Article 2(1) (which uses the term "other status"). Simi-

276 *Ibid*.

277 See above, note 1, Para 33.

278 United Nations Commission on Human Rights, *Report on the Fifty-First Session (30 January – 10 March 1995)*, UN Doc. E/CN.4/1995/176, 1995, Para 1.

larly, under Article 26 of the ICCPR, Moldova is required to ensure that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination" on grounds including on health status. Further, the ECHR requires Moldova to prohibit discrimination based on health status in respect to all Convention rights, by virtue of Article 14, as interpreted by the European Court of Human Rights.[279]

2.3.1 Discrimination on the Basis of HIV Status

HIV is a significant public health problem in Moldova. As of 1 January 2014, 8,557 cumulative cases of HIV infection had been registered in the country.[280] By the end of 2013, HIV prevalence (the number of people living with HIV) was 173.43 cases per hundred thousand.[281] There was a substantial regional disparity, with the rate on the right bank being 129.89 per hundred thousand, while in the eastern territories it was 463.25 per hundred thousand.[282] During 2013, the incidence of HIV across the country (i.e. new cases) was 17.99 cases per hundred thousand people.[283] The incidence in the "right bank" territories was 13.68 per hundred thousand, while it was 46.91 per hundred thousand in the eastern territories.[284] Incidence and prevalence rates of HIV infection are particularly high in the eastern territories, representing some of the highest levels in Europe.[285]

Prejudice and stigma directed towards people living with HIV (PLWHIV) are common. Research conducted in 2014 revealed worrying levels of prejudice and stereotyping.[286] More than half of those sampled believed that children

279 See, for example, *I.B. v Greece,* European Court of Human Rights, Application No. 552/10, 3 October 2013.

280 Decision approving the National Monitoring and Evaluation Plan for National Programme on Prevention and Control of HIV / AIDS Infection and Sexually Transmitted Infections for 2014-2015 (Government Decision No. 806 of 10 June 2014), Para 6, available at: http://lex.justice.md/md/354938.

281 *Ibid.*

282 *Ibid.*

283 *Ibid*.

284 *Ibid.*

285 *Ibid.*

286 See above, note 40, p. 29.

with HIV should be taught in separate classes, while 38% believed that PLWHIV should not use public transport.[287] Stereotypes associated with HIV were also common, with 40% of respondents believing that those with HIV posed a risk of infection, and many associating PLWHIV with drug use, prostitution, "perversion" and "sin".[288] The same study found that the "integrated indicator of acceptance" of PLWHIV dropped from 5% in 2010, to only 1.7% in 2014,[289] representing a worrying decline in public acceptance of PLWHIV.

A more recent study reveals similar attitudes towards PLWHIV: 31.5% of respondents considered PWLHIV as an infection risk, and 20.8% of respondents considered PLWHIV as having a "disordered sexual life".[290] The most prevalent reaction was that of fear, with some respondents indicating that they would avoid PLWHIV,[291] and 31.3% of respondents considering that PLWHIV should be isolated to prevent the spread of infection.[292]

Legal and Policy Framework

In recent years, there have been a number of positive legal changes aiming to combat the discrimination suffered by PLWHIV. One of the most important changes is the amendment of the Law on Prevention of HIV/AIDS Infection in April 2012,[293] which creates a number of protections for persons living with HIV/AIDS (PLWHIVA). Article 22 of the Law prohibits any discrimination based on HIV status at all stages of employment, while further provisions prohibit discrimination based on HIV status in education,[294] healthcare,[295] and other services.[296] In addition, the amendments provided for new privacy and

287 *Ibid*.

288 *Ibid.*

289 *Ibid.*, p. 28.

290 See above, note 3, p. 34.

291 *Ibid.*, p. 37.

292 *Ibid.*, p. 35.

293 Law on Prevention of HIV/AIDS Infection (Law No. 23-XVI of 16 February 2007).

294 *Ibid.*, Article 23.

295 *Ibid.*, Article 25.

296 *Ibid.*, Article 26.

confidentiality[297] safeguards and removed travel and immigration barriers for PLWHIVA.[298] Mandatory HIV testing is also prohibited in a range of contexts, including employment, travel and access to healthcare and education.[299] The Law also addresses the particular vulnerability of women to discrimination based on HIV status: for example, in local programmes on the prevention of HIV there are activities which aim to strengthen the leadership and participation of women living with HIV.[300]

Discriminatory Legal and Policy Provisions

Despite the introduction of legal protections from discrimination in the Law on Prevention of HIV/AIDS Infection, a number of discriminatory or potentially discriminatory legal and policy provisions remain in force.

Article 30 of the Law on Asylum in the Republic of Moldova provides that"[a] sylum-seekers are provided with the right to a free medical examination (including anonymous examination) with a view to early detection of HIV and AIDS".[301] The effect of this testing, however, leaves asylum seekers vulnerable to discrimination based on HIV status, as the Government Decision on approving the Regulation of the Accommodation Centre[302] provides that the accommodation of asylum seekers in the Centre will be refused if, *inter alia*, they are suffering from TB in its active form[303] or other contagious infectious diseases.[304] Although no definition of "contagious infectious disease" is given in the Decision, there are reasonable grounds for concern that these provisions may lead to cases of discrimination. Representatives of the Bureau for Migration confirmed that mandatory HIV testing of asylum seekers is common.[305] If asylum seekers are then found to be HIV positive

297 *Ibid.*, Article 14.

298 *Ibid.*, Article 24.

299 *Ibid.*, Article 15.

300 *Ibid.*, Article 6(7).

301 See above, note 158, Article 30(2).

302 Decision approving the Regulation of the Accommodation Centre (Government Decision No. 1023 of 28 December 2012).

303 *Ibid.*, Para 11/1.

304 *Ibid.*, Para 11/2.

305 Official Letter from Bureau for Migration and Asylum No 5/4 0-87/16, 29 March 2016.

they are often refused accommodation or expelled from the Accommodation Centre.[306]

Treatment by Law Enforcement Agencies

The Equal Rights Trust interviewed Stas, a prisoner living with HIV, who indicated that the widespread stigma, prejudice and fear associated with HIV influenced the treatment of PLWHIV in penal institutions:

> *Prison staff and detainees are afraid of PLWHIV. As a result, prison authorities segregate PLWHIV and place them in separate cells to avoid contact between persons who do not have HIV and those with HIV. Sometimes we do not receive our antiretroviral treatment for between one and two weeks because prison staff often neglect to do this. This interruption of our treatment is dangerous because it can lead to a decline in our health and resistance to the antiretroviral treatment. As a result of such resistance, we will then need other medication.*[307]

Research conducted for this report also revealed instances of discrimination by penitentiary administration/staff. PLWHIV complained to Promo-LEX Association lawyers about poor detention conditions and a failure to provide special medical treatment to PLWHIV who are active drug users.[308]

Employment

Research conducted by the Soros Foundation in 2012 shows that PLWHIV have limited access to employment and are particularly vulnerable to discrimination in employment.[309] Of the PLWHIV surveyed, only one third were employed full or part-time.[310] Many of those who were currently unem-

306 *Ibid.*

307 Equal Rights Trust interview with Stast, 14 May 2015, Bălți city.

308 Equal Rights Trust focus group, 10 December 2015, Chișinău.

309 Malcoci, L., *The Socio-Economic Situation of HIV Infected Persons*, 2012, p. 93, available at: http://soros.md/files/publications/documents/Raport_Soros_2012_statut%20HIV.pdf.

310 *Ibid*.

ployed stated that they had been dismissed from their jobs because of their HIV status.[311]

The Law on Prevention of HIV/AIDS Infection prohibits discrimination based on HIV status in making employment decisions,[312] and prohibits employers and potential employers from demanding medical tests or confirming HIV testing.[313] However, the Equal Rights Trust found that employers continue to demand medical certificates, including details of HIV status, and then dismiss those found to have HIV or AIDS. One interviewee told the Trust's researchers that:

> *I found a job in a bakery. Once every six months all the employees are required to undergo medical examination, which includes testing for HIV/AIDS. As I am PLWHIV I provided my employer with a certificate confirming that I am healthy. The doctor was very surprised that the employers ask for such certificates, because the law prohibits any such requirement. When I went to the doctor in early 2015 to obtain my certificate I was seen by the nurse who I later learned was my colleague's wife. I later discovered that she had told her husband that I was HIV positive and that I had provided a false certificate to my employer. The other employees, including the director, then found out about my HIV status and on the same day I was forced to resign.*[314]

This finding reflects a similar finding from a 2012 report, which found that employers demanded medical records, test or certificates from prospective and current employees.[315]

There is also evidence of employment discrimination against PLWHIV in the military. In 2012, it was reported that a young man was not able to complete

311 *Ibid.*

312 See above, note 293, Article 22.

313 *Ibid*., Article 15.

314 Equal Rights Trust interview with И., 22 September 2015, Taraclia town.

315 See above, note 309.

his military service when his HIV status became known. The Medical Commission of the Military Centre ruled that he was incapable of performing his military service and excluded him from military records. His military ID was amended to indicate a code that could easily disclose his HIV status.[316]

As a result of their low levels of employment, the vast majority of PLWHIV live in poverty and their income level barely covers the costs of subsistence.[317] Focus groups conducted for this report identified a number of consequences arising from the relative poverty of PLWHIV, including for example that many are unable to afford the costs of formal identification.[318]

Education

PLWHIV can also experience considerable discrimination in education. Research conducted in 2012 found that when the HIV status of children is made public, educational institutions commonly refuse to accept children with HIV into kindergartens and schools.[319] According to a more recent study, 48.9% of respondents consider that children with HIV should study in separate classes or groups from the rest of children/students.[320]

Further, children with a HIV positive parent will often be stigmatised and become subject to discrimination by association if teachers or parents discover their parent's status, as demonstrated by the case of Elena.[321] Elena's son had a personal conflict with a classmate. The second boy's parents discovered that Elena and her husband are rights activists for PLWHIV, and then proceeded to inform all the other parents that Elena, her husband and son were HIV positive. As a result, Elena's son was isolated by his classmates and became depressed. Elena wrote and complained to the school director, but eventually

316 Discriminare Media, „Din cauza infecției HIV, a trebuit să renunțe la serviciul militar", 30 November 2012, available at: http://discriminare.md/din-cauza-infectiei-hiv-a-trebuit-sa-renunte-la-serviciul-militar-2.

317 See above, note 309, p. 111.

318 Equal Rights Trust, focus group, 9 July 2015, Chișinău.

319 See above, note 309, p. 87.

320 See above, note 3, p. 36.

321 Equal Rights Trust Interview with Elena, 21 July 2015, Chișinău.

transferred her son to another school. However, the information about Elena and her family rapidly spread to the new school.

Another example can be found in the case of L. In 2014, L.'s health condition deteriorated and she was diagnosed as HIV positive. Her doctors leaked the news of her health status; the other parents learned of L.'s diagnosis and informed the director of the kindergarten that if L. did not transfer her child they would collect signatures for a petition requiring L.'s child to transfer. As a result, the director telephoned L. and asked her to transfer her child to another kindergarten.[322]

Healthcare

Despite legal protections against discrimination based on HIV status in accessing healthcare, reports of HIV-positive patients being refused medical treatment and facing other discrimination in accessing healthcare is common.

According to a recent study on perceptions of equality and non-discrimination, about 50% of the respondents considered that PLWHIV should attend separate doctors, so as to avoid contact with other persons.[323] An alternative study, conducted in 2012, found that more than 40% of persons with HIV avoid going to the doctor because they are afraid of discrimination,[324] while another survey of 403 PLWHIV in Moldova conducted in 2010–2011, found that 44% of people infected with HIV felt discriminated against by medical institutions.[325] In the same study, 13.6% of respondents stated that they had no access to medical services, including dental services, because of their HIV status.[326]

Discrimination in health institutions is often manifested in doctors' attempts to avoid diagnosing or treating PLWHIV, especially where procedures involve

322 Equal Rights Trust Interview with L., 18 May 2015, Basarabeasca town.

323 See above, note 3, p. 36.

324 See above, note 309, p. 72.

325 League of People Living with HIV of Moldova, *The People Living with HIV Stigma Index for Moldova,* 2012, p. 33, available at: http://www.stigmaindex.org/sites/default/files/reports/Moldovan_PLHIV_Stigma_Index_Country_Assessment_2011.pdf.

326 *Ibid*., p. 8.

direct contact with a patient's blood. Researchers for the Soros foundation found cases in which doctors refused to perform surgery on PLWHIV after they revealed their health status to medical staff.[327] Additionally, doctors may take additional precautions if treating a patient they believe to be HIV positive.[328] Finally, researchers found that doctors may breach patient confidentiality regarding a person's HIV status.[329]

Focus groups conducted for this report revealed considerable discrimination against PLWHIV by doctors.[330] Participants indicated that on discovering that an individual is HIV positive, doctors might refuse medical assistance or refer PLWHIV to other specialists. PLWHIV also stated that they have been advised by doctors that they should not have children as the child is likely to be infected and therefore unable to attend kindergarten, while other doctors suggest that PLWHIV have short life expectancies and are therefore likely to die young, leaving their children uncared for. There were also reports of health workers taking unnecessary precautions during the childbirth of PLWHIV, for example by wearing two coats and two pairs of gloves.

Research for this report also found evidence that medical staff treat HIV positive patients aggressively or abusively. One person interviewed by Equal Rights Trust researchers stated:

> *At the end of 2014, I spoke to the surgeon in our city centre clinic and informed him I was HIV positive. He then became aggressive and asked me why this was not listed on my medical card. I tried to explain the situation, because I know that including this information on my medical card is not mandatory. The doctor and the nurse shouted at me, saying that they were at risk of infection and that I should have warned them of my status. I tried to explain that they were required to treat me as they treated other patients. I said I would complain to the di-*

327 See above, note 40, p. 33.

328 *Ibid*.

329 *Ibid*.

330 Equal Rights Trust focus group, 9 July 2015, Chișinău; Equal Rights Trust focus group, 14 May 2015, Bălți, city; Equal Rights Trust focus group, 18 May 2015, Basarabeasca town.

rector of the clinic because the doctor had written my health status on my medical card without my consent. After this, the doctor ripped up my documentation.[331]

Women living with HIV face discrimination during pregnancy and maternity. Pregnant women informed researchers from the Soros Foundation that they were advised to terminate their pregnancies, even at the final trimester, being told that the child might be born with disabilities or that they would be rejected by society.[332] Some respondents, particularly rural women, complied with the recommendations of doctors and terminated their pregnancies.[333] The case study presented below[334] illustrates some of the problems faced by pregnant women living with HIV when trying to access health services.

Case Study[335]

In 2013, a pregnant woman took a complaint to the CPEDEE against Orhei District Hospital and the Ministry of Health after doctors refused to treat her because of her HIV status. She was experiencing prenatal pain, but doctors refused to hospitalise her as she was not yet in labour and did not meet the conditions required to admit a person with HIV. She was forced to take public transport to the Mother and Child Institute in Chișinău where she gave birth the next day.

331 Equal Rights Trust Interview with O., 16 May 2015, Bălți city.

332 See above, note 309, p. 75.

333 *Ibid*.

334 Bujarov, S., "O gravidă HIV-pozitivă a depus o plângere împotriva Spitalului de la Orhei, pe motiv că aceştia au trimis-o cu microbuzul la Chișinău ca să nască", *Sănătate Info*, 12 May 2013, available at: http://e-sanatate.md/News/1691/o-gravida-hiv-pozitiva-a-depus-o-plangere-impotriva-spitalului-de-la-orhei-pe-motiv-ca-acestia-au-trimis-o-cu-microbuzul-la-chisinau-ca-sa-nasca; Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 021/2013 of 27 December 2013, available at: http://egalitate.md/media/files/files/decizie_2conf_din_27_12_2013_in_cauza_021_2013_t_r_3861503.pdf.

335 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Activity Report, 2013, p. 16, available at: http://egalitate.md/media/files/Moldovan-Equality-Body-Activity-Report-2013.doc.

On December 27, 2013, CPEDEE issued its decision, finding that the woman's treatment did not amount to discrimination based on HIV status. However, the CPEDEE did find that Order No. 100 of the Ministry of Health, which states that women living with HIV may only give birth in two specialised medical facilities, located in Chișinău and Bălți, unreasonably restricts the rights of pregnant women living with HIV. The CPEDEE recommended the repeal of Order No. 100, however, there is no data available on whether this recommendation was complied with.

Another woman, I., told us her story.[336] When she had contractions she came to the hospital. Once the doctors realised she was HIV positive they placed her in a separate room which she was told not to leave. She was informed that she should not shower because it posed a risk to others and that she should not communicate with others. Women living with HIV who participated in our focus groups said they often felt isolated and ignored during childbirth, as they were placed in rooms alone, with some stating that they were placed in very cold rooms with their newborn babies and felt forced to warm their babies with plastic bottles filled with hot water.[337]

As a result of these and other difficulties in accessing suitable reproductive healthcare, PLWHIV may abandon the idea of having a family. In a survey conducted by the League of People Living with HIV in Moldova, 35% of respondents indicated that they would not have children, while 13.6% refuse to marry.[338]

Unauthorised Disclosure of HIV Status

An additional problem facing PLWHIV is the failure of medical professionals to keep patients' health status confidential[339] despite the legal prohibi-

336 Equal Rights Trust interview with I., 21 July 2015, Chișinău.

337 Equal Rights Trust focus group, 9 July 2015, Chișinău; Equal Rights Trust focus group, 14 May 2015, Bălți city; Equal Rights Trust focus group, 18 May 2015, Basarabeasca town.

338 See above, note 325.

339 *Ibid*., p. 46.

tion on unauthorised disclosure.[340] This is particularly true in rural areas and for women.[341] A 2012 study have revealed that between 50% and 60% of respondents had their health status disclosed without their consent.[342] As a result of their fear of disclosure or discrimination when accessing health services, many PLWHIV do not visit doctors and do not register themselves at doctors.[343] The CESCR has noted this problem and urged Moldova to ensure the confidentiality of a patient's HIV status.[344]

The problem of unauthorised disclosure of health status is particularly acute in rural areas, where family doctors have a tendency to inform other residents of a village. Focus group respondents told Equal Rights Trust researchers that the results of such disclosure are devastating for PLWHIV, who are isolated, ignored and shunned, leaving some to eventually leave the village.[345] T.'s story is illustrative. In 2014, T.'s relatives learned that she was living with HIV, as her cousin who worked in a local health clinic informed them at a family event. T.'s family became aggressive and told T. to leave, as they thought she posed a risk of infection. T. went to Italy for 6 months, but on her return, stated that she felt as though she was an outcast in her village.[346] Stefan, another person interviewed by Equal Rights Trust researchers for this report, had a similar experience: after he was diagnosed with HIV, his wife saw his medical card and informed all his friends and neighbours. As a result, he felt that the whole village turned on him. Stefan told the Trust's researchers that he was unsure how long he could bear to remain in the village.[347]

There is a significant risk that fear of disclosure and consequential prejudice and discrimination leads people to avoid HIV testing, which in turn risks preventing PLWHIV from accessing antiretroviral treatment.

340 See above, note 293, Article 14.

341 See above, note 309, p. 105.

342 See above, note 325, p. 46; *Ibid*., p. 72.

343 Equal Rights Trust focus group, 9 July 2015, Chișinău.

344 See above, note 30, Para 23.

345 Equal Rights Trust focus group, 9 July 2015, Chișinău.

346 Equal Rights Trust interview with T, 18 May 2015, location anonymised.

347 Equal Rights Trust interview with Stefan, 23 July 2015, Călărași town, Călărași rayon.

Conclusion

Although the Moldovan Constitution does not expressly prohibit discrimination on the basis of health status, the Law on Prevention of HIV/AIDS Infection introduces a number of protections for PLWHIV. However, PLWHIV continue to experience stigmatisation and discrimination in all areas of life. Of particular concern are the widespread reports of the failure of medical professionals to keep patients' health status confidential and the poor treatment afforded such people. Women and children living with HIV are particularly vulnerable to discrimination in both healthcare and education, with many interviewees describing poor treatment by both schools and doctors.

2.3.2 Discrimination Against Persons with Tuberculosis

Tuberculosis (TB) has been a significant public health problem in Moldova since 1990. In 2015, the UN Special Rapporteur on Extreme Poverty and Human Rights noted the "very troubling levels" of TB in Moldova.[348] Moldova is one of 18 countries in Europe classified by the World Health Organization as still having a high burden of TB and one of the 27 countries in the world which has multi-drug resistant TB.[349] The prevalence of HIV-TB co-infection in Moldova is growing[350] and co-infection is considered to be accountable for roughly 50% of all AIDS related deaths in Moldova.[351]

While there is limited statistical data available on the prevalence of discrimination against persons with TB, the limited information which is available,[352] together with testimony collected for this report indicates that discrimination

348 See above, note 84, Para 8.

349 World Health Organization, *Good Practices in Strengthening Health Systems for the Prevention and Care of Tuberculosis and Drug-Resistant Tuberculosis*, 2016, p. 48, available at: http://www.euro.who.int/__data/assets/pdf_file/0010/298198/Good-practices-strengthening-HS-prevention-care-TBC-and-drug-resistant-TBC.pdf?ua=1.

350 World Health Organization, *Country Profile – Moldova*, 2014, available at: https://extranet.who.int/sree/Reports?op=Replet&name=%2FWHO_HQ_Reports%2FG2%2FPROD%2FEXT%2FTBCountryProfile&ISO2=MD&LAN=EN&outtype=html.

351 *Ibid.*

352 Government of the Republic of Moldova, *Draft National Program on Controlling Tuberculosis for 2016–2020*, 2015, Para 15, available at: http://www.particip.gov.md/public/documente/140/ro_2699_Proiectul-HG-Program-tuberculoza-2016-2020.docx.

and stigmatization against people with TB remains a significant problem both in the medical field, and in the wider community. In a 2012 survey, 59% of respondents stated a belief that people would change their attitude towards a person on learning that they have been diagnosed with TB.[353] Of greater concern was the finding that 23% of respondents considered it shameful to have TB, expressing concern that having the disease could cause them to lose their job or be considered as a drunk or homeless person.[354] Further, the UNDP has expressed concern that persons with HIV-TB co-infection "face persistent stigmatization and discrimination, poverty and have specific needs".[355]

Discriminatory Legal Provisions

The Regulation on Coercive Temporary Hospitalisation in Anti-Tuberculosis Specialised Healthcare Institutions of Persons with Contagious Tuberculosis Who Refuse Treatment provides for the forcible detention and stationary treatment of TB sufferers if they are deemed to have "avoided treatment".[356] Both the Committee Against Torture and the Human Rights Committee have articulated concerns about the scope of such a provision and called on Moldova to ensure that the implementation of any forcible treatment be in line with Moldova's international human rights law obligations.[357]

In its General Comment No. 14 CESCR noted that:

> *The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body… and the right to be free from interference, such as the right to be free from torture, noncon-*

353 Centre of Sociological, Politological and Psychological Analysis and Investigations, *Tuberculosis in Moldova: Knowledge, Attitude and Practice in General Population,* 2012, p. 30, available at: http://pdc.ceu.hu/archive/00006850/01/Center_for_Health_and_Policy_Studies_Tuberculosis-in-Moldova_2012.pdf.

354 *Ibid*., p. 40.

355 United Nations Development Programme, *Millennium Development Goal 6: Combat HIV/AIDS, Tuberculosis and other Diseases*, 2011, p. 3, available at: http://www.undp.md/employment/2011/201-250/229/MAF%20MDA%20Concept%20Note.pdf.

356 Committee against Torture, *Concluding Observations: Moldova,* UN Doc. CAT/C/MDA/CO/2, 29 March 2010, Para 24; Human Rights Committee, above, note 45, Para 13.

357 *Ibid*.

> *sensual medical treatment and experimentation… obligations to respect [the right to health] include a State's obligation to refrain (…)* ***from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness or the prevention and control of communicable diseases****. Such exceptional cases should be subject to specific and restrictive conditions, respecting best practices and applicable international standards, including the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care."*[358] *(emphasis added)*

Under the Regulation persons may be subject to forcible detention and treatment for avoiding treatment, however, there is no clear definition of what behaviour constitutes "avoiding treatment". The imposition of forcible medical treatment should be an option of last resort, and the use of broad, vague conditions is concerning. Furthermore, to the extent that the Regulation imposes a blanket requirement that persons with TB who avoid be subject to forcible treatment, this does not adequately balance an individual's rights against the need for treatment. Each decision to detain and treat a TB sufferer under this Regulation must involve a careful balancing of an individual's right both to the highest attainable standard of health under Article 12 of ICESCR and the right to non-discrimination and equality against the public health concerns weighing in favour of such treatment. The Regulation also fails to set out a method of reviewing or challenging the decision to apply forcible treatment. This leaves an already vulnerable group without any formal protection against the abuse of the power under this Regulation.

In 2014, the CPEDEE considered the provisions of the Regulation, and found that the text of the Regulation did not guarantee TB sufferers subject to coercive hospitalisation the rights set out in the Constitution, in violation of international and national non-discrimination standards.[359]

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358 Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4, 2000, Para 12.

359 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, *Activity Report*, 2014, p. 9, available at: http://egalitate.md/media/files/Moldovan-Equality-Body-Activity-Report-2014.docx.

Discriminatory Treatment in Penal Institutions

Following a 2009 visit to Moldova, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment raised concern about a number of cases of torture or other forms of ill-treatment of prisoners with TB. One man, in Rezina Penitentiary Institution, died of TB and diabetes because he was not given sufficient medicine and was not allowed to leave prison to go to hospital.[360] Furthermore, several detainees in the TB unit in the same prison stated that they were served rotten fish and beaten by the guards, simply because of their health status.[361] Finally, Inga Tcaci, a prisoner at SIZO Prison stated that she had been infected with TB while at the prison, before becoming pregnant and having a child with another inmate. Ms Tcaci stated that she was not allowed to see the child and that was kept in solitary confinement. She later lodged a complaint but was beaten by police when in detention in the investigation department.[362]

Although no similar cases of ill-treatment have been revealed in recent years, reports produced by the Ombudsman highlight other consistent failings in the treatment of prisoners with TB in Moldovan penitentiaries. Sanitary, technical and medical equipment are often outdated,[363] while hygiene conditions are poor,[364] negatively impacting upon detainees with TB. In some cases, prisoners suffering from tuberculosis and other infectious diseases have been held with the general prison population.[365] In part, this is due to the late diagnosis of TB in prisons.[366]

360 Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, Addendum*, UN Doc. A/HRC/10/44/Add.3, 2009, Para 57.

361 *Ibid.*

362 *Ibid.* Para. 8.

363 Office of the Ombudsman, *Report on the Observance of Human Rights in the Republic of Moldova in 2014*, 2015, p. 109, available at: http://www.ombudsman.md/sites/default/files/document/attachments/raport_2015_engleza.pdf.

364 *Ibid*.

365 *Ibid*., p. 100.

366 Equal Rights Trust focus group, 10 December 2015, Chișinău.

Employment

The Equal Rights Trust and Promo-LEX collected testimony from persons with TB which indicated that discrimination in employment is a significant problem. For example Nicholae stated that he started to look for a job in a village other than the one in which he lives, because in his village everyone knows about his TB status and he was repeatedly refused employment. He stated that while no one had told him the reason for these refusals, potential employers were not able to provide other reasons, and he feels that he knows it is because of his TB status.[367] Boris informed our researchers that he cannot get a job even as a security guard because he has previously been ill with TB.[368] Our research indicates that these are not isolated cases.

Education

In 2013, Moldova recognised that the prevalence of TB – and in particular multi-drug resistant TB – "has led to a decline in enrolment rates in general mandatory education".[369]

Research conducted for this report also found examples of discrimination against children whose relatives have TB. In one case, school administrators moved a child's desk to the back of the classroom, three metres away from other children. The child was asked to keep her mouth closed during school time and to avoid talking during class, unless asked by the teacher, so that "she would not spread the disease". The girl was bullied by other children and eventually left the school.[370]

367 Ziarul de Gardă, "Optimiştii se tratează mai repede de tuberculoză", 18 December 2014, available at: http://www.zdg.md/editia-print/social/optimistii-se-trateaza-mai-repede-de-tuberculoza.

368 Equal Rights Trust Interview with Boris, 14 August 2015, Chişinău.

369 Government of the Republic of Moldova, *Third Report on Millennium Development Goals*, 2013, p. 35, available at: http://planipolis.iiep.unesco.org/upload/Moldova%20R/Moldova_Third_MDG_2013-eng.pdf.

370 Equal Rights Trust focus group, 10 December 2015, Chişinău.

Access to Public Services

Research for this report indicated that discrimination on the basis of TB status when accessing goods and services is a significant problem. For example, Alexei informed the Trust's researchers that his local grocery store told him not to come to the store, because other people in the village had started to refuse to buy products from the store, because of his TB status.[371]

Conclusion

There are serious concerns about discrimination against persons with TB in Moldova on the basis of their health status. Persons living with TB are subject to considerable stigmatisation, with a diagnosis of TB frequently being considered as "shameful". There is considerable evidence of ill-treatment of persons with TB. The vulnerability of persons living with TB is exacerbated by the Regulation on Coercive Temporary Hospitalisation which does not provide for clear means to review and challenge any treatment administered under this regulation.

2.4 Discrimination on the Basis of Gender

Moldova is required to eliminate and prohibit all forms of discrimination against women through its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which it ratified in 1994. Moldova also has specific obligations under Article 3 of the ICCPR and Article 3 of the ICESCR to ensure the equal rights of both men and women to the enjoyment of all of the rights set forth in the Covenants. Further, under Article 26 of the ICCPR, Moldova is required to ensure that the law "shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as (…) sex". Finally, the ECHR requires Moldova to prohibit discrimination based on sex in respect to all Convention rights, by virtue of Article 14.

Although gender inequality can affect both men and women, it is overwhelmingly women who experience gender discrimination in Moldova, and consequently, this chapter focuses on discrimination against women. Just over

371 Equal Rights Trust interview with Alexei, 14 August 2015, anonymous locality, Ialoveni rayon.

half of Moldova's population of 3.56 million people – almost 1.84 million, or 51.9% – are women.[372]

Position of Women in Society

In 2015, the UNDP Gender Inequality Index ranked Moldova 107th out of 187 countries, with a gender equality rating of 0.248.[373] In the World Economic Forum's 2015 Global Gender Gap Report, which measures the gender gap in economic participation, political life, education and healthcare, Moldova was ranked 26 out of 145 countries with a score of 0.742.[374]

Although the reasons for gender discrimination in any society are diverse, patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in Moldovan society contribute to discrimination and impinge upon the rights of women.[375] In its 2013 review of Moldova, the Committee on the Elimination of Discrimination against Women (CEDAW) noted that stereotypes are one of the "root causes" of women's disadvantaged position in different areas of life, as well as a leading cause of violence against women.[376] Further, the Committee cited stereotyping of older women and women with disabilities, sexism in advertising, and the promotion of traditional gender roles through religious institutions as problems which adversely affect the implementation of state policies on gender equality and contribute to discriminatory attitudes towards women in Moldova.[377]

Legal and Policy Framework

Several laws prohibit discrimination and promote equality on the basis of gender in Moldova. Under Article 16(2) of the Constitution, "all citizens of the

372 National Bureau of Statistics of the Republic of Moldova, *Moldovan Stable Population Structure by Sex and Age from 1 January 2015*, 2015, available at: http://www.statistica.md/newsview.php?l=ro&idc=168&id=4769.

373 United Nations Development Programme, *Human Development Report 2015: Work for Human Development,* 2015, p. 239, available at: http://hdr.undp.org/sites/default/files/2015_human_development_report_1.pdf.

374 World Economic Forum, *Global Gender Gap Report 2015*, 2015, p. 261, available at: http://www3.weforum.org/docs/GGGR2015/cover.pdf.

375 See above, note 51, Para 17.

376 *Ibid.*

377 *Ibid.*

Republic of Moldova shall be equal before the law and public authorities, regardless of (…) sex".[378] Similar provisions are found in the Labour Code, Family Code, the Law on Equality of Opportunities between Women and Men, the Law on Ensuring Equality, the Law on Preventing and Combating Domestic Violence, and the Law on Healthcare. These laws are examined in more detail in Part 3 of this report.

However, while Moldova has enacted a range of laws prohibiting discrimination on the basis of gender, including most recently the Law on Ensuring Equality in 2012, in 2013, CEDAW highlighted several problems with the Moldovan legislative framework:

> *(a) The slow progress of the State party's legal reform aimed at harmonizing its national legislation with the Convention, in addition to the delay in, and lack of a clear time frame for, the adoption of a number of important draft laws;*
>
> *(b) The insufficient implementation of laws aimed at the elimination of discrimination against women;*
>
> *(c) The limited budget allocated to the Anti-Discrimination Council; [and]*
>
> *(d) The lack of awareness by the judiciary of women's rights and relevant national legislation and the lack of systematic training on the Convention and national legislation that promotes gender equality.*[379]

In 2009, a National Programme on Ensuring Gender Equality (2010–2015) was adopted.[380] The Programme is implemented by the Ministry of Labour, Social Protection and Family (MLSPF), the central authority responsible for

378 See above, note 196, Article 16.

379 See above, note 51, Para. 9.

380 Decision approving the National Programme for Ensuring Gender Equality for 2010-2015 (Government Decision No. 933 of 31 December 2009), available at: http://lex.justice.md/viewdoc.php?action=view&view=doc&id=333441&lang=1.

drafting and promoting policies in the field of equality between women and men.[381] Within the MLSPF, the Directorate for Ensuring Equality Between Women and Men is responsible for assessing the compliance of Moldovan laws with the principle of gender equality.[382] Additionally, in 2006 a Government Commission on Equality between Women and Men was established in order to implement the Law on Equality of Opportunities between Men and Women.[383]

Nevertheless, the system of policies is not perfect, and implementation is a cause for concern. In 2015, an evaluation of the implementation of the National Programme on Ensuring Gender Equality was conducted. The study found that insufficient resourcing of the MLSPF limited its capacity to ensure gender equality and combat domestic violence.[384] In 2013, the Committee on the Elimination of Discrimination against Women expressed concern over the Moldovan policy framework, criticising the "limited cooperation between existing gender equality bodies and relevant ministries (…) frequent staff turnover (…) [and] insufficient gender mainstreaming within ministries at all levels".[385] The Committee also noted the exclusion of disadvantaged women from the formulation of policies and programmes and the "limited decision-making power" of national mechanisms.[386]

381 The Ministry is established under the Law on Equality of Opportunities between Women and Men. See Law on Ensuring Equal Opportunities between Women and Men (Law No. 5 of 9 February 2006), Article 19.

382 The Directorate was established under Decision approving the Regulation on the Organisation and Functioning of the Ministry of Labour, Social Protection and Family (Government Decision No. 691 of 17 November 2009), available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=332740.

383 Decision approving the Establishment of a Government Commission for Equality between Women and Men (Government Decision No. 350 of 7 April 2006), available at: http://lex.justice.md/document_rom.php?id=7C97B488:5258D42D. The Commission is regulated under a subsequent Government Decision. See Decision approving the Governmental Commission for Equality between Women and Men (Government Decision No. 895 of 7 August 2006), available at: http://lex.justice.md/document_rom.php?id=2ABB75A7:85A94D0D.

384 Ministry of Labour, Social Protection and Family of the Republic of Moldova, *Evaluation Report on the Degree of Implementation of the National Gender Equality Programme for 2010–2015*, 2015, p. 13 available at: http://www.mmpsf.gov.md/sites/default/files/document/attachments/raport_evaluare_pnaeg_2010-2015.pdf.

385 See above, note 51, Para. 13.

386 *Ibid*.

Similar criticisms have been voiced by Moldovan NGOs,[387] which have expressed concern over the infrequent activity of the Governmental Commission for Equality between Women and Men and the lack of full time personnel responsible for ensuring gender equality in other ministerial departments.[388]

Discriminatory Legal Provisions

Article 2(f) of CEDAW requires Moldova "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women". However, depsite its international legal obligations, Moldovan legislation does not currently conform to the requirements of the CEDAW.

In 2015, the CPEDEE noted the existence of stereotypes and gender-discriminatory language in Moldovan policy documents and legislation.[389] These stereotypes are particularly evident in Government Decision No. 264 of 1993, which prohibits women from undertaking certain forms of dangerous work, including, for example, processing metals, roles in the construction materials industry and in certain types of construction and ship repair.[390] Irrespective of their intent, prohibitions such as this have been criticised by the Committee

387 See, for example, National Council of NGOs, *Proposals on Governance in Promoting Gender Equality for the Period 2014–2018*, 2016, Para V, available at: http://www.consiliulong.md/agenda-egalitatii-de-gen.

388 This report argues that Moldovan institutions face a number of challenges in ensuring gender equality, the biggest of which include: (1) that public institutions have limited responsibility to achieve gender equality (2) lack of understanding of the differential effect of policy choices on men and women; (3) poor monitoring and evaluation of the effective implementation of gender equality initiatives. See Gender Equality Platform and Others, *Joint Submission to the Universal Periodic Review for the Republic of Moldova*, 2016, Para 5.1, available at: http://cdf.md/files/resources/98/UPR-submission-gender-equality-platform-Moldova.pdf.

389 For example, the Classification of Occupations applies uses the female gender for certain jobs such as "maid", "babysitter", "governess" and "seamstress" (although a male equivalent title is provided). Certain management level professions are not offered in the female equivalent, namely "chief", "director", "chairman", "minister" etc. See, Ministry of Labour, Social Protection and Family, Order approving the Classification of Occupations in Moldova (Order No. 22 of 3 March 2014), available at http://lex.justice.md/viewdoc.php?action=view&view=doc&id=353018&lang=1; Council on the Prevention and Elimination of Discrimination and Ensuring Equality, *Activity Report*, 2015, p. 12, available at: http://www.egalitate.md/media/files/Raport%20general%202015.pdf.

390 Decision approving the List of Industries, Professions and Works with Hard and Harmful Working Conditions Proscribed to Women and Maximum Permissible Norms for Women on Manual Lifting and Carrying of Loads (Government Decision No. 264 of 6 October 1993), available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=300608.

on the Elimination of Discrimination against Women for "restricting women's economic opportunities", as "neither legitimate nor effective as a measure for promoting women's reproductive health"[391] and creating "obstacles to women's participation in the labour market".[392]

In addition, there are other laws that include discriminatory provisions on the grounds of gender. For example, Articles 41, 44(2) and 56(1) of the Law on State Social Insurance Pensions establish different retirement ages for men and women.[393] The current retirement age for men is 62 years, whilst women retire at 57.[394]

A number of provisions of the Labour Code[395] differentiate between men and women in ways which are discriminatory. For example, Article 251, which rightly prohibits the dismissal of pregnant women, also prohibits dismissal of women with children under six years old. Article 124(1), of the Labour Code grants female employees, female apprentices and dependent female spouses the right to 70 days pre-natal and 56 days post-natal maternity leave. There is no right to post-natal paternity leave under this provision. This is not consistent with international best practice in this area, which is moving towards the recognition of equal parental leave rights for men and women, with the exception of the immediate pre- and post-natal periods. It is worth noting that the Law on Amendments and Addenda to Certain Legislative Instruments approved by Parliament on 14 April 2016 and awaiting promulgation by the President at time of writing, would amend the Labour Code to provide for a right of paid paternity leave of 14 days within the first 56 days from the birth of a child.[396]

Article 173(1) of the Code on Enforcement, which deals, *inter alia,* with the treatment of prisoners, provides for the postponement of penalties applied

391 Committee on the Elimination of Discrimination against Women, *Fifteenth Session Report*, UN Doc. A/51/38, 1996, Para. 286.

392 Committee on the Elimination of Discrimination against Women, *Concluding Observations: Ukraine*, UN Doc. A/57/38, 2 May 2002, Para 293.

393 Law on State Social Insurance Pensions, (Law No. 156 of 14 October 1998).

394 *Ibid*.

395 Labour Code of the Republic of Moldova (Code No. 154 of 28 March 2003).

396 Draft Law on Amending and Supplementing Certain Acts (Law No. 180 of 15 May 2014), available at: http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2285/language/ro-RO/Default.aspx.

to pregnant women and to women with children aged up to 8 years.[397] Granting favourable treatment to pregnant women who have been convicted of crimes may be justified in light of their particular health needs. However, affording special rights to women prisoners with children (as opposed to convicted fathers), constitutes unjustified differential treatment, contrary to the requirements of international law.

Discriminatory laws have also been identified by United Nations Special Procedures. In 2008, Moldova amended its Family Code, increasing the minimum age of marriage from 16 to 18 years for girls, in consonance with the recommendations of the Committee on the Elimination of Discrimination against Women.[398] However, where "well-founded reasons" exist, the marriage of children under the age of 18 may still be permitted. The Working Group on discrimination against women in law and in practice has criticised the language of this provision as creating space for the exercise of discretion, "which in turn could be influenced by discriminatory practices".[399]

While the list of discriminatory provisions identified above is not exhaustive, they elucidate the prevailing stereotypes of women that pervade Moldovan society, and in particular the paternalistic, patriarchal notions that help to legitimise discrimination against women in other spheres of life.

Gender-Based Violence

While the CEDAW does not explicitly refer to gender-based violence, the Committee on the Elimination of Discrimination against Women has interpreted Article 1 of the Convention as including a prohibition on gender-based violence, which it has defined as "a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men".[400]

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397 Code on Enforcement, (Code No. 443, of 24 December 2004).

398 Committee on the Elimination of Discrimination against Women, *Concluding Observations: Moldova*, UN Doc. CEDAW/C/MDA/CO/3, 25 August 2006, Para. 33.

399 See above, note 212, Para. 15.

400 Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against Women*, UN Doc. A/47/38, 1993, Para. 1.

Domestic and sexual violence is a serious problem in Moldova.[401] In a survey conducted by the National Bureau of Statistics in 2011, 63.4% of the 1,116 of women and girl respondents had experienced psychological, physical, or sexual violence at least once since the age of 15.[402] Approximately 40% of respondents had suffered physical violence committed by their current or most recent husband or partner at least once, and 9% of respondents indicated that they had experienced physical violence in the previous 12 months.[403] However, as a consequence of both societal and familial pressure, few victims report these crimes.[404]

Tolerance of domestic violence and sexual violence is alarmingly high. In a more recent survey conducted by the Women's Law Centre, 50% of men surveyed stated that there was physical violence in their families.[405] In total 27.7% of men and 17.5% of women agreed with the view that "a woman should tolerate violence in order to preserve the family".[406] Moreover, over 41% of men believed that there were circumstances in which a woman should be beaten.[407] In the same study, 7% of female respondents stated that they would not resist a partner using force when they did not want to have sex,[408] while 18% of men admitted to having used force to have sex with their current girlfriend or wife.[409] One in five men reported having sex with a female without her consent, and almost one in four men reported having sex with a female unable to give consent due to alcohol.[410] Despite this, only 8.4% of women had reported

401 Women's Law Centre and others, *Joint Submission to the Universal Periodic Review for the Republic of Moldova*, 2016, Para 1, available at: https://promolex.md/upload/publications/en/doc_1463468569.pdf.

402 National Bureau of Statistics of the Republic of Moldova, *Violence against Women in the Family*, 2011, p. 22, available at: http://www.statistica.md/public/files/publicatii_electronice/Violenta/Raport_violen_fem_eng.pdf.

403 *Ibid*., p. 33.

404 *Ibid*., p. 33.

405 Women's Law Centre, *Men and Gender Equality*, 2015, p. 114, available at: http://cdf.md/files/resources/89/Studiul_B%C4%83rba%C8%9Bii%20%C8%99i%20Egalitatea%20de%20gen%20%C3%AEn%20Republica%20Moldova.pdf.

406 *Ibid*., p. 63.

407 *Ibid*., p. 115.

408 *Ibid*., p. 14.

409 *Ibid*., p. 96.

410 *Ibid*., p. 96.

partner or family abuse to police.[411] According to the survey, the main causes of domestic violence include alcohol, jealousy, unemployment, infidelity, a lack of education, and the inability to resolve conflicts peacefully.[412]

Legislative Framework on Gender-based Violence

In 2007, Moldova Enacted the Law on Preventing and Combating Domestic Violence, which establishes a legal, organisational and institutional framework for preventing and combating domestic violence, and a mechanism for identifying and responding to cases of violence.[413] The Act is supplemented by Article 201^1(1) of the Criminal Code, which provides that

> *Domestic violence, namely intentional action or inaction, manifested physically or verbally, committed by a family member against another family member, which caused physical suffering, resulting in light bodily injuries or damage to health, physical suffering or material or moral damage, is punishable by unpaid community work from 150 to 180 hours or by imprisonment for up to 2 years.*

Despite these legislative measures, inadequate and uneven implementation of the law, particularly concerning the criminal liability of perpetrators and the execution of protection orders, has left victims of domestic violence exposed. Between 2013 and 2014, the European Court of Human Rights issued judgment in several cases concerning allegations of domestic violence; in each case finding that Moldova had breached Article 3 of the European Convention, either on its own or in conjunction with Article 14,[414] by failing to effectively prevent domestic violence. Concerns relating to the government's response

411 *Ibid*., p. 15.

412 *Ibid*., p. 15.

413 Law on Preventing and Combating Domestic Violence (Law No. 45 of 1 March 2007).

414 See *Eremia v The Republic Of Moldova,* European Court of Human Rights, Application No. 3564/11, 28 May 2013; *Mudric v The Republic Of Moldova,* European Court of Human Rights, Application No. 74839/10, 16 July 2013; *T. M. and C. M. v The Republic Of Moldova v The Republic Of Moldova,* European Court of Human Rights, Application No. 26608/11, 28 January 2014 (Violation of Article 3 in conjunction with Article 14); and *B v The Republic Of Moldova,* European Court of Human Rights, Application No. 61382/09, 16 July 2013 (Violation of Article 3).

to domestic violence have also been raised by United Nations treaty bodies. In 2013, the Committee on Elimination of Discrimination Againt Women criticised "the inconsistent application of laws aimed at combating domestic violence"; "the failure to take note of lower-level injuries" and "the fact that it takes repeated instances of domestic violence to trigger an investigation".[415]

Promo-LEX has conducted studies on domestic violence in Moldova in 2014 and 2015, each of which clearly demonstrates deficiencies in the current framework for the protection and prevention of domestic violence.[416] These are discussed below:

Psychological Violence: Five forms of domestic violence are recognised in Moldovan law – physical, sexual, spiritual, economic, and psychological violence.[417] Despite this, psychological violence is not regulated under the Law on Judicial Expertise[418] and there is no provision for psychologists to be accredited as judicial experts.[419] In order to prove that a victim has been subject to psychological violence, therefore, *a priori* evidence must be presented, which is very difficult to acquire. Psychiatric institutions issue *de facto* psychiatric and psychological examination reports which emphasise the psychiatric rather than psychological aspects of the trauma suffered by victims of violence. In practice, psychologists who provide services to domestic violence victims may issue psychological reports, but these can only provide indirect

415 See above, Note 51, Para. 19. Additionally, the Committee criticised "the ineffectiveness of protection orders against alleged aggressors"; and "the low rate of reporting cases of sexual violence, including rape, and ineffective investigation and prosecution in reported cases." See *Ibid*.

416 See Promo-LEX Association, *Assessment of the Implementation of Law No. 45 on Preventing and Combating Domestic Violence among Roma People from the Republic of Moldova*, 2014, available at: https://promolex.md/upload/publications/ro/doc_1401979049.pdf; Promo-LEX Association, *Assessment Report on the Method of Issuance and Execution of Restraining Orders on Domestic Violence Cases During 2012-2014*, 2015, available at: https://promolex.md/upload/publications/en/doc_1429103090.pdf; and Promo-LEX Association*, Analytical Note on the Uneven Practices of Criminal Prosecution of Perpetrators for the Violation of Restraining Orders*, 2015, unpublished.

417 See above, note 413, Article 2.

418 Law on Judicial Expertise and Technical-Scientific and Forensic Findings (Law No. 1086 of 23 June 2000).

419 United Nations Development Programme, *Feasibility Study on the Forensic Infrastructure in the Republic of Moldova*, 2009, p. 71, available at: http://www.undp.md/publications/Forensics_Feasibility_External%20Audit_Report_EN.pdf.

evidence of psychological violence. Consequently, national law offers insufficient protection for victims.[420]

Restraining Orders: Under the Contravention Code, a first violation of a restraining order results in a fine,[421] while a second results in criminal liability.[422] Bailiffs are responsible for determining whether violation of a restraining order has occurred and initiating administrative proceedings,[423] whilst the police and social services ensure execution and oversight of the order. However, in practice, where a restraining order has been breached, the bailiff often refuses to initiate such proceedings when requested by the police, because the procedure fails to stipulate execution of the restraining order. A further problem with sanctioning aggressors for breach of restraining orders is that criminal sanctions cannot be applied to an individual in breach of an order until final judgment on the administrative sentencing for such breach has been entered. As there is no time limit for the conclusion of administrative proceedings, there can be considerable delay before an individual faces criminal sanction.

Inconsistent implementation: In 2015, Promo-LEX analysed the implementation of domestic violence sanctions under the Criminal Code and Code of Administrative Offences, reviewing a total of 501 judgments and sentencing decisions of national courts between August 2014 and July 2015. One of the major findings of this study was the inconsistent application of the relevant provisions. Although Article 201(1) of the Criminal Code was applied correctly in some cases,[424] in others, criminal proceedings were dropped in favour of administrative sanctions.[425] According to information provided to Promo-LEX by the General Prosecutor's Office, in 2014 700 administrative offences and 2374 criminal prosecutions were initiated in domestic violence cases.[426]

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420 See Promo-LEX Association, *Submission to the Committee on the Elimination of Discrimination against Women for Moldova*, 2015, pp. 4-5, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MDA/INT_CEDAW_NGS_MDA_21994_E.pdf.

421 See above, note 15, Article 318.

422 See Criminal Code, above, note 18, Article 320.

423 See above, note 15, Article 421.

424 Perpetrators were charged with a criminal offence.

425 See above, note 420, p. 6.

426 Official Letter to Promo-LEX from the General Prosecutor's Office No 25-2d/15-298 of 19 May 2015.

Although this number has decreased from previous years,[427] the high number of administrative proceedings is alarming and demonstrates poor practice in sanctioning domestic violence perpetrators. Despite this, authorities have failed to implement any measures that would facilitate the documentation of cases, in order to standardise judicial practice.[428] In correspondence with Promo-LEX in August 2014 and September 2015, the Supreme Court of Justice confirmed the need to standardise practice in this area and indicated that this would be addressed in the Draft Explicative Decision on the examination of the criminal cases of domestic violence in courts of law. On 11 May 2016, the Draft Decision was posted on the Supreme Court of Justice web page, and is now pending decision.[429]

Domestic Violence Shelters: There are 16 shelters for victims of domestic violence in Moldova which provide rehabilitation services, only two of which (located in the Chișinău Municipality) provide shelter to victims regardless of their residence.[430] In some districts there are no shelters, meaning victims cannot receive emergency help; in these districts, individuals must travel to Chișinău at their own expense.[431] For the majority of victims, shelters will only accept those domiciled within the same territory as the domestic violence centre. Where spare beds are available, and with the approval of the Family Protection Department (FPD), exceptions can be made, but the number of free beds is very small and the application process is complex.[432] The consequences of this inadequate and inconsistent system of provisions are self-evident: if victims cannot find a place, they may be required to go back to the same house as their abuser.[433] Research carried out by Promo-LEX has

427 *Ibid.*

428 This is despite repeated calls by NGOs. For example, Promo-LEX made three such submissions to the Supreme Court of Justice in 2013, 2014 and 2015.

429 Supreme Court of Justice, Draft Decision of 11 May 2016, available at: http://csj.md/index.php/unificarea-practicii-judiciare/proiecte-hot-explicative-plen/641-cu-privire-la-judecarea-cauzelor-penale-despre-violenta-in-familie-ffff.

430 International Centre for Women's Rights Protection and Promotion "La Strada", *Study on Observance of Rights of Domestic Violence Victims in the Assistance and Protection System of the Republic of Moldova*, 2013, p. 33, available at: http://www.lastrada.md/publicatii/ebook/Violenta_raport_engl_final.pdf.

431 See above, note 420, p. 7.

432 See above, note 212, Para. 32.

433 See above, note 420, p. 7.

identified the lack of a clear procedure for the provision of funds to shelters by local authorities as a further problem. In the absence of such a procedure, practice varies from district to district: in some cases, written applications must be submitted describing in detail all predicted expenditures for the funding period, while for others, local public authorities provide funds without the need for any application.

Legal Representation: A further significant problem is that when victims of domestic violence seek protection, they do not benefit from qualified legal aid, as they do not fulfil the necessary criteria established under law.[434] As a result, victims can only seek the assistance of specialised non-government organisations or a private lawyer. In most cases, female domestic violence sufferers are in an extremely vulnerable situation, making the identification of an NGO or lawyer (often located in Chișinău or other district capitals) difficult. Where women are unable to get legal representation, they may not be aware of relevant procedures, particularly as there is often insufficient information made available to victims or potential victims on relevant laws and policies. As a result, in many cases, victims do not request protective measures or do so as a measure of last resort. This gap particularly affects vulnerable groups such as the Roma, persons with disabilities, and the elderly, who are already subject to discrimination and are more likely to live in poverty.[435]

Domestic Violence in the Transnistrian Region

Victims of domestic violence in the Transnistrian region lack protection. In a 2011 HIV Vulnerability Survey, almost one quarter of the women interviewed (22.3%) had been subject to physical violence. 35.7% of women had been victims of physical violence at least once in their lives, while 20.5% said they had been victims of physical violence "once or twice", 5.9% "3 to 5 times", and 8.7% had been subject to violence five times or more. In half of the cases of violence, the aggressor was either their husband or live-in partner, in 8.7% of cases it was a boyfriend, in 25.8% it was their father or brother, and in 9%

434 Law on State-Guaranteed Legal Aid (Law No. 198 of 26 July 2007), Article 19.

435 See above, note 84, Para. 9.

of the cases it was another man.[436] Absent any local law prohibiting gender-based or domestic violence, a lack of *de facto* control over the region ensures that administrative and criminal sanctions cannot be enforced. The majority of victims, lacking effective avenues of redress, do not seek assistance from local authorities, fearing humiliation during the investigative process and court hearings.[437] Although domestic violence cerntre located near Causeni or Drochia, and those in the Chișinău Municipality, may be able to offer assistance and support, this is an expensive process and requires frequent travel, which may prevent victims from seeking help.

Sexual Harassment

Under Article 173 of the Criminal Code, "sexual harassment" is defined as:

> *[T]he manifestation of physical, verbal or nonverbal behaviour that violates the dignity or creates an unpleasant, hostile, degrading, humiliating, discriminatory or insulting atmosphere with the purpose of coercing another person to engage in sexual intercourse or other unwanted sexual actions committed by threat, coercion or blackmail.*[438]

Sexual harassment may be punished by a fine, unpaid community work from 140 to 240 hours, or imprisonment for up to three years.[439] Under the Law on Ensuring Equal Opportunities between Women and Men, sexual harassment is defined as "any form of physical, verbal or non-verbal sexual conduct that violates the person's dignity or creates an unpleasant, hostile, degrading, humiliating or offensive environment".[440] Article 10(3)(d) of the Law requires

436 Centre for Support and Development of Civic Initiatives «RESONANCE», *Women's Vulnerability to HIV/AIDS in Transnistria: Sociological Research Report*, 2011, p. 60, available at: http://aids.md/aids/files/1161/ENG_Report%20on%20women's%20vulnerability%20to%20HIV_AIDS_TRS_final%20version.doc.

437 Promo-LEX Association and Others, *Human Rights in the Transnistrian Region of the Republic of Moldova,* 2012, p. 49, available at: https://promolex.md/upload/publications/ro/doc_1355473506.pdf.

438 See above, note 422, Article 173.

439 *Ibid.*

440 See above note 381, Article 2.

that employers "undertake measures to prevent sexual harassment of women and men at their place of work, as well as prevent persecution for submitting complaints of discrimination to the competent body".[441]

However, the prohibition of sexual harassment in two different laws, with different evidentiary standards, can lead to problems in practices:

> *[T]he inclusion of sexual harassment in the Criminal Code proves to be unworkable The nature of the acts which amount to sexual harassment makes it difficult for the victim to meet the burden of proof required for the criminal prosecution of such acts. Sexual harassment is often committed in the absence of witnesses and without any written documentation. Therefore, by addressing the problem of sexual harassment through the criminal law, which will often result in a direct conflict between the respective evidence of the victim and the aggressor, it is difficult to secure a conviction and therefore obtain justice for the victim. Further, this can also lead to the re-victimisation of the victim and the withdrawal of the complaint. Once a complaint is withdrawn by the victim, there follows a cessation of the criminal procedure and no redress is provided to the victim.*

In recent years, several examples of sexual harassment in the workplace have been identified and publicised by the media.[442] Despite this, following a review of National Court, Court of Appeal, and Supreme Court of Justice decisions, Promo-LEX has found no examples of definitive court decisions issued on sexual harassment crimes under Article 173 of Criminal Code.

441 *Ibid*., Article 10(3)(d).

442 See for example: Discriminare Media, "She Resigned because she was Sexually Harassed", 16 May 2012, available at: http://discriminare.md/istoria-mea/s-a-concediat-din-cauza-ca-era-hartuita-sexual/; Ziarul de Gardă, "Sexual Harassment in a State Institution", 26 April 2012, available at: http://www.zdg.md/editia-print/investigatii/hartuire-sexuala-intr-o-organizatie-de-stat; and Ziare, "Head of the State Hydrometeorological Service Dismissed Following a Sexual Harassment Scandal", 8 August 2012, available at: http://www.ziare.com/europa/moldova/r-moldova-seful-de-la-meteo-demis-in-urma-unui-scandal-de-hartuire-sexuala-1183205.

Several interviews were conducted during the research for this report, revealing sexual harassment in education. For example, T.N. told us:

> *There was a teacher at the university who treated girls differently compared to boys. One day he asked for an answer from a girl that would please his eyes and chose me to answer. That day I was wearing a skirt. I wanted to answer from my seat, but he said: "No! In that skirt you must answer in front of the class." This bothered me and I felt humiliated, but I could do nothing in this situation. It was more embarrassing for me since he did that in front of all my classmates. He treated me as if I were a girl without morals.*[443]

Similarly M.I. stated:

> *A teacher from the State University of Moldova, law faculty, during an exam session, graded students on their appearance. He often said that girls should only wear skirts for exams. There was a case when my classmate, who was wearing a skirt, was answering a question in front of the class and the teacher commented: "See? When girls come to me to answer, they come in skirts." I think this is not normal and ethical. His attitude humiliates many female students.*[444]

D.N. painted a similar picture:

> *I often felt that the teacher was staring at me trying to cling to every word or move I make. He tried to humiliate me. For example one day I was cleaning the ink from my pencil and he stopped the lesson and said: "Attention, look how D.N. cleans her pen" and then began to laugh. He often made unpleasant remarks to me, despite being a teacher.*[445]

443 Equal Rights Trust interview with T.N. 21 April 2015, Chișinău.

444 Equal Rights Trust interview with M.L. 18 April 2015, Chișinău.

445 Equal Rights Trust interview with D.N. 22 April 2015, Chișinău.

Employment

Article 11 of CEDAW requires Moldova to take "appropriate measures to eliminate discrimination against women in the field of employment", including in respect of employment opportunities, free choice of profession, the right to promotion, benefits, and training, and the right to equal remuneration. On paper, Moldova has relatively strong legislative protections against discrimination on the basis of gender in employment. Article 7 of the Law on Ensuring Equality prohibits any distinction, exclusion, restriction or preference, based on grounds including gender, which limit or undermine equality of opportunity or treatment in employment or dismissal, at work or during professional training.[446]

The Labour Code of the Republic of Moldova, imposes various obligations on employers intended to ensure equality and non-discrimination in employment, which include:

- Ensuring that everyone has equal opportunities and treatment in employment and professional guidance, training and promotion without any kind of discrimination;[447]
- Ensuring equal payment for equal work.[448]
- Prohibiting discrimination on any ground in internal regulations and policies;[449]
- Taking measures to prevent sexual harassment;[450] and
- Applying the same criteria for performance review, punishment and dismissal.[451]

In addition, the Law on Ensuring Equal Opportunities between Women and Men obliges employers to ensure equal opportunities and treatment in employment, including in respect of professional development, career promotion,

446 See above, note 14.

447 See above, note 395, Article 10(2)(f).

448 *Ibid.*, Article 10(2)(g).

449 *Ibid.*, Article 10(2)(f^5).

450 *Ibid.*, Article 10(2)(f^3).

451 *Ibid.*, Article 10(2)(f^2).

evaluation, punishment and dismissal, negotiation and payment of salary.[452] The law also prohibits job advertisements that directly or indirectly discriminate on the basis of gender.[453]

Yet despite its international obligations and the range of domestic provisions in effect, gender discrimination remains prevalent in the workplace, and women experience inequality in many areas of employment.

Access to Employment and Discrimination in Hiring Practices

Women have higher rates of unemployment than men: 40.6% of women are unemployed, compared to 36.5% of men.[454] The United Nations Working Group on the issue of discrimination against women in law and practice, following their visit to Moldova in 2012, concluded that discriminatory practices prevent women from participating equally in the labour market.[455] Research has shown that men have higher chances of securing jobs,[456] resulting in women becoming trapped in a cycle of unemployment. One factor may be the gender of those making hiring decisions. National Bureau of Statistics data found that the gender ratio among those responsible for making employment decisions (heads of organisations and managers) is onr woman to every three men (26.9% women and 73.1% men), regardless of type of enterprise.[457]

One of the most significant barriers for women in accessing employment is widespread discrimination against pregnant women and women with children, as well as the stereotype attached to younger women who are perceived by em-

452 See above, note 440, Article 10(3).

453 See above, note 14, Article 7(2)(a); *Ibid*., Article 5(3), Article 6(2) and (4) and Article 11(1)(a); and Law on Employment and Social Protection of People Looking for Work (Law No. 102 of 13 March 2003), Article 13(2).

454 National Bureau of Statistics of the Republic of Moldova, *A Statistical Portrait of Men and Women in Moldova,* 2014, p. 2, available at: http://www.statistica.md/public/files/publicatii_electronice/femei_si_barbati/Portret_statistic_femei.pdf.

455 See above, note 212, Para 64.

456 Office of the Ombudsman, *Report on the Observance of Human Rights in the Republic of Moldova in 2013*, 2014, p. 26, available at: http://www.ombudsman.md/sites/default/files/document/attachments/raport_cpdom_20131.pdf.

457 National Bureau of Statistics of the Republic of Moldova, *A Statistical Portrait of Men and Women in Moldova,* 2015, available at: http://www.statistica.md/libview.php?l=ro&id=5106&idc=168.

ployers as likely to become pregnant and subsequently give rise to maternity obligations. Research presented by NGOs at the last Universal Periodic Review of Moldova indicates that in 2014, 38.9% of women with children at preschool age (aged between 3 and 7) were in employment, compared to 58.9% of women who did not have children of that age.[458] In 2011, 56.5% of women with preschool age children were in employment,[459] meaning that there has been a significant decline in the employment rate in a short period. It is notable that maternity pay obligations changed in 2014, with the extension of the period for which maternity pay is calculated from six to twelve months, thus increasing costs for employers.

The CPEDEE has made findings of discrimination in several cases in which women have been asked at job interviews whether they are married, pregnant, or have plans to marry or have children, and others in which women have been dismissed after becoming pregnant.[460] Similarly, women interviewed for this report narrated their experiences of discrimination in employment as a result of their actual or anticipated pregnancy.

For the purpose of this report, Equal Rights Trust researchers conducted a focus group with 17 women, on the issue of discrimination in employment.[461] Participants stated that employers do not want to hire pregnant women or those who have small children. They stated that some employers avoid signing employment contracts with women or impose contracts that include only employee obligations, but no rights, with the result that women are deprived of rights such as childcare allowance and maternity allowance. In addition, we interviewed N., who was interviewed for a job on the basis of a personal recommendation. She was asked whether she was married and planned to have children in the near future and was told that she could not be given a job because she was pregnant.[462]

Gender stereotypes tend to limit women's access to certain jobs and prevent them from exercising freedom of choice in employment. For example, as

458 See above, note 388, Para 3.1.

459 *Ibid*.

460 See above, note 359, p. 20; and Council on the Prevention and Elimination of Discrimination and Ensuring Equality, above, note 389, p. 14.

461 Equal Rights Trust focus group with 17 women aged 30–60, 12 June 2015, Lăpuşna village, Hînceşti region.

462 Equal Rights Trust interview with N., 20 June 2015, Chişinău.

noted above, the Classification of Occupations in Moldova prevents women from taking certain roles.[463] In addition, the CPEDEE's 2014 activity report, notes that, in addition to the common practice of not hiring, or dismissing women who become pregnant, one of the most common examples of gender discrimination in employment is the publication of discriminatory job advertisements.[464] For example some employers expressly stated a requirement for women to act as salespersons or to conduct surveys in shopping centres.[465] The CPEDEE examined several cases referring to such advertisements posted online, finding that job advertisements with requirements or criteria that exclude or favour a certain gender are discriminatory and that gender cannot be a genuine occupational requirement.[466] Participants of the aforementioned Equal Rights Trust focus group gave examples of cases when the requirements of job advertisements would include criteria based on gender, age and appearance.[467]

The Committee on the Elimination of Discrimination against Women has articulated concern about the persistent stereotyping of women with disabilities[468] and the exclusion of Roma women and women with disabilities from the formal labour market.[469] Women with disabilities face specific challenges and additional disadvantages, when compared both to other women and other persons with disabilities, meaning that they are less encouraged to join the labour market.[470] Roma women represent one of the most vulnerable groups in Moldova: they have lower levels of education, much higher rates

463 See, Ministry of Labour, Social Protection and Family Order No. 22, above, note 389.

464 See above, note 359.

465 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 050/14 of 22 February 2014, available at: http://www.egalitate.md/media/files/files/decizia_cauza_050_gavriloi_rodion_catre_legis-com_srl_5733279.pdf; Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 041/13 of 24 February 2014, available at: http://egalitate.md/media/files/files/decizia_cauza_041_autosesizarea_anunturi_discriminatorii_4412343.pdf.

466 *Ibid.*

467 See above, note 461.

468 See above, note 51, Para. 17.

469 *Ibid*., Para. 27.

470 Joint Integrated Local Development Programme, *Who is Missing from Local Development*, 2011, p. 22, available at: http://www2.un.md/UNWomen/knowledge_center/Who%20is%20Missing%20from%20Local%20Development%202011%20RO.pdf.

of unemployment and significantly lower levels of income than the rest of the population.[471] According to a United Nations Report on the situation of Roma in Moldova, only 15% of Roma women older than 15 years are employed compared to 34% of non-Roma women and 25% of Roma men.[472] This is largely attributable to the limited employment opportunities available for Roma women, the lower levels of education among Roma communities, and the lack of professional qualifications and residential segregation.[473]

Unequal Pay and Labour Market Segregation

Article 7(a)(i) of the ICESCR requires Moldova to ensure:

> *Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.*

Article 10(3)(c) of the Law on Ensuring Equal Opportunities between Women and Men provides that in order to ensure equality between women and men, employers shall ensure equal pay for work of equal value.[474] In addition, Article 7(2)(d) of the Law on Ensuring Equality prohibits unequal pay for the same type of work or workload.[475]

Despite the existence of these provisions, Moldova has a significant gender pay gap. In 2014, two national non-governmental organisations stated that the average salary for men was 12.4% higher than that of women.[476] The UN Working Group on the issue of discrimination against women in law and in

471 See above, note 27, p. 10.

472 See above, note 96, p. 41.

473 See above, note 27, p. 37.

474 See above, note 440.

475 See above, note 14.

476 Centre "Partnership for Development"(CPD) and Platforma Pentru Egalitate de Gen, *Gender-dependent Salary Inequalities in Moldova: How Each Moldovan Woman Loses 7620 lei* [€346 Euro] *Annually*, 2015, p. 3, available at http://www.progen.md/files/4717_analiza_paygap_moldova.pdf. See above, note 457.

practice reported in 2013 that women earned 72% of men's wages.[477] While sources vary as to the extent of the gender pay gap, it is clear that it is persistent, as evidence suggests the pay gap has remained a constant problem at least over the last five years.[478] In addition to the pay gap, there is a gender based pension gap between men and women, which increased from 10.12% in 2011 to 17.17% in 2014.[479]

The persistence of the gender pay gap is explained in part by the widespread phenomenon of gender segregation, both within individual workplaces and across the labour market as a whole. Historically, women have mostly been employed in the "social sphere",[480] in industries such as healthcare, education, and social assistance. These positions have the lowest pay in the Moldovan economy. This trend is still pronounced, with women disproportionately represented in the lowest paid sectors: Health and Social Assistance (81.3% of employees are women), Education (81.5%), and Hotels and Restaurants (73.7%).[481]

Women are particularly underpresented in law enforcement, security and military professions, particularly at the highest levels. The percentage of women in managerial and executive positions in all divisions of the Ministry of the Interior in 2015 was just 6%, a fall from 9% in 2011.[482] Women make up 23% of soldiers of the National Army and just 14.3% of all students at the Military Academy "Alexandru cel Bun", but constitute 70% of all civilian employees of the National Army.[483] Despite activities and actions taken by the state to increase the employment of women in law enforcement and military service by informing the public and offering career guidance, the problems remain. Current issues include: insufficient measures to implement the plans to ensure equality between women and men in sectoral policies; insufficient

477 See above, note 212, Para 64.

478 See above, note 476, p. 3.

479 *Ibid*.

480 Promo-LEX Association and Others, *Submission to the Committee on the Elimination of Discrimination against Women for Moldova*, 2013, Para 57, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MDA/INT_CEDAW_NGO_MDA_14954_E.pdf.

481 *Ibid*., Para 56.

482 See above, note 384.

483 *Ibid.*

staff gender training in agencies responsible for security, public order and military service; the lack of international training and access to such training to increase women's eligibility and capacity to apply to civilian and military peacekeeping missions.[484]

One measure of the segregation in the workforce, the segregation index (where "0" equals total inequality and "100" equals total equality), shows that the uneven distribution of women and men in some areas of the economy remained unchanged between 2009 and 2015, at the rate of 58. [485] When assessing gender inequality in leadership positions across all economic sectors, inequality decreased slightly as the segregation index increased from 53 to 55.[486]

Even within sectors, women are on average paid less than men. In highly skilled sectors where pay is relatively high, the gender pay gap is much more significant than the average: in finance, the pay gap is 32%, in information technology it is 37%, and in management consulting it is 30%.[487] This is perhaps explained by the fact that men are disproportionality found in management and ownership roles across sectors, including in industries where women make up the majority of the workforce.[488] Men hold 66% of roles with management functions in individual non-agriculture enterprises and 83% in state enterprises.[489]

While the government has put in place policies to reduce the gender pay gap, they have been largely unsuccessful. Both the National Employment Strategy (2007-2015) and the National Programme for Ensuring Gender Equality (2010-2015) aimed to reduce the pay gap, but a group of non-government organisation found that they had failed to make changes, for two key reasons. Firstly, there was a lack of clear and consistent action from authorities as a result of a lack of political will; secondly, the policies failed to address the underlying direct and indirect discrimination causing the pay gap.[490]

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484 *Ibid*.

485 Centre "Partnership for Development", *Gender Equality Index*, 2015, p. 10, available at: http://progen.md/files/7562_raport_indexul_egalitatii_gen_2015final.pdf.

486 *Ibid*., p. 10.

487 See above, note 388.

488 See above, note 480, Para. 57.

489 See above, note 456, p. 33.

490 See above, note 388, Para. 3.2.

Education

While access to education for women and girls in Moldova is generally good, there are significant concerns in respect of equality of participation. Unofficial gender segregation between subject areas has been criticised by non-governmental organisations: boys and girls tend to focus in particular subject areas, largely as a result of stereotypes about "male" and "female" career paths.[491] In 2013, the Committee on the Elimination of Discrimination against Women noted its concerns over the "persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society" which it said are a "root cause" of the educational and employment choices made by Moldovan women:[492]

> *While noting the high level of education of women and girls in the State party, the Committee remains concerned about the persistent segregation of women and girls in traditionally female-dominated fields of study at the post-secondary level and their underrepresentation in engineering, technological and other fields of education, negatively affecting their chances of integration into higher-paying sectors of the labour market.*[493]

> *In its 2014 index, the Centre of Partnership for Development scored gender equality in Moldovan education at 55 on a scale where 0 represents complete inequality, and 100 perfect equality; this represented only one-percentage point improvement from 2009.*[494] *The Centre made several recommendations for the improvement of gender equality in education, including by extending nursery services, encouraging reading among boys*

491 Centre "Partnership for Development", *Three Solutions for Gender Equality in Education*, 2015, p. 2, available at: http://progen.md/files/1103_analiza_egalitatii_gen_educatie.pdf.

492 See above, note 51, Para. 17.

493 *Ibid*., Para. 25.

494 See above, note 485, p. 10. See *Ibid*., p. 1.

(who tend to be outperformed by female students), and the integration of new technologies in rural areas.[495]

The Committee on the Elimination of Discrimination against Women has expressed its particular concerns about the "limited access to mainstream and inclusive education by Roma girls and girls with disabilities, which results in low enrolment rates and high dropout rates at the primary school level", as well as negative attitudes demonstrated by teachers and school administrators.[496] Roma girls are more likely to drop out of school to undertake work around the home or because they are married during childhood.[497]

Health

There is also evidence that women face problems in accessing healthcare, particularly reproductive healthcare. The Committee on the Elimination of Discrimination against Women has noted with concern "the low use, availability, affordability and accessibility of modern forms of contraception, in particular in the Transnistrian region and rural areas". [498] There has been limited progress in informing and educating the population on reproductive health due to a lack of resources.[499] There have been no recent information or education campaigns on this issue.[500] The Committee on the Elimination of Discrimination against Women also noted its particular concern about reports of practices of coercive sterilisation, affecting in particular women with disabilities, women in rural areas and Roma women.[501]

More broadly, the Committee on Elimination of Discrimination Against Women has expressed its concern at the limited access to affordable health care

495 See above, note 491, p. 2.

496 *Ibid*.

497 See above, note 96, p. 16.

498 See above, note 51, Para 31.

499 Ministry of Health, *Final Evaluation Report of the National Reproductive Health Strategy 2005–2015,* 2015, p. 62, available at: http://www.sanatateafemeii.md/wp-content/uploads/2015/02/Raport_evaluare_SNSR_final_14-August-2015.pdf.

500 *Ibid*., p. 62.

501 *Ibid.*

for older women,[502] a concern which was corroborated through research for this report. One participant in an Equal Rights Trust focus group stated that a doctor had used derogatory language towards her, because of her age and gender, stating: "How old are you? Do you look at your date of birth on your ID from time to time? Don't you see your age? Do you want to be a maid?"[503] In a 2013 survey, 85.8% of older women stated their health was "frail, poor [or] very poor" as compared with 75.7% of men.[504]

Our research has also revealed negative attitudes towards women from rural areas. In a focus group, participants noted that doctors often fail to make the necessary medical investigations or have a discriminatory attitude towards rural women, because they are poor.[505] An Evaluation Report on the implementation of the National Programme on Ensuring Gender Equality for 2010-2015 also noted that women living in rural areas suffer from limited access to healthcare.[506] The same report also noted the failure to provide adequate medical and social assistance to women with complex medical and social needs from a multi-dimensional perspective.[507]

Political Life

Women are underrepresented in political life and decision-making in Moldova, with both the UN Special Rapporteur on Extreme Poverty and Human Rights[508] and the Committee on the Elimination of Discrimination against Women noting the low levels of female participation in public life:

> *The representation of women in Parliament and in Government positions at national and local levels is still low. The disadvantaged groups of women, includ-*

502 See above, note 51, Para 31.

503 *Ibid*.

504 HelpAge International and Gender-Centru, *Submission to the Committee on the Elimination of Discrimination against Women for Moldova*, 2013, p. 11, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MDA/INT_CEDAW_NGO_MDA_14778_E.pdf.

505 Focus group with 17 women, aged 30-60, 12 June 2015, Lăpușna village, Hîncești rayon.

506 See above, note 384, p. 53.

507 *Ibid*., p. 11.

508 See above, note 84, Para. 24.

> *ing Roma women and women with disabilities, are, in practice, almost completely excluded from political and public life.*[509]

The level of women's participation in parliament is below the EU average (approximately 24%).[510] In 2014, slightly over a fifth (21.78%, 22 of 101 positions) of parliamentarians were women.[511] As of April 2016, only five women had positions in the Cabinet.[512] In 2005, just 25% of candidates in parliamentary elections were women, rising to just 30.5% in 2014.[513] In addition, civil society organisations have expressed concerns about the placement of women on candidate lists:

> *Women are placed at the end of the candidate's lists which prevents them from accessing (…) Parliament even though they have been active members of the parties. Only 5.9% of women are placed in the first 10 positions on the lists in comparison with 11% of men. This clearly diminishes the chances of women to get elected and to increase their number in the Parliament.*[514]

While the representation of women in local decision making bodies has increased in recent years,[515] party leaders have also been accused of nominating women for "uncompetitive" positions in local and regional elections.[516]

509 See above, note 51, Para. 23.

510 Inter-Parliamentary Union, *Women in National Parliaments*, 2016, available at: http://www.ipu.org/wmn-e/world.htm. See also European Parliamentary Research Service, *At a Glance: Infographic*, 2015, available at: http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/545717/EPRS_ATA(2015)545717_REV1_EN.pdf.

511 See above, note 388, Para. 1.1.

512 Government of the Republic of Moldova, *Cabinet of Ministers*, 2016, available at: http://www.gov.md/ro/profiles/team.

513 See above, note 388, Para. 1.1.

514 *Ibid*., p. 3.

515 See above, note 369, p. 41.

516 Organisation for Security and Cooperation in Europe, *Final Report: Parliamentary Elections in Moldova*, 201, p. 9, available at: http://www.e-democracy.md/files/elections/parliamentary2014/final-report-osce-elections-2014-ro.pdf.

In the 2015 local elections 34.9% of candidates were women.[517] Only 22.5% of mayoral candidates were female, suggesting that fewer women are nominated by parties to run for more senior positions.[518]

Research by civil society organisations indicates that gender stereotypes inhibit women's participation in public life. The traditional view of women as having a primarily private, family-focused role in social life "restricts their involvement in politics".[519] In a recent survey conducted by the Women's Law Centre, some male respondents expressed the view that "incapable women" should not hold positions of power; whilst others suggested that positions of authority should only go to "skilled persons".[520] Only 53.7% of male respondents indicated that they would support a quota system providing for a higher representation of women in Parliament and just 55.3% would agree to a similar quota for management positions.[521] Additionally party financing may play a role: as women are less able to contribute toward party election campaigns, they can be disadvantaged in securing party support for their election.[522]

Despite this, there are some positive indications. In the 2015 local elections, two female Roma candidates won election for the first time,[523] a particularly positive development in light of the finding by the Committee on the Elimination of Discrimination against Women, which found in 2013 that Roma women are "almost completely excluded from political and public life".[524] In April 2016, Parliament passed a law requiring that at least 40% of candidates on electoral lists be women, and providing sanctions for parties which do not

517 Centre "Partnership for Development", *Equal Opportunities in the Electoral Process. Case study: Local Elections of 14 and 28 June*, 2015, p. 10, available at: http://progen.md/files/7091_sanse_egale_in_procesul_electoral.pdf.

518 *Ibid*.

519 *Ibid*., p. 8.

520 See above, note 405, p. 13.

521 *Ibid*., p. 13.

522 See above, note 485, p. 9.

523 Ziarul de Grdă, "For the First Time in Moldova Three Roma women Become Local Councillors", 3 July 2015, available at: http://www.zdg.md/stiri/stiri-sociale/foto-pentru-prima-data-in-moldova-trei-femei-rome-devin-consilieri-locali.

524 See above, note 51, Para. 23.

comply.[525] However, there is no provision regulating the order of candidate placement on electoral lists.[526] At the time of writing, the draft amendments are awaiting Presidential assent.

Sexism in Advertising and the Media

Stereotypes of women are encouraged through sexist advertisements and media imagery. In 2013, the Committee on the Elimination of Discrimination against Women urged Moldova to amend its legislation in order to prohibit the practice of using sexist imagery in the media.[527]

In 2010 and 2013, women sued two companies over sexist advertising. Both cases reached the Supreme Court in 2013, which found against the claimants. At the time of the case, there was no express prohibition on the use of sexist imagery in advertisements, and the court found that the images used could not be considered "immoral" for the purposes of Article 11 of the Law on Advertising.[528] In 2014, a separate case concerning the use of sexist images in the marketing of chocolates was considered by the CPEDEE.[529] According to the Council, Moldovan legislation, specifically the Law on Ensuring Equal Opportunities for Women and Men, prohibits the use of materials that impugn the dignity of women.[530] On 15 January 2016, the Supreme Court of Justice confirmed the decision of the CPEDEE, concluding that the images used were sexist and breached the principle of non-discrimination on the grounds of sex.[531]

On 14 April 2016, a bill to amend the Law on Advertising and the Law on Ensuring Equal Opportunities between Women and Men was passed in the Moldovan

525 The same quota also applies to male candidates. See above, note 396.

526 *Ibid*., Article 41(2).

527 See above, note 51, Paras. 17–18.

528 Law on Advertising (Law No. 1227 of 27 June 1997).

529 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 108/2014 of 28 July 2014, available at: http://www.egalitate.md/media/files/files/decizie_cauza_108_28_07_2014_depersonalizat_8508578.pdf.

530 See above, note 359, p. 23.

531 Supreme Court of Justice, Decision No. 3ra-1573/15 of 24 December 2015, available at: http://jurisprudenta.csj.md/search_col_civil.php?id=25022.

Parliament. The proposed amendment, Article 11[1], introduces an explicit ban on sexist advertising[532] and includes a definition of "sexist advertising".[533]

Conclusion

In recent years, Moldova has developed an extensive legal and regulatory framework providing for gender equality in employment, education, healthcare and other areas. Yet historic inequalities, persistent gender stereotypes, and problems with implementation and enforcement of laws and policies means that women experience discrimination and disadvantage in many areas of life. This is most evident in respect of gender-based violence, where poor enforcement of laws is compounded by high levels of social tolerance of violence against women, particularly violence in the home. Women do not participate in employment on an equal basis with men: women are more likely to be unemployed, and if employed are likely to work in less senior roles, with lower levels of pay. Gender segregation in the workplace is also reflected in education, where there is a tendency to treat certain subjects as "male" and others as "female". Gender stereotypes are also reflected in political life, where women are underrepresented at all levels of government.

2.5 Discrimination on the Basis of Disability

Moldova is required to prohibit all forms of discrimination against persons on the basis of disability, by virtue of its obligations under the Convention on the Rights of Persons with Disabilities (CRPD), which it ratified in 2010. The CESCR has stated that discrimination on the basis of disability in the enjoyment of the rights guaranteed by the ICESCR is prohibited by virtue of the term "other status" in the non-discrimination provision, Article 2(2).[534] Further, the ECHR requires Moldova to prohibit discrimination based on disability in respect of all Convention rights, by virtue of Article 14.

532 Defined as "a form of gender-based discrimination expressed in behaviour and attitude toward, or conditions for a gender or sex as inferior, less competent, or less valuable than the other gender or sex, that makes use of prejudices or stereotypes in the misrepresentation of images of women or men, or the social aspect of relations between women and men, or masculinity or femininity". See above, note 528, Article 11.

533 See above, note 396.

534 See above, note 1, Para 28.

Due to lack of agreement over the definition of disability, there remains some uncertainty over total number of persons with disabilities in Moldova.[535] According to the National Bureau of Statistics, almost 185,000 people (approximately 5.2% of the total population) have some form of disability, of which 13,000 are children (aged 0–17).[536] Of the total, almost one in seven persons with a disability is categorised as severely disabled.[537] In the period from 2010 to 2014, the total number of persons categorised as having a disability increased by 2.7%, whilst the number of children recognised as having a disability decreased by 11.3%.[538] However, as the UN Special Rapporteur on the Rights of Persons with Disabilities has noted, as the certification of a person as having a disability is dependent on medical testing, the total number of persons with disabilities is "probably much higher".[539] The World Health Organization (WHO) estimates that approximately 15.6% of people aged 15 or above live with some form of disability, of whom 2–4% experience significant difficulties in functioning.[540] This would suggest an actual population of around 533,700 persons with disabilities in Moldova – almost three times as many as estimated by the National Bureau of Statistics.

Cultural Attitudes and the Position of Persons with Disabilities

In her 2016 report, the United Nations Special Rapporteur on the Rights of Persons with Disabilities noted that the "pervasive influence of (…) stigma and the prejudiced perception of persons with disabilities"[541] heavily influenced the development of law and policy in Moldova. For instance, the Special Rapporteur found that the legal and social framework in Moldova

535 Human Rights Council, *Report of the Special Rapporteur on the Rights of Persons with Disabilities on her Mission to the Republic of Moldova*, UN Doc. A/HRC/31/62/Add.2, 2016, Para 8.

536 National Bureau of Statistics of the Republic of Moldova, *The Situation of People with Disabilities in Moldova*, 2015, available at: http://www.statistica.md/newsview.php?l=ro&id=4976&idc=168.

537 *Ibid.*

538 *Ibid*.

539 See above, note 535, Para. 8.

540 World Health Organization, *World Report on Disability*: *Summary*, 2011, pp. 7–8, available at: http://apps.who.int/iris/bitstream/10665/70670/1/WHO_NMH_VIP_11.01_eng.pdf.

541 See above, note 535, Para. 19.

is strongly biased towards institutionalisation of persons with disabilities, with a lack of community-based services available.[542] The Special Rapporteur also found that Moldova's approach to the rights of persons with disabilities is characterised by "a geographically and culturally specific interpretation of the medical model of disability, sometimes referred to as the 'defectology' approach" which results in widespread perceptions of persons with disabilities as "abnormal".[543] This approach, in conjunction with a general lack of awareness of disability, can result in significant stigma and discrimination.[544]

In a 2015 study of attitudes towards disability in Moldova, a large share of respondents considered that persons with disabilities face discrimination in employment, in education, in political life and in their interactions with the state.[545] The study also revealed deeply concerning evidence of stigma around disability in Moldova: 53% of respondents considered persons with mental disabilities to be dangerous and felt that they should be isolated, with 70% stating that these people should be placed in state institutions.[546] A majority of respondents held negative stereotypes in relation to persons with intellectual disabilities, characterising them as "dangerous, underdeveloped, poor, hapless persons who incite pity [and] sorrow".[547] A majority also held negative views of persons with physical disabilities, with over two thirds of respondents associating them with "sin, suffering, [and] poverty".[548]

Of particular concern are the profoundly negative perceptions of persons with mental and intellectual disabilities. In a further study, two thirds of respondents associated this group of persons with "persons mentally or psychologically ill", and one third considered them to be "invalids"; 17.2% of respondents considered persons with mental and intellectual disabilities to be

542 *Ibid*., Para. 13.

543 *Ibid*., Para. 18.

544 *Ibid*.

545 See above, note 40, p. 26.

546 *Ibid*., p. 27.

547 *Ibid*.

548 *Ibid*., p. 27.

"dangerous", while 7.2% believed that they "should be isolated".[549] This study found that, while persons with physical disabilities were perceived more positively than persons with mental or intellectual disabilities, 60% of respondents considered them to be "invalid[s]".[550] Approximately 25% of respondents agreed that persons with physical disabilities "cannot take care of themselves [and] cannot work".[551]

Children with disabilities are particularly vulnerable to these negative attitudes towards disability. A particular issue is the failure to integrate children with disabilities into society, particularly in education where they are not provided with the support needed to access integrated education.[552] The UN Special Rapporteur on the Rights of Persons with Disabilities noted social stigma and lack of such support "are reportedly often behind the decision of parents to have their child interned in an institution, given that other options are not available to them".[553]

Participants in an Equal Rights Trust focus group conducted with people with multiple sclerosis in August 2015 spoke of the social stigma they suffer, and the consequential discrimination that they experience.[554] Focus group participants told our researchers that there is no tolerance or compassion towards persons with disabilities in society and that many people with disabilities want to leave Moldova because they feel marginalised and isolated from society. Participants were afraid of being abandoned by their family. Participants stated that people with multiple sclerosis experience prejudice both in general society and within the family. They stated that people with multiple sclerosis strive to hide their diagnosis due to fear that, if it becomes known, they will be isolated from society, dismissed from work, or refused employment. One participant said that people with disabilities often have depression because they feel isolated and misunderstood. She told researchers that from time to time she considers it would be better to live

549 See above, note 3, p. 23.

550 *Ibid*., p. 26.

551 *Ibid*., p. 26.

552 *Ibid*., p. 71.

553 See above, note 535, Para. 20.

554 Equal Rights Trust focus group with 10 people with multiple sclerosis, 4 August 2015, Chișinău.

in a centre for persons with disabilities because only they could understand and support her.

Legal and Policy Framework

Having ratified the CRPD in 2012, Moldova enacted the Law on Social Inclusion of Persons with Disabilities, with the express aim of transposing the Convention's provisions into national law. As such, the main piece of legislation governing the rights of persons with disabilities in Moldova reflects the "social model" of disabilities that underpins the Convention. Nevertheless, other laws, state policies, and practice have yet to be brought into line with this approach, with the result that Moldova has been criticised for applying a medical model, whereby persons with disabilities are defined by their "defects" when compared to "normal" or "healthy" members of society, leading to "exclusion and segregation".[555] The UN Special Rapporteur on the Rights of Persons with Disabilities has urged the State to adopt a human rights approach to disability, eliminating the medical model in "public policy, legal instruments and social protection services" and implementing a "comprehensive combination of policy, legal and service reforms", as required by the CRPD.[556]

A number of legal provisions in Moldova regulate the rights of persons with disabilities. Nevertheless, it is noteworthy that in Article 16 (2) of the Constitution, which provides for equality before the law, disability is omitted from the list of protected characteristics. It states:

> *[A]ll citizens of the Republic of Moldova shall be equal before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin.*[557]

Elsewhere in the Constitution, persons with disabilities are provided with certain additional benefits and protections, albeit in language which indicates

555 UN Special Rapporteur on the Rights of Persons with Disabilities on Moldova, *Statement on the Preliminary Findings of the Special Rapporteur on the Rights of Persons with Disabilities on her Mission to the Republic of Moldova*, 2015, available at: http://www.un.md/viewnews/307.

556 See above, note 535, Para. 60.

557 See above, note 196, Article 16.

that persons with disabilities are objects of charity, rather than independent rights holders. Article 51 of the Constitution provides that:

> *(1) Handicapped persons shall enjoy special protection from the whole of society. The State shall ensure normal conditions for medical treatment and rehabilitation, education, training and social integration of disabled persons.*

Moreover, Article 51(2) states that "[n]o one can be subject to forced medical treatment unless for the cases foreseen by law", thus contravening the CRPD, which expressly prohibits all forms of forced medical treatment.[558] The UN Special Rapporteur on the Rights of Persons with Disabilities has recommended this Article be amended to bring it into full compliance with the Moldova's international human rights obligations, including those set out in the CRPD.[559]

Article 47 of the Constitution provides that:

> *(1) The State shall be bound to take actions aimed at ensuring to every person and to his/her family a decent standard of living, health protection and welfare including food, clothing, shelter, medical care, and the necessary social services.*
>
> *(2) All citizens shall have the right to be socially secured in case of: unemployment, disease, invalidity, widowhood, old age or other cases of loss of the subsistence means, due to certain circumstances beyond their control.*[560]

While a constitutional provision guaranteeing social protection for persons with disabilities is to be welcomed, it is cause for concern that both this Article and Article 51 use inappropriate language such as "invalids" and

558 See above, note 535, Para. 11.

559 *Ibid*.

560 See above, note 196, Article 47.

"handicapped". The use of language such as this has been criticised by UN Treaty bodies.[561]

Beyond the Constitution, legislation provides stronger protection for the rights of persons with disabilities. The Law on Ensuring Equality lists disability as a protected ground of discrimination in Article 1(1), a provision that has been used by both the CPEDEE[562] and national courts.[563] In addition, following the ratification of the CRPD in 2012, the Moldovan Parliament adopted the Law on Social Inclusion of Persons with Disabilities.[564] The Law is aimed at transposing the provisions and guarantees of the Convention into the national legal framework; regulating the rights of persons with disabilities "in order to ensure their social inclusion and participation in all spheres of life without discrimination".[565] The Law provides for reasonable accommodation, which it defined as:

> *[N]ecessary and appropriate changes and adjustments, which do not impose a disproportionate or undue burden, aimed to ensure persons with disabilities the enjoyment or exercise, on equal terms with others, of all human rights and fundamental freedoms.*[566]

The Law provides that reasonable accommodation shall be made when developing infrastructure to be used by persons with disabilities,[567] and when mak-

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561 See, for instance, the United Nations Committee on the Rights of Persons with Disabilities Concluding Observations on Ukraine: "*The Committee (…) is of the opinion that the use of terminology in Ukrainian that refers to persons with disabilities as "invalids" or "persons with limited abilities" is not consistent with the Convention (…) The Committee calls upon the State party to remove the reference to "invalids" or "persons with limited abilities" from all its legislative and policy documents*". Committee on the Rights of Persons with Disabilities, *Concluding Observations: Ukraine*, UN Doc. CRPD/C/UKR/CO/1, 2 October 2015, Paras. 5-6.

562 See, for example, Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 291/15 of 28 September 2015, available at: http://egalitate.md/media/files/files/decizie_291_2015_depersonalizat_578216.pdf.

563 See, for example, Botanica Court, Chișinău, Decision No. 2-1379/15 of 29 October 2015, available at: http://www.jbt.instante.justice.md/apps/hotariri_judecata/inst/jb/get_decision_doc.php?decision_key=78F7A3E2-AC91-E511-A1AB-005056A5D154&case_title=Dosar-12-2-2938-07042015-3581.

564 Law on Social Inclusion of Persons with Disabilities, (Law No. 60 of 30 March 2012).

565 *Ibid*., Article 1.

566 *Ibid*., Article 2.

567 *Ibid*., Article 19.

ing arrangements to meet the needs of persons with disabilities in housing, in education and professional training and at work.[568]

Under Article 54 of the Law, a National Council on the Rights of Persons with Disabilities is established.[569] The Council is tasked with promoting and monitoring the implementation of state policy in the field of disability and the enforcement of the CRPD.[570] However, at present, the efficacy of the Council has been undermined by the lack of powers to apply sanctions and the lack of resources to support its mandate.[571] Moreover, the UN Special Rapporteur on the Rights of Persons with Disabilities has noted that many of the Council's decisions have been "challenged and overturned in court", whilst interaction with disability organisations has been lacking.[572] The Special Rapporteur has urged the State to strengthen the Council and establish an independent monitoring mechanism, in accordance with Article 33 of the CRPD.[573]

Through Government Decision No. 65 on the Determination of Disability and Working Capacity, disabilities are categorised into three groups: slight, moderate and severe; to be determined by the National Council on Disability and Work Capacity Determination or its territorial subdivisions.[574] Under Annex 3 of the Decision, detailed instructions are provided on how a determination of the degree of disability is to be made.[575] The disability certification system has been severely criticised by the Special Rapporteur, who has described the process as "arbitrary", "ineffective" and "discriminatory"; failing to ensure the societal involvement of persons with disabilities and in contravention of "the principles of independence, choice and control that are central to a human rights-based approach".[576]

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568 *Ibid*., Articles 22, 27 and 33.

569 *Ibid*., Article 54.

570 *Ibid*., 'Article 54.

571 See above, note 535, Paras 15–16.

572 *Ibid*.

573 *Ibid*.

574 Decision approving the Determination of Disability and Working Capacity (Government Decision No. 65 of 23 January 2013), Article 2, Annex 3, available at: http://lex.justice.md/md/346508.

575 *Ibid.*, Annex 3.

576 See above, note 535, Para. 25.

Accessibility

Accessibility is a key principle of the CRPD.[577] Under Article 9 of the Convention, states parties are required to ensure access on "an equal basis with others" to the physical environment, transportation, information and communications, and to other facilities and services open or provided to the public, in both urban and rural areas.

Despite Moldova's international obligations, including those under Article 9 of the CRPD, the inaccessibility of public spaces and infrastructure is a major problem in Moldova.[578] The issue has been highlighted by the Ombudsman, who noted in 2015 that persons with certain physical disabilities, as well as those with impaired hearing and vision faced serious difficulties in accessing public institutions, housing, and public transport, with the result these people are "isolated in their homes and depend on others in order to move".[579]

Accessibility of General Infrastructure

The creation of accessible conditions is required by several pieces of national legislation, including the Law on Authorising the Execution of Construction Works,[580] the Law on the Quality of Construction,[581] and the Law on the Social Inclusion of Persons with Disabilities.[582] Additionally, in 2014, the Ministry of Regional Development and Construction amended construction regulations to require the adaptation of social infrastructure to the needs of persons with disabilities.[583] Article 19 of the Law on the Social Inclusion of Persons with Disabilities provides that:

577 Convention on the Rights of Persons with Disabilities, 2515 U.N.T.S. 3, 2006, Article 3(f).

578 Association "Motivation", *Holistic Report: Monitoring of Rights of Persons with Disabilities in Republic of Moldova*, 2014, p. 11, available at: http://www.cod.rs/wp-content/uploads/2014/06/Raport-holistic-eng.pdf.

579 Office of the Ombudsman, *Activity Report*, 2015, p. 42, available at: http://www.ombudsman.md/sites/default/files/document/attachments/raport_2015_red.pdf.

580 Law on Authorising the Execution of Construction Works, (Law No. 163 of 9 July 2010), Article 1.

581 Law on the Quality of Construction, (Law No. 721 of 2 February 1996), Article 9.

582 See above, note 564, Articles 19 and 26.

583 See Construction Regulations Regarding the General Security Requirements of Constructions for their Use and Accessibility for Persons with Disabilities (NCM C.01.06-2014); and the Practical Code of Constructions on the Design of Constructions Considering Accessibility for Persons with Disabilities (CP C.01.02-2014).

> *Social institutions must be designed in a way that makes them accessible to people with disabilities: equipped with roadways and installed in compliance with the legislation in force regarding respective field.*

Article 26 of the same Law provides that: "[o]fficials, enterprises, institutions and organisations, irrespective of ownership, which do not meet the provisions of this law in terms of removing barriers (…) are liable under the Contravention Code".

Supplementing these legislative provisions, in 2013, the Government of Moldova adopted an Action Plan on the Implementation of Measures to Ensure Accessibility for People with Disabilities to Social Infrastructure.[584] The Action plan calls for the adoption of various measures designed to improve accessibility for persons with disabilities; including:

- Organising inspections in accordance with provisions of the Law on State Control over Business Activity (2012), in order to ensure observance of accessibility requirements for persons with disabilities;
- Developing and adopting an Action Plan on adapting buildings to the needs of the persons with disabilities;
- The revision and approval of normative acts in order to ensure access of persons with disabilities to social infrastructure;
- The development of a curriculum for architecture faculties on accessibility compliant construction design and reasonable accommodation for people with disabilities; and
- Capacity building to ensure compliance with technical requirements of regulations on accessibility for persons with disabilities.[585]

Despite these legislative and policy provisions, the inaccessibility of public buildings and social institutions continues to create barriers for persons with

584 Decision approving the Adoption of Action Plan on Implementation of Measures to Ensure Accessibility for People with Disabilities to Social Infrastructure (Government Decision No. 599 of 13 August 2013), available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=349254.

585 Government of the Republic of Moldova, *Action Plan on the Implementation of Measures to Ensure Accessibility for People with Disabilities to Social Infrastructure*, 2013, available at: http://lex.justice.md/UserFiles/File/2013/mo182-185md/anexa_599.doc.

disabilities. In 2014, the NGO Association "MOTIVAȚIE" produced a monitoring report on the rights of persons with disabilities in Moldova, which found, among other things, that very few institutions were fully adapted to the needs of persons with disabilities.[586] A similar conclusion was reached by the Ministry of Regional Development and Construction, which conducted an assessment of the accessibility of public institutions and buildings in 2014. According to this assessment, 3,440 out of 5,137 public institutions (70%) did not have access ramps and, of those that did, many did not meet established accessibility standards.[587] The issue has also been highlighted by the CPEDEE, which stated in its Activity Report for 2014, that "60% of the premises of the monitored public administration authorities are not adapted for the needs of persons with disabilities",[588] and found that 60% of court buildings lacked access ramps.[589] In 2015, the CPEDEE requested that its own offices be made more accessible to persons with disabilities.[590]

As a result of poor monitoring and sanctioning mechanisms, few Moldovan institutions are adapted to the accessibility requirements of persons with disabilities,[591] and the adoption of new laws, regulations and action plans has not had a marked impact on this situation. In 2015, the Office of the Ombudsman produced an assessment of the implementation of the Action Plan on Measures to Ensure Accessibility for People with Disabilities to Social Infrastructure, which showed no significant change in levels of accessibility.[592] Similarly, in 2015 the UN Special Rapporteur on the Rights of Persons with Disabilities criticised the lack of accessibility for persons with disabilities in Moldova, noting that the "lack of accessibility provisions (…) poses a significant cross-cutting challenge that has an impact on every facet of the lives

586 See above, note 378, p. 34.

587 See above, note 378, p. 34.

588 Ministry of Regional Development and Construction, "Press statement", 4 January 2014, available at: http://mdrc.gov.md/libview.php?l=ro&idc=55&id=2747&t=/Arhitectura-si-Urbanism/Urbanism-arhitectura-si-amenajarea-teritoriului/Circa-70-la-suta-din-institutiile-publice-i-cladirile-de-menire-sociala-din-tara-nu-dispun-de-rampe-de-acces.

589 See above, note 359, p. 7.

590 *Ibid*.

591 See Council on the Prevention and Elimination of Discrimination and Ensuring Equality, above, note 389, pp. 47–48.

592 *Ibid*., p. 22.

of [persons with disabilities]."[593] The Special Rapporteur recorded that few changes had occurred since 2013.[594]

While the research for this report was being conducted, Promo-LEX provided assistance in several cases relating to inaccessible infrastructure and the denial of reasonable accommodations to persons with disabilities. For example, in 2014, Promo-LEX provided assistance to Cornel Baran, a young man who required the use of a wheelchair.[595]

Case Study: Cornel Baran

Because of birth trauma, Mr Baran was unable to walk and, since 2002, was home schooled by teachers under an Educational Program developed by the Ministry of Education. He was denied the right to sit his Baccalaureate exams at home, despite the fact that the Baccalaureate Regulations provided for home examination in certain circumstances. Mr Baran had undertaken all previous examinations, including the preliminary Baccalaureate tests, at home.

One day before the Baccalaureate exams, Mr Baran was informed that he would have to report to the Baccalaureate Centre. He was assured that he would receive all necessary assistance from representatives of the Ministry of Education. However, on the day of exams, nobody from the Ministry was in attendance, and he had no alternative but to seek the help of other students to enter the Baccalaureate Centre, as it was inaccessible. In June 2014, Mr Baran lodged a complaint against the Ministry of Education and the Chişinău Department of Education, Youth and Sports to the CPEDEE. On 9 September 2014, the CPEDEE ruled that Mr Baran had been denied reasonable accommodationThe Council also issued several recommendations to the Ministry of Education.

Participants in an Equal Rights Trust focus group with persons with disabilities stated that public authorities had failed to accommodate them on many

593 See above, note 579, p. 42.

594 See above, note 535, Para 29.

595 *Ibid*., Para 31.

occasions. They noted that employees of local authorities, medical institutions, and public transport providers had failed to make accommodations, and emphasised the lack of access ramps and support bars in education institutions (including kindergartens and schools), as being a particularly significant barrier for persons with physical disabilities.[596]

Poor accessibility is also a serious issue in Moldovan penitentiaries. Out of 7,600 detainees, an estimated 207 have some form of disability.[597] In 2015, the Ombudsman visited several prisons, concluding that current levels of accessibility are insufficient and need to be improved.[598] Tatiana Machina, a woman who uses a wheelchair, was detained for four years between 2011 and 2015 in an unsuitable facility;[599] she received assistance from Promo-Lex, and her case was taken to the CPEDEE[600] and then the European Court of Human Rights.[601]

Case Study: Tatiana Machina

Between February 2011 and September 2015, Ms Machina was detained in Penitentiary No. 13, Chişinău. Her cell was not adapted for persons with motor disabilities and, consequently Ms Machina could not perform basic activities, such as personal hygiene and eating, without the assistance of another person. In February 2012, because the bathroom was not adapted for persons with disabilities, Ms Machina fell and injured herself.

596 Promo-LEX Association, "Press Statement on the Case of Cornel Baran", 4 November 2014, available at: https://promolex.md/index.php?module=press&cat=0&&item=1617&Lang=enl; and Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 122/2014 of 9 September 2014, available at: http://egalitate.md/index.php?pag=news&id=836&rid=529&l=ro.

597 Equal Rights Trust focus group with 12 persons with disabilities, 11 July 2015, Cahul town, Cahul rayon.

598 Office of the Ombudsman, *Monitoring the Rights of Persons with Disabilities in Detention*, 2015, p. 9, available at: http://www.ombudsman.md/sites/default/files/document/attachments/diz_pen1.pdf.

599 *Ibid*., p. 11.

600 Promo-LEX Association, "Press Statement on the Case of Tatiana Machina", 12 January 2015, available at: https://promolex.md/index.php?module=press&cat=0&&item=1660&Lang=en.

601 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 155/14 of 11 December 2014, available at: http://egalitate.md/media/files/files/decizia_nr__155_depersonalizat_1273504.pdf.

In September 2014, Tatiana submitted a complaint to the CPEDEE concerning the failure of the Department of Penitentiary Institutions and the administration of Penitentiary No. 13 to make reasonable accommodation for her. She also alleged indirect discrimination by the local office of the National Social Insurance House for their refusal to pay her disability allowance, on the grounds that she was already in the state's care (detention). On 11 December 2014, the CPEDEE established that Tatiana Machina had been discriminated against, finding for her in response to both aspects of her complaint. In 2014, the case was also submitted to the European Court of Human Rights. The Court communicated the case to the Government of the Republic of Moldova in 2015.

Accessibility of Transportation

Under Article 20(1) of the Law on the Social Inclusion of Persons with Disabilities, public and private entities are required to:

- adapt the means of public transport in circulation;
- re-equip vehicles according to the needs of people with motor disabilities;
- adapt stations for the means of public transportation, including tactile paving marking the spaces to the front door access to transport;
- install appropriate billboards in public transport in compliance with the needs of people with hearing and visual impairments;
- print large and contrasting colour indicators for routes and signs in urban public transport;
- adapt pedestrian crossings and intersections to meet the needs of people with visual and hearing impairments; and
- mount audible and visual signalling systems at intersections with heavy traffic.[602]

Under Article 20(2), taxi firms are obliged to maintain "at least one adapted car to transport people with disabilities who use a wheelchair".[603] Refusal

602 See above, note 564, Article 20(1).

603 *Ibid*., Article 20(2).

to provide transport to a person with disabilities including those who use a wheelchair or other walking apparatus constitutes discrimination. In addition, wheelchairs and walking apparatus must be carried free of charge.[604] Similar conditions are imposed on rail and air transport providers.[605]

Nevertheless, despite legislative protection, persons with disabilities face difficulties in accessing transportation, impacting upon their personal autonomy and ability to enjoy all aspects of social life on an equal basis with others. During research undertaken for this report, Promo-LEX conducted several interviews that illustrate the problems faced by persons with disabilities in respect of transport. Iuliana, from *Hincești* town, told researchers:

> *I am a person with a motor disability and I use a wheelchair. The biggest problem I, and other people like me, encounter in my daily life is related to inaccessible infrastructure. I recall a case when the bus driver from the route Chișinău-Hîncești refused to take me on the bus because I was not accompanied. He was very brutal and mean to me.*[606]

Another interviewee, Marina, narrated her experience watching a man in a wheelchair struggling to board an adjusted trolleybus:

> *After 25 minutes, the trolleybus he was waiting for had arrived. The people standing at the bus station stepped aside allowing the man in a wheelchair to pass freely onto the trolleybus. The man approached the trolleybus; the driver saw him and opened the middle door, specially adjusted for wheelchairs. However, the man could not enter the trolleybus because of the huge gap between the trolleybus step and the curb. The man made several attempts but failed. The driver got out and tried to help, he was very nice and polite. However, regardless of all efforts, the man in a wheelchair could not enter the trol-*

604 *Ibid*., 2012, Article 20(2).

605 *Ibid*., Articles 20(3) and (4).

606 Equal Rights Trust interview with Iuliana, 14 July 2015, Hîncești town, Hîncești region.

> *leybus. The trolleybus left while the man remained at the bus station, waiting for another one.*[607]

The most accessible means of transport in Moldova are trolleybuses. However, these are available only in major cities such as Chișinău, Bălți, Tiraspol, and Bender. In rural areas there are only buses and minibuses, which are inaccessible for persons using a wheelchair. Thus, many are forced to use taxi services, resulting in high transport costs, as one person interviewed for a 2014 report stated:

> *Transport costs are very high. Only new trolleybuses in Chișinău are accessible (…) so people have to take a taxi (…) It is impossible to enter into a minibus. I tried once and I failed. The door is too narrow and the driver was annoyed because I was delaying him. It is easier to enter a bus but only if someone helps because the stairs are very high and it takes 2-3 strong men to lift you up.*[608]

On 28 October 2015, the Government adopted amendments to Article 49 of the Law on the Social Inclusion of Persons with Disabilities, aiming to merge two pre-existing transport compensation benefits into one core benefit.[609] However, this change did not increase the amount of benefits awarded, which are currently insufficient to meet the real transport costs of persons with disabilities.

Beyond basic issues of accessibility, non-governmental organisations and media organisations have highlighted the problem of overcharging persons with disabilities for transport. Although this practice is prohibited under the Law on the Social Inclusion of Persons with Disabilities,[610] in 2015 the Association for Independent Press published an article discussing attempts to procure a

607 Equal Rights Trust interview with Marina, 5 October 2015, Chișinău.

608 Feghiu, L., "Interview with Elena Ratoi, PR Manager at Association "Motivație", *BLOGUVERN*, 1 April 2014, available at: http://bloguvern.md/2014/04/01/transforma-dizabilitatea-inabilitate-oameni-simpli-despre-lucruri-complicate.

609 Government of the Republic of Moldova, *People with Special Needs will Receive a Single Compensation Benefit for Transport Services Every Year*, 2015, available at: http://www.gov.md/ro/content/persoanele-cu-nevoi-speciale-vor-primi-o-compensatie-unica-pentru-serviciile-de-transport.

610 See above, note 564, Article 20(2).

wheelchair accessible taxi. Having been rejected by one company, which did not have adapted cars, a second company attempted to charge double the ordinary fare, in direct violation of the law.[611] This issue has also been discussed by NGOs during meetings with the Ombudsman's Office.[612] Mariana, interviewed for this report, narrated her experience of being overcharged by taxi companies:

> *I am a wheelchair user. When I order a taxi, I do not inform them that I am in wheelchair, because asking for a wagon costs 10–15 lei [€0.45–€0.68 Euro] more than asking for a non-wagon car. There are cars where my wheelchair can get into the car, but there are times when it does not. In such cases I have to ask for a wagon car, which costs more. There were situations when I called an ordinary taxi, got into the car, and the driver asked 10–15 lei [€0.45–€0.68 Euro] more. When I asked why I should pay more, the driver replied that it is because I am in wheelchair and it is in the trunk. There were cases when I was asked to pay 20 lei [€0.9 Euro] more. Why, I asked? Because it is a wagon, the driver replied. And I start to explain that the wheelchair is my legs and I do not want to pay because of this. The taxi operators say that this is normal and that I have to pay more.* [613]

Our research also found other examples of discrimination against persons with disabilities when accessing public transport. In 2014, a young man from Chișinău, Maxim Miftahov complained to the CPEDEE, alleging discrimination in access to public transport services after the driver of a minibus would not let him on board due to a lack of space. The CPEDEE ruled that Mr. Miftahov had been directly discriminated against on the grounds of disability.[614]

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611 Association for the Independent Press, *Taxi Companies Violate the Rights of People Using Wheelchairs*, 2015, available at: http://api.md/upload/files/ACTIV-11(65)-antidiscr-ro-web.pdf.

612 Office of the Ombudsman, "Press Statement", visited 12 May 2016, available at: http://www.ombudsman.md/ro/content/asigurarea-accesului-la-transportul-public-al-persoanelor-cu-dizabilitati-locomotorii-cu.

613 Equal Rights Trust interview with Mariana, 24 March 2015, Chișinău.

614 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 157/14 of 9 December 2014, available at: http://egalitate.md/media/files/files/decizie_157_14_depersonalizat_6487263.pdf.

Following the decision of the CPEDEE, the case was taken to court; in 2015, a court awarded Mr Miftahov 10,000 lei (approximately €449 Euro).[615] Our researchers interviewed N., who stated:

> *I have a motor disability. In 2015, I was traveling by minibus from Chișinău to my village. I asked the driver to stop near the road where it will be easier for me to get down. The driver replied: "in this village all are "disabled"?" I went to the owner of the route and complained about this situation and the driver was rebuked.*[616]

Accessibility of information

Persons with total or partial hearing or sight loss face considerable difficulties accessing information. The issue of access to information has been recognised by civil society, the Ombudsman and UN Special Procedures. In its 2015 Activity Report, the Office of the Ombudsman criticised the lack of translation services in the State, finding that "the required volume of translation into sign language on television is not ensured [and] public information is not translated into Braille".[617] Similarly, the Special Rapporteur on the Rights of Persons with Disabilities has noted that:

> *Deaf persons (…) face significant barriers to their inclusion (…) [S]ign language has not been adequately developed in the country, a fact that hampers the access of deaf children to bilingual education in sign language. Hardly any public services or information are provided in sign language. These barriers force deaf persons to live in complete isolation from the rest of society.*[618]

615 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, "Press Statement", 6 November 2015, available at: http://www.egalitate.md/index.php?pag=news&id=832&rid=851&l=ro.

616 Equal Rights Trust interview with N., 11 July 2015, Andrusul de Sus village, Cahul rayon.

617 See above, note 579, p. 42.

618 See above, note 535, Para 39.

Data compiled by the Association of the Deaf suggests that there are around 5,000 persons with "hearing impairments" in the country.[619] There are only nine sign language interpreters in the country, which equates to one interpreter for every 555 persons.[620] There are no educational centres providing training to sign language interpreters.[621]

Several laws and regulations include provisions providing for accessible information for persons with hearing difficulties. For example, Article 13(4) of the Moldovan Broadcasting Code states:

> *Access for people with hearing impairments to television broadcasts and news of major importance is guaranteed by interpretation in sign language, at the expense of broadcaster, for at least 20 minutes of the daily output of the programme service.*[622]

Civil society organisations have noted that not all broadcasters abide by this regulation and, moreover, that 20 minutes of programming is insufficient to secure effective access to information.[623]

In 2012, the government adopted a regulation on the Official Websites of Public Authorities on the Internet.[624] According to this regulation, official websites must be adapted in compliance with the Web Accessibility Initiative guidelines to provide access for persons with disabilities.[625] However, non-governmental organisations report that laws have not been harmonised in this area.[626]

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619 See above, note 579, p. 43.

620 Office of the Ombudsman, *Observance of the Rights of People with Disabilities*, 2015, available at: http://www.ombudsman.md/en/content/observance-rights-people-disabilities.

621 Legal Assistance Centre for Persons with Disabilities, *Submission to the Committee on the Rights of Persons with Disabilities for Moldova,* 2015, p. 27, available at: http://www.advocacy.md/sites/newadvocacy/files/Raport%20de%20alternativa%20CRPD_ROM.pdf.

622 Broadcasting Code of the Republic of Moldova (Code No. 260 of 27 July 2006), Article 13(4).

623 See above, note 621, pp. 10–11.

624 Decision approving Official Websites of Public Authorities on the Internet, (Government Decision No. 188 of 3 April 2012), available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=342699.

625 *Ibid*., Article 51.

626 See above, note 621 p. 27.

In 2014, a new regulation was adopted on the Provision of Communication Services through the use of Sign Language with the Help of an Interpreter.[627] Under this regulation, communication services using a sign language interpreter are to be provided free of charge to persons with hearing impairments who are registered with the social assistance and family protection departments or the Association of the Deaf, and those who require support of an interpreter to ensure communication.[628] Although welcoming this addition, the Office of the Ombudsman has stated that improvements will need to be made in order to fully realise the rights of persons with hearing impairments.[629] The Ombudsman has further recommended that the relevant authorities work with persons with hearing difficulties to develop materials and staff training in sign language.[630]

Employment

Article 27 of the CRPD requires Moldova to "recognize the right of persons with disabilities to work, on an equal basis with others", including "the opportunity to gain a living by work freely chosen or accepted in a labour market" and the right to a "work environment that is open, inclusive and accessible to persons with disabilities".[631]

Several laws regulate access to employment for persons with disabilities. Under Article 8 of the Labour Code, discrimination in employment is prohibited, on grounds which include disability. The Code also contains a number of specific disability-related provisions concerning the conclusion of contracts (Articles 31(2)(e), 61(f)); the length of the working day (Articles 96(4), 97(1), 100(4)); and leave entitlement (Articles 120(2), 121(4)).[632]

627 Decision approving the Adoption of the Regulation on the Provision of Communication Services through the Use of Sign Language with the Help of an Interpreter (Government Decision No. 333 of 14 May 2014), available at: http://lex.justice.md/viewdoc.php?action=view&view=doc&id=353016&lang=1.

628 See above, note 627, Article 3.

629 See above, note 579, p. 43.

630 *Ibid.,* p. 43.

631 See above, note 577, Article 27.

632 See above, note 395, Article 8.

Chapter V of the Law on the Social inclusion of Persons with Disabilities concerns the employment of persons with disabilities. The Law sets out the rights of persons with disabilities to work and to reasonable accommodation in the work place; it also sets out employers obligations, including in respect of working hours and holidays, professional development and rehabilitation.[633] Article 34(4) of the Law provides that employers with 20 or more employees are required to employ persons with disabilities at a rate of at least 5% of the total number of employees. A separate register is to be maintained of applications from persons with disabilities, including reasons for hiring or refusing to hire.[634] However, no independent mechanism exists to ensure the implementation of this quota.[635]

The National Employment Office is responsible for the promotion of policies in the field of employment, including for persons with disabilities.[636] In 2011, the Law on Employment and Social Protection of People Looking for Work was amended, in order to extend services provided by the National Employment Office to more persons with disabilities,[637] and a number of new posts were added to the Office to help achieve this. However, non-governmental organisations have reported that the work of these individuals tends to be limited to providing advice and information on job vacancies.[638] In 2015, National Employment Office registered an increased number of unemployed persons with disabilities (878 up from 598 in 2014) and stated that it had helped 300 of them to get a job.[639]

Whilst Moldovan legislation has increasingly recognised the rights of persons with disabilities in employment, unemployment remains a problem

633 See above, note 564, Articles 33–40.

634 *Ibid.*, Articles 33–40, Article 34(4).

635 See above, note 621, p. 32.

636 See above, note 564, Article 34(6). See, Law on Employment and Social Protection of Persons Looking for Work, above, note 453, Article 10(1).

637 *Ibid*., Law on Employment and Social Protection of Persons Looking for Work, Articles 2(a) and 5(d).

638 See above, note 621, p. 33.

639 National Employment Office, *Report on Measures of Employment and Social Protection of People Looking for Work Performed by NEA between January and December 2015*, 2016, available at: http://www.anofm.md/files/documents/ianuarie%20-%20decembrie%202015%20SITE%20-%20Copy%20%281%29.doc.

for persons with disabilities. Data obtained from the National Bureau of Statistics demonstrates that less than 1% of the Moldovan workforce was made up of persons with disabilities in 2014 and only 46.1% of those persons recognised as having a disability were employed, with the severity of disability directly correlating to employment opportunities.[640] Of those persons categorised as having a slight disability, 62% were employed; of those categorised as having a moderate disability, less than half (48.2%) had found employment; while just 14.6% of those classified as having severe disabilities were employed.[641]

In a recent study on the perceptions of Moldovan society towards different groups, respondents expressed the view that persons with disabilities are frequently discriminated against in both employment (59%) and the workplace (43%).[642] These findings are corroborated in the testimony of individuals working with persons with disabilities in Moldova. One woman with mental disabilities was reportedly denied employment as a manicurist because the owner feared she would attack the clients with scissors.[643] Another was reportedly refused an interview due to the supposed additional cost of ensuring compliance with the legal regulations surrounding persons with disabilities.[644] Recognising that persons with disabilities are especially vulnerable to unemployment in times of economic uncertainly, the UN Special Rapporteur on the Rights of Persons with Disabilities has urged Moldova to continue working towards the mainstreaming of disability in public services.[645]

Interviews conducted for this report confirmed that discrimination against persons with disabilities is common in employment. Alina told Equal Rights Trust researchers of her experience of discrimination in employment:

640 See above, note 536.

641 *Ibid.*

642 See above, note 40, p. 26.

643 Discriminare Media, "Employees with Mental Disabilities become a Scarecrow for many Companies", 11 February 2015, available at: http://discriminare.md/angajatii-cu-dizabilitati-mintale-devin-o-sperietoare-pentru-multe-companii.

644 Discriminare Media, "People with Disabilities Expect Changes in Labour Protection", 28 January 2015, available at: http://discriminare.md/persoanele-cu-dizabilitati-asteapta-schimbari-in-domeniul-protectiei-muncii.

645 See above, note 535, Para. 22.

> *During my work, I had to go on a sick leave. Because treatment lasted several weeks and the administration found out about my diagnosis, they asked me to leave the job because they thought I could fall on the floor at any time, losingmy consciousness. Even after I told them about multiple sclerosis they did not give up. I was asked to quit the job. The most interesting thing is that this organisation is an organisation working in the field of human rights. They wanted to fire me because of my disease. I asked them not to do so, because it would cause problems for me when I try to find another job in the future – I'd be labelled as if I have a stamp on my face (…) What do you think, if I go somewhere to get employed and the work records state "dismissed due to illness" will they employ me? I worked five years in this organisation and I wanted to avoid a scandal, so I left.*[646]

Our researchers also spoke to T.J., a woman with a child with a disability, from Ciobalaccia village, Cantemir region who told us about her experiences of discrimination by association when she tried to find work.[647] T.J., is a teacher by profession who had worked for several years but had stopped due to problems with her eyesight. She underwent treatment and later approached the local kindergarten, which had advertised vacancies. She stated that she was rejected and humiliated by the director of the institution, who argued she would not be available to work full time hours because she had a child with disabilities. T.J stated that she had complained to the Directorate of Education in Cantemir region, but had not received an answer.

Education

Article 24(1) of the CRPD guarantees "the right of persons with disabilities to education (…) without discrimination and on the basis of equal opportunity".[648] The right to education is guaranteed under Article 35 of the Moldovan

646 Equal Rights Trust Interview with Alina, 04 August 2015, Chişinău.

647 Equal Rights Trust Interview with T.J., 12 July 2015, Ciobalaccia village, Cantemir rayon.

648 See above, note 577, Article 24(1).

Constitution,[649] whilst Article 9 of the Law on Ensuring Equality prohibits discrimination in education, including on the grounds of disability.[650]

Chapter IV of the Law on the Social Inclusion of Persons with Disabilities regulates the education, training and professional development of persons with disabilities.[651] In addition, on 23 November 2014, a new Education Code entered into force.[652] The Code includes several provisions on special education needs[653] and provides that parents have the right to choose the educational institution they want their children to attend.[654] Additionally, following ratification of the CRPD, the Government of Moldova approved a Programme on Inclusive Education (2011-2020)[655] with the objective of creating conditions for the inclusion of children who have previously been excluded from the public education system, as well as those in need of special education.[656] At the same time, during the first cycle of the Universal Periodic Review, Moldova agreed to fully implement recommendations on ensuring the rights of children with disabilities in education.[657]

There are an estimated 13,400 children with disabilities in Moldova.[658] According to the UN Special Rapporteur on the Rights of Persons with Disabilities, Moldova has "initiated a process of deinstitutionalisation".[659] As part of this process, between 2015 and 2016, five auxiliary boarding schools (special schools for children with disabilities) were closed, leading to 220 children being placed in social services, or "reintegrated with their

649 See above, note 196, Article 35.

650 See above, note 14, Article 9.

651 See above, note 564, Articles 27–32.

652 Education Code of the Republic of Moldova (Code No. 152 of 17 July 2014).

653 *Ibid.*, Articles 9(6), 16(6), 25(2), 32–35, and 40(5).

654 *Ibid.,* Articles 136(1) and 138(1)(a).

655 Decision approving the Development Program of Inclusive Education in Moldova for 2011-2020 (Government Decision No. 523 of 11 July 2011), available at: http://lex.justice.md/viewdoc.php?action=view&view=doc&id=339343&lang=1.

656 See above, note 193, Para 60.

657 *Ibid*., Recommendations 73.19, 73.23, and 73.59.

658 See above, note 536.

659 See above, note 535, Para. 46.

extended families."[660] However, over 1,300 children remain in these boarding schools.[661] In addition to the significant concern about the *de facto* institutionalisation of these children, these institutions often lack the required materials and expertise necessary to afford children with disabilities effective access to education.[662]

Data provided by the Ministry of Education indicates that there were 8,564 children with special educational needs integrated into general educational institutions between 2015 and 2016, and 1,829 students with other disabilities.[663] However, non-governmental organisations have identified challenges with integrating children with disabilities into mainstream schools.[664] The Legal Assistance Centre for Persons with Disabilities has recorded that many mainstream schools are unwilling to take children with disabilities.[665] Lack of skills, resources, and materials as well as issues related to accessibility all hinder access to mainstream education. Additionally, the Centre has noted that the coexistence of the general and special education systems reduces effectiveness and increases costs, leading to the exclusion of children with disabilities.[666]

The inability of schools to cater to the needs of students with disabilities has been widely covered in the media. In December 2014, the Centre for Information on Human Rights interviewed the mother of a child with disabilities who stated that her son is home schooled, but only receives two hours of teacher training per week.[667] Similarly, several cases of discrimination have been lodged with the CPEDEE. In November 2013, the Council heard the case

660 See above, note 621, pp. 28–29.

661 *Ibid*.

662 For instance, the Legal Assistance Centre for Persons with Disabilities has reported that in one institution for the blind in Bălți only one teacher knows how to read Braille. See *Ibid*.

663 Ministry of Education, *Activity Report*, 2016, p. 21, available at: http://www.edu.gov.md/sites/default/files/raport_me_2015_1.pdf.

664 See above, note 621 pp. 28–29.

665 *Ibid*., p. 29.

666 *Ibid*., p. 30.

667 Human Rights Information Centre, "Trained at Home but the Teachers Rarely Show Up", *Discriminaire Media*, 4 December 2014, available at: http://discriminare.md/invata-la-domiciliu-insa-profesorii-pasesc-foarte-rar-pragul-copiilor-cu-dizabilitati.

of Valentina Ursu who alleged discrimination and harassment on account of her disability. Having graduated from secondary school, Ms Ursu applied to a Vocational School in Chișinău. Despite acceptance at the school, Ms Ursu was bullied and later expelled following a number of unexplained absences. Whilst the CPEDEE found in favour of Ms Ursu,[668] the decision was later overturned in court.[669] In a second case, two kindergartens from Chișinău refused to enrol a four year-old child with diabetes because of her special needs, as she required a special menu and attention from teachers and medical staff. The CPEDEE found that the child had been subject to discrimination on account of her disability.[670]

Access to higher education is also limited for persons with disabilities. According to the Legal Assistance Centre for Persons with Disabilities, just 249 persons with disabilities are currently enrolled in universities and only 404 in colleges.[671] In part, this may be due to exclusion at earlier stages of educational development, but other barriers also prevent access. Our researchers spoke to a university student S., who used a wheelchair and who told us the difficulties he faced while at university:

> *In 2014, I graduated with a Masters in psychology at State University of Moldova. None of the buildings were accessible. Every time I went to the university was a challenge for me. The Dean of the faculty was the most responsive and organised classes on the ground floor, though some classes were held on other floors which required me to ask for help climbing the stairs every time, which was not exactly easy. The biggest problem was*

668 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 004/2013 of 22 November 2013, available at: http://egalitate.md/media/files/files/2013_decizie_cauza_004_13_ursu_valentina_final_3196018.pdf.

669 Buiucani Court, Decision No. 4-1013/14 of 22 December 2014, available at: http://www.jbu. instante.justice.md/apps/hotariri_judecata/inst/jbu/get_decision_doc.php?decision_key=9AC628F6-DC89-E411-8112-005056A5D154&case_title=Dosar-14-4-6070-20062014-7864.

670 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 005/2013 of 25 November 2013, available at: http://egalitate.md/media/files/files/decizie_proiect_cauza_005_13_f_v_final_2502223.pdf.

671 See above, note 621, pp. 28–29.

> *the lack of an accessible bathroom for people in wheelchairs. One building – building number five – had only one lift, which did not work.*[672]

Healthcare

Article 25 of the CRPD guarantees the right of persons with disabilities "to the enjoyment of the highest attainable standard of health without discrimination". This requires states parties to "provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons".[673]

Under Article 36 of the Moldovan Constitution the right to health protection and a minimum standard of health insurance provided by the State free of charge is guaranteed.[674] This provision is supplemented by both the Law on Healthcare[675] and the Law on Patient's Rights[676] which both contain additional healthcare guarantees. Article 2 of the Law on Healthcare lists a set of principles which include a guarantee that persons with disabilities can access health services according to their needs. Chapter VI of the Law on the Social Inclusion of Persons with Disabilities contains several Articles on healthcare including rights to healthcare; to medical and social rehabilitation; to early intervention; to individual rehabilitation programs; and to social inclusion.[677] Under the Law on Mandatory Medical Health Insurance, free medical insurance is issued to all persons with disabilities[678] and in the case of persons with severe disabilities, to their carers.[679] Additionally, under Article 8(b) of the Law on Ensuring Equality, discrimination in access to medical and health services is prohibited.[680] In addition to the legislative framework, the Govern-

672 Equal Rights Trust Interview with S. on 25 May 2015, Chişinău.

673 See above, note 577, Article 25.

674 See above, note 196, Article 36.

675 Law on Healthcare, (Law No. 411 of 28 March 1995).

676 Law on Patient's Rights and Obligations (Law No. 263 of 27 October 2005).

677 See above, note 564, Articles 41–45.

678 Law on Mandatory Medical Health Insurance, (Law No. 1585 of 27 February 1998), Article 4(4)(i).

679 *Ibid*.

680 See above, note 14, Article 8(b).

ment of Moldova has adopted a National Program on Mental Health (2012–2016)[681] and a National Health Policy.[682]

However, in practice persons with disabilities face difficulties accessing health care in Moldova. A study by Association "Motivatie" in 2013 found that persons with disabilities encounter prejudice from healthcare professionals and that lack of reasonable accommodation further impedes access to healthcare.[683] One participant in this study noted that a lack of sign language interpreters meant that he faced severe difficulties when communicating with doctors.[684] Another participant with mobility difficulties explained that he was unable to go to the hospital or to see his doctor unless he used an ambulance, and stated that he often had to source the ambulance himself, as authorities were unwilling to help.[685] Others interviewed for the same report gave examples of different forms of discrimination. In 26 cases participants did not feel that they were empowered to make "autonomous decisions regarding health".[686] Poor accessibility of health services, including access to specialised medical care, medicine and rehabilitation services, has also been documented by other non-governmental organisations.[687]

Equal Rights Trust focus groups also found evidence of discrimination in healthcare. Participants at a focus group in Cahul town stated that medical staff discriminated against people with disabilities.[688] At a focus group in Chişinău, participants indicated that persons with multiple sclerosis suffer discrimination most frequently in medical institutions.[689]

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681 Decision approving the Adoption of the National Program Regarding the Mental Health for Years 2012–2016 (Government Decision No. 1025 of 28 December 2012), available at: http://lex.justice.md/viewdoc.php?action=view&view=doc&id=346311&lang=1.

682 Decision approving the Adoption of the National Health Policy (Government Decision No. 886 of 6 August 2007), available at: http://lex.justice.md/md/324940.

683 Association "Motivation", *Analysis of the Individual Experience of People with Disabilities in Republic of Moldova: 1 February – 31 July 2013*, 2014, p. 83, available at: http://www.cod.rs/wp-content/uploads/2014/06/Raport-interviuri-EN.pdf.

684 *Ibid*.

685 *Ibid.,* p. 80–81.

686 *Ibid*., p. 78.

687 See above, note 621, p. 31.

688 See above, note 596.

689 See above, note 554.

A separate issue identified in the research for this report concerns the lack of early-intervention services. Article 44 of the Law on the Social Inclusion of Persons with Disabilities states that early-intervention services should be provided.[690] However, since the passage of this law, no regulatory framework has yet been established.[691] This has a serious detrimental impact on children with developmental delays and children with autism, who cannot access the care they need at the early stages of development.[692]

Multiple Discrimination faced by Women with Disabilities

Women with disabilities face particular problems in accessing healthcare. Whilst measures have been adopted to ensure access to appropriate healthcare for women in childbirth, prenatal healthcare is not accessible for persons with disabilities. For example, while some hospitals have access ramps, the majority of medical institutions do not have adapted consultation and delivery rooms, examination chairs or delivery tables.[693]

The number of women with disabilities giving birth is low. In 2013, only two gave birth at the Mother and Child Centre, one of Moldova's leading institutions for gynaecology and paediatrics.[694] The low incidence of birth among women with disabilities has been attributed to poor accessibility in hospitals, which discourages potential mothers.[695] There is also evidence that some women with disabilities have been actively discouraged by medical staff from having children due to their disability.[696] Mariana told Equal Rights Trust researchers about her experience:

690 See above, note 564, Article 44.

691 See above, note 621, p. 31.

692 See above, note 621, p. 37.

693 Independent Press Association, "Women with Locomotor Disabilities Discriminated in Maternity", 14 July 2014, available at: http://www.api.md/news/view/ro-femeile-cu-dizabilitati-locomotorii-discriminate-in-maternitati-557.

694 Discriminare Media, "Women with Physical Disabilities Would Give Birth if Gynecological Surgeries Could be Adapted", 20 March 2014, available at: http://discriminare.md/femeile-cu-dizabilitati-locomotorii-ar-naste-daca-cabinetele-ginecologice-ar-fi-adaptate.

695 *Ibid.*

696 Ghilascu, N., "Mothers with Disabilities Stigmatized by Doctors, Inaccessible Hospitals", *Discriminare Media,* 24 April 2014, available at: http://discriminare.md/mamele-cu-dizabilitati-stigmatizate-de-medici-lipsite-de-conditii-adaptate.

> *I went to a gynaecologist. The doctor received me and for half an hour she talked about contraception, what is contraception, why it is important. The doctor talked about contraception because when I entered her office I said I wanted her to check me and let me know what are the risks of becoming a mother (…) She told me about contraception, about how hard it is to be a mother; she asked why would I want to be mother and said that there are so many methods of contraception that are really good and she can recommend them to me. [She also said] in case you get pregnant, I will not register you – I do not want such statistics. I was discouraged and left. After one year, I went to another doctor who examined me and told me everything was fine.*[697]

Another woman told our researchers how she had been confronted by the prejudice of healthcare workers during her pregnancy, when she discovered there was a chance her child would have a disability:

> *I did a genetic exam that showed that the risk of me having a child with disabilities is very small, about 0.5%. The doctor explained that the genetic risk would be high (50%) only if a partner had the same genetic mutation as me. When I went to the next routine appointment, a woman doctor saw the medical card, containing the information about my genetic analysis. She asked me why I did a genetic analysis. When I explained she said, "Do you know that you cannot have children? If you have kids, they will have disabilities". She misinformed me. She spoke relying on stereotypes rather than medical knowledge.*[698]

697 Equal Rights Trust Interview with Mariana, 24 March 2015, Chișinău.

698 Equal Rights Trust Interview with L., 21 May 2015, Chișinău.

Access to Social Assistance

Article 9 of the ICESCR recognises the right of everyone to social security. Under Article 28 of the CRPD, state parties:

> *[R]ecognise the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realisation of this right without discrimination on the basis of disability.*[699]

Chapter VII of the Law on the Social Inclusion of Persons with Disabilities guarantees the provision of social assistance to persons with disabilities.[700] However, the Ombudsman has criticised the state for providing social assistance that is insufficient to meet living costs.[701] The UN Special Rapporteur on the Rights of Persons with Disabilities has noted that persons with disabilities are overrepresented among those who experience economic hardship.[702]

There are also reports of persons with disabilities suffering discrimination in seeking to access social services. For example, a 2014 report found that some persons with disabilities were required to pay for social and health services they are entitled to by law, or were refused access to social support to which they are entitled.[703] There are also examples of those with caring responsibilities for persons with disabilities being denied pension payments to which they are entitled, as in the case of N.C., narrated below.[704]

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699 See above, note 577, Article 28.

700 See above, note 634.

701 See above, note 629, p. 44; see above, note 578, p. 14.

702 See above, note 535, Para. 22.

703 See above, note 578.

704 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 030/2013 of 13 February 2014, available at: http://www.egalitate.md/media/files/files/decizie_fin_conf_cauza_nr_030_catre_das_si_mmpsf_2330661.pdf.

Case Study: N.C.

N.C was employed during 1973 until 1992 when her daughter was born. At the age of three, her daughter was certified as having severe disability. N.C. was the primary carer for her daughter until her daughter's death 20 years later. When N.C retired, her pension did not account for the years when she had worked as primary carer for her daughter. She brought the case to the CPEDEE which ruled that parents who care for children with severe disabilities and are therefore unable to work suffer discrimination by association in relation to the calculation of their pension. Following this decision, N.C. challenged the pension calculation procedure in Court where she lost the case before all instances. N.C. is now appealing her case to Committee on the Elimination of Discrimination against Women.

Access to Goods and Services

Article 9 of the CRPD requires states parties to ensure the identification and elimination of "obstacles and barriers to accessibility" which includes ensuring that "private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities".[705] Under Article 8 of the Law on Ensuring Equality, any form of discrimination on the basis of disability in the provision of goods and servicesties is prohibited.[706]

Despite this, research for this report has identified several cases where effective access to goods and services has been denied to persons with disabilities. For example, Z, interviewed by Equal Rights Trust researchers, stated:

> *I had a situation last year, on the 9th of May 2014. Me and my friend, both people in wheelchairs, were coming from a party and wanted to go to eat something in a bistro. The security guard saw us, and said that we cannot enter, without providing any reason. Then my friend*

705 See above, note 577, Article 9.

706 See above, note 14, Article 8.

> *took the phone and started filming everything and when someone from the administration saw that we are recording this situation, they allowed us to enter. In another case I wanted to go to a disco and I was not allowed to enter the disco because, they said, is not safe for me.*[707]

n 2014, the CPEDEE considered the case of Alexandru Cebotari, a student at the Institute of Physical Culture and Sports in Chișinăuwho uses a wheelchair.[708]

Case Study: Alexandru Cebotari

In February 2014, Mr Cebotari went to a club in the Botanica sector of Chișinău and was banned from entering by the club's security staff, who explained that persons with disabilities are prohibited from entering the club. Club staff also noted that his image and condition could "sadden" other club visitors. Despite calling the police for help, they did not intervene.

After the case was reported in the media, Mr Cebotari was contacted by his local police officer, who asked for more details about the incident. He was also informed that a case had been opened under the Contraventions Code because of the publicity the incident received. In September 2014, Mr Cebotari registered an official complaint at the CPEDEE, alleging discrimination in access to public services, and a failure to make reasonable accommodations. On 17 October 2014, the CPEDEE ruled in his favour.

In 2015, Adrian Oleg Vlad, a man with a visual impairment, was stopped from entering a shop by a security guard and threatened after being informed that blind persons were not permitted to enter without a companion; having com-

707 Equal Rights Trust Interview with Andrei. Z., 3 September 2015, Chișinău.

708 Promo-LEX Association, "Press Statement on the Case of Alexandru Cebotari", 7 November 2014, available at: https://promolex.md/index.php?module=press&cat=0&&item=1621&Lang=en; and Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 156/2014 of 17 October 2014, available at: http://egalitate.md/media/files/files/decizia_cauza_156_deperson_1745637.pdf.

plained to the store's manager, Adrian was offered an apology and assured that the incident would not occur again.[709]

In another case, a man was not permitted to enroll in a driving school because the medical board would not grant him a medical certificate, which he received only after submitting an official complaint.[710] Oxana P., interviewed by Equal Rights Trust researchers, recounted the discrimination she faced when trying to obtain a driving license:

> *There are problems because our legal framework does not stipulate the conditions under which a person such as myself, with locomotor disability could obtain a driver's license (…) I was able to buy a car, but first of all I had to obtain a driver license. I called about 10 schools, I told them about my situation and they told me that they do not have their cars adapted. I proposed that I can study only the theory with them, while for practice I will use my car. They did not want that, because they want people to pay both theory and practice so that they could earn more money. Another problem is that schools are not accessible (…) Finally, I was accepted into a school just because I was recommended by someone. Then I studied theory for three months. I passed the exam on theory, I bought a car, I adapted it and I contacted an instructor and I paid for the practice course. The big problem came when we went to take the practical examination, I went with my car, which has an automatic gearbox, adapted, They said I'm not allowed to take the exam with the automatic gearbox (…) They told me to bring a car with a manual gearbox. I could not find such a car, so I sent them a*

709 Discriminare Media, "A Blind Man Entered a Shopping Centre with Scandal", 11 February 2015, available at: http://discriminare.md/la-un-magazin-comercial-din-capitala-un-nevazator-a-intrat-cu-scandal.

710 Ghilascu, N., "Driving Licenses for Persons with Disabilities are Rare", *Discriminare Media,* 15 January 2014, available at: http://discriminare.md/permisele-de-conducere-pentru-persoanele-cu-dizabilitati-sunt-o-raritate.

> *letter asking them to explain how I should take the examination. Eventually they said to come with my car and take the exam.*[711]

Similar cases have also been identified in relation to rental services.[712] In one instance, a man was not permitted to rent a car because the owners believed he would damage it.[713]

Political Life

Article 29 of the CRPD provides that persons with disabilities have the right to participate in political and public life on an equal basis with others, and states parties are required to ensure the accessibility of all voting procedures, facilities and materials; and to promote an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs. Article 7 of the Law on Social Inclusion of Persons with Disabilities provides for the participation of people with disabilities in political and public life on an equal basis with others. The Article also guarantees persons with disabilities the right to vote and to be elected; to access to adequate voting procedures and materials, including alternative voting procedures; to vote by secret ballot; and to effectively hold office.

Despite these legal guarantees, there are still many obstacles to the equal participation of persons with disabilities in public and political life in Moldova. According to a recent study, the main obstacles for participation of persons with disabilities in political and public life include: inaccessible infrastructure and transportation; legal limitations and restrictions such as denial of voting rights for persons declared incapacitated; prejudices; direct discrimination by those involved in the process; lack of accessible information about opportunities to become involved in public and political life; and

711 Equal Rights Trust Interview with Oxana P., 4 July 2015, Chișinău.

712 Ghilascu, N., "Driving Schools in From of Dilemma: Profit or Reasonable Accommodation", *Discriminare Media,* 1 November 2012, available at: http://discriminare.md/scolile-auto-puse-in-fata-dilemei-profit-sau-adaptare-rezonabila.

713 Human Rights Information Centre, "Owners Refuse Rental Services to Persons with Disabilities", *Discriminare Media,* 30 January 2015, available at: http://discriminare.md/proprietari-ai-unor-locuinte-ignora-serviciile-de-inchiriere-persoanelor-cu-dizabilitati.

failure by the authorities to engage with persons with disabilities and create conditions for participation.[714]

Nevertheless, the government has made efforts to increase the accessibility of the electoral process for persons with disabilities. In Parliamentary elections held on 30 November 2014, the Central Election Commission (CEC) took a number of measures, which included:

- Improving access to polling stations: a number of polling stations were moved to ground level and in 30 polling stations, access ramps were installed;[715]
- Equipping polling stations with a separate booth for people with disabilities;[716]
- Using a template envelope for voters with visual impairments which had been designed in partnership with civil society organisations and persons with disabilities;[717]
- Adapting the official website of the CEC for visually impaired people;[718]
- Employing sign language interpreter who, through the media, informed people with hearing impairment about the electoral process.[719]

However, there are still numerous barriers to full and equal participation of persons with disabilities in the electoral system. During the 2014 parliamentary elections, 63% of polling stations monitored by the Organisation for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions

714 Legal Assistance Centre for Persons with Disabilities, *Participation of Persons with Disabilities in Political and Public Life*, 2016, pp. 7-8, available at: http://www.advocacy.md/sites/newadvocacy/files/Raport_2%20CAJP%20v2.pdf.

715 Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *Statement on Preliminary Findings and Conclusions: Moldova, Parliamentary Elections 30 November 2014*, 2014, p. 5, available at: http://www.osce.org/ro/odihr/elections/moldova/128551?download=true.

716 Central Election Commission of the Republic of Moldova, *Report on the results of Parliamentary Elections of November 30*, 2014, p. 4, available at: http://cec.md/files/files/raporttotalizarealegeri2014din5decemredactat_5373809.pdf.

717 *Ibid.*, p. 3.

718 Promo-LEX Association, *Report on Human Rights in Moldova: 2014 Retrospective*, 2015, p. 109, available at: https://promolex.md/upload/publications/en/doc_1444027212.pdf.

719 *Ibid.*

and Human Rights (OIDHR) Election Observation Mission were considered inaccessible to voters with disabilities.[720] At the 2015 local elections, "[m}ost polling stations visited were noted as lacking adequate access for voters with disabilities".[721] During these local elections, a group of civil society organisations conducted a national study, which found that 47% of polling stations were inaccessible, 42% were partially accessible and only 11% were fully accessible to people with disabilities.[722]

The government has also made efforts to make elections accessible to people with visual impairments. While ballots were not available in Braille for the 2014 Parliamentary Elections, the CEC started a pilot project to provide ballots in Braille for subsequent elections.[723] During the 2015 local elections on 14 and 28 June, the Central Election Commission tested this project and provided ballots in Braille at all polling stations for persons with visual disabilities.[724] However, the media and election candidates generally do not use accessible forms of communication with voters with disabilities (for example, publications in Braille, sign language, phonetic system or plain language texts that are easily understandable), depriving them of information on electoral processes.[725]

Transnistrian Region

As of 1 December 2015, there were 19,768 persons with disabilities registered by "social assistance bodies" in the Transnistrian region.[726] Many of the

720 See above, note 715, p. 14.

721 Organisation for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *Republic of Moldova: Local Elections 14 and 28 June 2015: OSCE/OIDHR Limited Election Observation Mission Final Report*, 2015, p. 21, available at: http://www.osce.org/odihr/elections/moldova/178226?download=true.

722 See above, note 621, p. 35.

723 United States Department of State, *Country Reports on Human Rights Practices for 2014: Moldova*, 2015, available at: http://www.state.gov/documents/organization/236766.pdf.

724 United States Department of State, *Country Reports on Human Rights Practices for 2015: Moldova*, 2016, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper.

725 See above, note 718, p. 109.

726 Portal Novosti, "In Transnistria, 19,768 Persons With Disabilities", 2 December 2015, available at: http://novostipmr.com/ru/news/15-12-02/v-pridnestrove-na-uchete-v-organah-socialnoy-zashchity-sostoit-19.

human rights concerns relating to persons with disabilities in the Transnistrian region are similar to those identified elsewhere in the country. However, Transnistria's isolation from both international and regional law and justice mechanisms has limited reform efforts in the territory.[727]

Transnistrian legislation provides for protection of the rights of persons with disabilities in the areas of education, health care, and employment,[728] but there is no specific law on equality and non-discrimination.[729] Given the lack of data and prior research, establishing the extent of discrimination against persons with disabilities in Transnistria is difficult. However, Equal Rights Trust researchers spoke to many persons with disabilities in Transnistria, and were able to gain an understanding of some of the problems they face. An interview with one woman, Tamara, indicated that issues related to inaccessible infrastructure in the region are similar to those found in the rest of the Moldova:

> *We have traffic lights with an audible signal only near our house, but life is not happening only near the house. If you want to go somewhere far away, for example, to a hospital or shopping, it is difficult and even dangerous, because there are no special adaptations for the blind (…) I do not have special devices that would help me. They are expensive, and not available in Transnistria*.[730]

Another woman, Diana, spoke of her experience as a person with a hearing impairment:

> *People with hearing impairments face serious problems with housing, employment and education. In Transnistria there is no educational institution with a sign language interpreter. Therefore, almost all people with a hearing impairment have no education, and are without a good profession. Therefore, they have a lot of problems*

727 See above, note 272, p. 15.

728 See above, note 724.

729 *Ibid*.

730 Equal Rights Trust interview with Tamara, 14 May 2015, Tiraspol.

> *with employment, because they are not qualified. When children finish school, nothing happens. There is no work. The pension is very small. You need three years of work experience to have your pension bigger. But where to get this experience, if there is no work? Hearing impaired people do not watch the news because there is no sign language interpreter. They do not understand what is happening in the country. They therefore do not have an opinion. In elections, people with hearing impairments either do not vote or they vote how neighbors or relatives tell them to. It's hard to go anywhere without a sign language interpreter. There is only one interpreter in Tiraspol – there need to be more.*[731]

Employment

A number of people interviewed for this report recounted the problems that they faced in accessing employment, as a result of discrimination or failure to make reasonable accommodation. Participants at a focus group in Tiraspol stated that when persons with hearing impairments are seeking a job, they are generally rejected, because employers prefer "healthy" workers.[732] In another focus group, with persons with visual impairments, only one of the eleven participants was in employment.[733] Participants stated that they are denied registration at the Employment Center and estimated that only 10% of all visually impaired people are employed in Transnistrian region. Andrei, interviewed by Equal Rights Trust researchers, recounted his personal experience:

> *The biggest problem is that there is no work. I understand that people without disabilities also have problems in finding a job, but still they have more possibilities and it is easier for them to find a job. Deaf people are rarely employed. I am a builder, but I cannot find*

731 Equal Rights Trust Interview with Diana, 3 June 2015, Tiraspol city, Transnistrian region.

732 Equal Rights Trust Focus group with 12 people with hearing disabilities, 6 June 2015, Tiraspol city, Transnistrian region.

733 Equal Rights Trust focus group with 11 people with visual impairments, 14 May 2015, Tiraspol city, Transnistrian region.

> *a job. Two deaf persons were employed as janitors. But now they were told to leave the work because it is too dangerous for them to clean the road.*[734]

Education

Local regulations provide that children with disabilities may join the mainstream education system or, based on the degree of disability can be enrolled in "correctional educational facilities" or special schools. According to the Special Rapporteur, children considered unsuited for special education are placed in rehabilitation centres, which have a medical or rehabilitation focus rather than an educational one; there are few community-based services for children with disabilities, especially for those with sensory, intellectual or psychosocial disabilities.[735] However, reports indicate that in practice, children with disabilities rarely attend school and lack access to specialised resources.[736] Interviewed by a civil society organization, Cristina from Râbnița, stated that:

> *It started with kindergarten. No kindergarten wanted to enroll my son. Then when we addressed to a school for children with special needs, I was told that because my son does not have cerebral palsy, they cannot enroll him. If he had, he would have been accepted. Otherwise, they cannot.*[737]

Participants in a focus group in Transnistria told our researchers that hearing impaired people tend to have less education than other citizens.[738] One interviewee, Alina, stated that:

734 Equal Rights Trust Interview with Andrei, 6 June 2015, Tiraspol city, Transnistrian region.

735 See above, note 535, Paras. 57–58.

736 See above, note 724.

737 Discriminare Media, "Parents from the Transnistrian Region Learn about the Rights of Children with Disabilities", 7 August 2014, available at: http://discriminare.md/parintii-din-regiunea-transnistreana-invata-despre-drespre-drepturile-copiilor-cu-dizabilitatilitati-intelectuale-nu-sunt-acceptati-in-scolile-din-regiunea-transnistreana.

738 Equal Rights Trust focus group with 12 people with hearing disabilities, 6 June 2015, Tiraspol city, Transnistrian region.

> *Almost all deaf people graduate only 8 classes, maximum 10 classes, because there are no opportunities to study and it requires a lot of effort. There are children who want to go to college, but there is no interpreter. Deaf can learn, and are eager to learn, but for this we need some special conditions and a sign language interpreter.*[739]

In his report of February 2013, the United Nations Senior Expert on Human Rights in Transnistria addressed 13 recommendations to the *de facto* authorities of the region, including one calling for the adoption of provisions to enable children with disabilities to attend mainstream schools.[740]

Healthcare

Participants with hearing impairments at an Equal Rights Trust focus group in Tiraspol stated that in order to address a doctor they need sign language interpreter, and there is only one sign language interpreter in Tiraspol, so they tend to avoid going to doctors as much as possible.[741]

Political Life

Participants at a focus group for persons with hearing impairments told Equal Rights Trust researchers that due to their disability they are less informed than others, and are excluded from gaining an understanding of the political situation, because there are no news programs with a sign language translator.[742] As a result, people with hearing impairments are unable to participate fully in elections. Participants also stated that communication and interaction with government officials is difficult, because the majority of those with hearing impairments only have education equivalent to 9th grade and face difficulties in writing an application. They noted their major difficulties in communication with representatives of institutions, local and central government, stating that they need a sign-language interpreter, but there is only one sign-language interpreter in Tiraspol and he is a beginner on voluntary basis.

739 Equal Rights Trust interview with Alina, 6 June 2015, Tiraspol city, Transnistrian region.

740 See above, note 146, pp.44–48.

741 See above, note 732.

742 *Ibid*.

2.5.1 Discrimination against Persons with Mental Disabilities

According to a recent study, people with mental disabilities are among the most discriminated against social groups in Moldova. A 2015 survey found that significant numbers of people considered people with mental disabilities them to be "invalids (…) distressful (…) persons with mental retardation (…) [or] dangerous" who should be "isolated" (7.2%) or "excluded or disregarded" (6%).[743]

Legal Capacity

Article 12 of the CRPD provides for the right to equal recognition before the law for all adult women and men with disabilities, and confirms that legal capacity is a universal right for all people. The Committee on the Rights of Persons with Disabilities has stated that rules on mental capacity should never be used to deny a person the right to recognition before the law.[744] Article 12(3) of the CRPD, recognizes the right of persons with disabilities to access support in order to exercise their legal capacity, which means that people with disabilities must be able to receive support to make decisions about their lives, in a way that respects their will and preferences.[745]

In Moldova, issues related to the legal capacity of persons with mental disabilities are regulated by the Law on Mental Health, the Law on Patients' Rights and Obligations, and the Civil Code. The Civil Code provides that "[c]apacity to possess civil rights and duties (legal civil capacity of individuals) shall be recognized equally in respect to all individuals"[746] and that "[i]ndividuals shall not be liable to discharge of legal capacity".[747] However, the Civil Code also provides for the possibility of deprivation[748] and limitation[749] of legal capacity. When a court establishes the need to deprive a person of legal capacity in

743 See above, note 3, p. 23.

744 Committee on the Rights of Persons with Disabilities, *General Comment: No. 1: Article 12: Equal Recognition before the Law,* UN Doc. CRPD/C/GC/1, 2014, Para. 13.

745 *Ibid.,* Para. 14.

746 See above, note 220, Article 18(1).

747 *Ibid*., Article 23(2).

748 *Ibid.,* Article 24(1).

749 *Ibid*., Article 25(1).

line with these provisions, a guardian is appointed. According to Article 24 of the Civil Code, the guardian is empowered to execute all legal acts in the name and on behalf of the incapacitated person.

Serious questions arise over whether the guardianship system as provided in the Civil Code is compatible with Moldova's obligations under Article 12 of the CRPD. An examination of the operation of the system in practice indicates that there are a number of aspects of the system that contravene the CRPD's provisions.

In Moldova, approximately 4,000 persons with disabilities were deprived of legal capacity and subject to guardianship orders as of February 2015.[750] E.T., a woman diagnosed with paranoid schizophrenia, has received legal assistance from the Equal Rights Trust and Promo-LEX in order to challenge her treatment by her ex-husband. Her case illustrates the kinds of abuses that can occur through the guardianship process.

Case Study: E.T.

On the basis of a complaint from her then husband, in 2001 a court deprived E.T. of her legal capacity. After the court decision, the husband divorced E.T. and took possession of the couple's apartment, car, money, and property. E.T.'s court appointed guardian is a relative who is hostile towards her. Since 2006, E.T. has been held in Cocieri Psychiatric Institution. Since that time, she has been trying to secure her release and recover her legal capacity. She is a licensed doctor with 16 years of experience; she is lucid, takes care of herself and often helps doctors in the Cocieri Psychiatric Institution with advice regarding the treatment of other patients, medicines and other. Her guardian, ex-husband, and the Cocieri Psychiatric Institution have never tried to help her to recover her legal capacity.

There are only two institutions in the country, the Chișinău Psychiatric Hospital and the Bălți Psychiatric Hospital, which are authorised to form psychi-

750 Organisation for Security and Cooperation in Europe, *Final Report: Parliamentary Elections in Moldova (English)*, 2015, p. 6, available at: http://www.osce.org/odihr/elections/moldova/144196.

atric evaluation commissions,[751] specialsed bodies of psychiatrists with the power to conduct assessments of an individual's legal capacity at the request of a court.[752] To date, there are no standardised tools or approved methodologies for assessing a person's mental capacity and reports filed with the court provide mostly information on the medical diagnosis of the person.[753]

The Civil Code provides that if the facts justifying the limitation of legal capacity change, the courts shall recognise the legal competence of the person or cancel the limitation of the legal competence.[754] However, those without legal capacity do not have legal standing in the Moldovan courts, meaning that only a person's guardian or the public prosecutor can bring civil cases on their behalf.[755] Thus, one of the most problematic elements of the guardianship system in practice is that persons deprived of legal capacity cannot file requests or challenge court decisions that established their incapacity.[756] As a result, most of those declared incapacitated will never be able to restore their legal capacity. Indeed, it was only in June 2015 that the first person in Moldovan history had their capacity restored by a court, when the ChișinăuCourt of Appeal ordered that Ms Elena Voronina's capacity be restored.[757] The case was appealed by Ms Voronina's daughter, who was alleged to have abused the guardianship rules and taken advantage of her mother, but the Supreme Court of Justice upheld the decision of the ChișinăuCourt of Appeal.[758] However, Promo-LEX experts are doubtful of the extent to which the case sets a genuine precedent, given that the positive judgment was the result of extensive pressure by non-governmental organisations.

751 See above, note 418.

752 For further information, see: United Nations Partnership on the Rights of Persons with Disabilities, *The Human Rights of Persons with Mental or Intellectual Impairments in the Republic of Moldova: An Assessment of Key Aspects of the Domestic Law and Policy Framework in Light of the UN Convention on the Rights of Persons with Disabilities*", 2015, pp. 45–46.

753 See above, note 727. p. 48.

754 See above, note 746, Articles 24(3) and 25(2).

755 See above, note 535, Para. 54.

756 Civil Procedure Code of the Republic of Moldova (Code No. 225 of 30 May 2003), Article 308.

757 See above, note 727, p. 50.

758 Supreme Court of Justice, Decision No. 2ra-2914/15 of 9 December 2015, available at: http://jurisprudenta.csj.md/search_col_civil.php?id=24582.

On 13 November 2014, based on a petition from the Ombudsman, the Constitutional Court issued a decision by which it found unconstitutional the legal provisions that prohibit persons declared incapacitated from filing requests and petitions to the Ombudsman.[759] While this decision allows persons declared incapacitated to submit petitions to the Ombudsman as a mean of legal protection of their rights, it does not apply to national courts. Following this, in 2015, there were a number of legislative initiatives directed towards changing this situation. On 7 May 2015, Parliament passed Law No. 87 on the amendment and completion of some legislative acts, which guaranteed to persons deprived of legal capacity the right to vote and to challenge court decisions that deprived them of legal capacity. The President of the Republic of Moldova, however, refused to promulgate this law, meaning that it has not come into effect.[760]

A further problem with the guardianship system is that – as in the case of Ms Voronina – guardians do not necessarily act in the best interest of the persons declared incapacitated. Persons deprived of their legal capacity are unable to take control of their own financial affairs and handle their property, resulting in serious vulnerability to abuse. One person under guardianship interviewed for a UN report stated "[I feel] like a beggar (…) I am forced to starve and freeze because all my money goes into the guardian's hands and she spends it on everything except my necessities".[761] Another direct effect of depriving a person of their legal capacity is the disregard for that person's consent in all spheres of life, including when placing them in various psychiatric institutions.[762]

Other problems also arise as a result of the denial of legal capacity. For example, the Electoral Code restricts the voting rights of persons declared incapacitated by a final court decision.[763] The OSCE has noted that "the

759 Constitutional Court, Decision No. 27 of 13 November 2014.

760 United Nations Development Programme, *Prevention and Combating Torture in Residential and Neuropsychiatric Institutions*, 2015, p. 31, available at: http://www.md.undp.org/content/moldova/ro/home/library/effective_governance/prevenirea-_i-combaterea-torturii-in-instituiile-rezideniale-i-n.

761 See above, note 727, p. 52.

762 See above, note 535, Para. 48.

763 Electoral Code of the Republic of Moldova, (Code No. 1381 of 21 November 1997), Article 13(1)(b).

practice of courts ruling guardianships for older persons and persons with disabilities automatically deprives them of their right to vote, in violation of international standards".[764]

Institutionalisation

Article 19 of the CRPD states that all people with disabilities, including people with mental disabilities, have the right to live independently while Article 14 states that disability should in no case be the basis for deprivation of liberty.

In Moldova, there is a direct relationship between the deprivation of legal capacity and long-term institutionalisation in healthcare or residential care facilities; most persons declared incapacitated are placed in psychiatric institutions.[765] A 2015 study indicated that approximately 2,500 children and adults with mental disabilities were resident in six specialized institutions.[766] In addition, there are three psychiatric hospitals administered by the Ministry of Health. It is estimated that annually, residential care facilities for persons with disabilities take in 1,700 people with mental (intellectual or psycho-social) disabilities and the average duration of the stay in these institutions is 9.7 years in psycho-neurological residential institutions and 7.6 years in psychiatric institutions.[767] Persons held in these institutions are denied legal capacity.[768]

In addition to the concerns raised by the fact of institutionalisation itself, there is evidence of shocking discriminatory violence and abuse towards people with mental disabilities held in such psychiatric institutions. In 2015, the

764 See above, note 716, p. 6.

765 Office of the High Commissioner for Human Rights, *The System of Guardianship in Practice in the Republic of Moldova: Human Rights and Vulnerability of Persons Declared Incapacitated*, 2013, pp. 10-18, available at: http://md.one.un.org/content/dam/unct/moldova/docs/pub/STUDY_The_System_of_Guardianship_in_Practice_in__Republic_of_Moldova.pdf.

766 See above, note 727, pp. 18 and 66.

767 National Bureau of Statistics of the Republic of Moldova, *The Situation of Persons with Disabilities in Moldova*, 2013, available at: http://www.statistica.md/newsview.php?l=ro&id=4253&idc=168.

768 Legal Assistance Centre for Persons with Disabilities, *The Right to Legal Capacity of Persons with Disabilities. A Comparative Study of the Legislation of the Republic of Moldova and International Standards in the Field*, 2013, p. 42, available at: http://soros.md/files/publications/documents/Anexa%201_%20Studiu%20comparativ.%20Drept%20la%20capacitate%20juridica.pdf.

UN Special Rapporteur on the Rights of Persons with Disabilities noted with serious concern the treatment of persons with disabilities living in psycho-neurological residential institutions ("internats") and psychiatric hospitals, referring to "shocking reports of ill-treatment, violence, including sexual and gender-based violence, perpetrated by staff members, neglect, restraint, forced medication and seclusion".[769]

In September 2015, the ill treatment of children with severe mental disabilities in Orhei Psycho-neurological "internat" caused a public outcry following publication of images showing the abuse.[770] The images featured such things as children with bruises and mutilated genitals bound to wheelchairs and worms in the food.[771] The Ministry of Labor, Social Protection and Family visited the institution; the Director was subsequently dismissed and a criminal case was initiated.[772]

Women with mental disabilities are particularly vulnerable to abuse in psychiatric institutions. In one institution, the Bălți neuropsychiatric institution for adults with disabilities, the UN Special Rapporteur on the Rights of Persons with Disabilities cited numerous allegations of "shocking practices such as rape, forced contraceptive measures, forced abortion and deprivation of reproductive rights".[773] Reports of particularly shocking abuse arose in 2013, when 18 women with disabilities resident at the Bălți facility alleged they had been sexually abused and subject to coercive measures including forced abortion by senior staff members.[774] Investigation into this abuse has been beset by delays, and as of June 2016 there were no "first-instance decision[s] in (…) criminal proceedings"[775] regarding rape or forced abortion. In May 2016, the

769 See above, note 535, Para. 48.

770 Realitatea MD, "Children are Treated like Animals", 3 September 2015, available at: http://www.realitatea.md/video-18-imagini-groaznice-la-orfelinatul-pentru-persoane-cu-dizabilita-i-din-orhei-copiii-sunt-t_26132.html.

771 PROTV, "Pictures of Horror that have been Filmed by an Employee of the Boarding School for Children with Disbailities in Orhei", 3 September 2015, available at: http://protv.md/stiri/social/copii-cu-vanatai-legati-de-scaunul-cu-rotile-sau-cu-penisul-rupt---1121311.html.

772 Ziarul National, "Testimonials: Children with mental disabilities at Orhei", 7 September 2015, available at: http://ziarulnational.md/marturiile-copiilor-cu-deficiente-mintale-ba latjocoriti-la-internatul-din-orhei.

773 See above, note 535, Para. 50.

774 See above, note 727, p. 61.

775 *Ibid*., p.61.

Bălți court adjourned consideration of the complaints until August 2016 for reasons that were not explained.[776]

In 2007, allegations of sexual, physical and mental abuse were made against staff members at the Cocieri neuropsychiatric residential institution.[777] As in other cases, the official response to these reports has been ponderous, and the UN Special Rapporteur on the Rights of Persons with Disabilities noted in 2015 that "Dubasari police and prosecutors declined to open criminal proceedings, apparently on grounds that women in neuro-psychiatric residential institutions provide inherently unreliable testimony".[778]

Despite the widespread reports of abuse of people with mental disabilities in residential instuitions, official action to address these abuses has been slow and ineffective. Although instances of violence in psychiatric institutions have been reported for many years,[779] as of May 2016, there have been no court decisions finding this violence to be torture or inhuman or degrading treatment. Moreover, while several inquiries into allegations of rape and abuse of office in psycho-neurological residential institutions have been active since 2013,[780] to date no conclusions have been published.

Problems of access to justice compound the difficulties in challenging these abuses, as victims do not have access to an effective mechanism for reporting abuses and filing complaints. While there are a number of options to challenge abuse – the prosecutor's office, the ombudsman and the ombuds-

776 Crime Moldova, "A Further Postponement of the Hearing in the case of Rape at Psycho-Neurological Boarding School in Bălți", 2 June 2016, available at: http://crimemoldova.com/md/news/kriminal/o-nou-am-nare-a-edin-ei-de-judecat-n-cazul-violurilor-de-la-internatul-psihoneurologic-din-b-l-i.

777 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment, *Report to the Government of Moldova on the Visit to Moldova by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment*, 2008, Para. 148, available at: http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf.

778 See above, note 727, p. 61.

779 Legal Assistance Centre for Persons with Disabilities, *Report on the Rights of Persons Declared Incapacitated held in Psycho-Neurological Internats in Moldova*, 2015, pp. 7–8, available at: http://soros.md/files/publications/documents/Drept%20la%20capacitate%20juridica%202015.pdf.

780 Ombudsman for Psychiatry, *Report on the Observance of Patients' Rights in the Psychiatric Hospitals of the Republic of Moldova for the Period of October 2012 through July 2013*, 2013, point 1.1.

man for psychiatry – none has proved effective. The prosecutor's office has the authority to investigate cases of torture and inhuman and degrading treatment and other forms of abuse. However there is a general failure to appreciate the context of psychiatric institutions and the particular vulnerability of persons with mental disabilities. According to figures for 2013 released by the Prosecutor General's Office, of 719 complaints of torture and ill-treatment, only three were recorded as having taken place in psychiatric institutions.[781] There were six and seven complaints of abuse in psychiatric institutions in 2014 and 2015, respectively.[782] Research conducted for this report suggests that the problem of abuse is much more widespread than these figures indicate.

In addition to criminal prosecutions, a complaints procedure for rights violations of persons placed in psychiatric institutions, examined by the Ombudsman, was established by national mental health legislation.[783] The complaints procedure is deeply flawed, however. Complaints must be filed with the administration of the relevant healthcare facility, which then sends complaints to the Ombudsman's office,[784] thus creating scope for the administration to abuse the process. In addition, the mechanism is not clear and transparent, particularly as there are no procedures for registering, tracking and managing complaints, and the procedure does not guarantee the confidentiality of correspondence. Finally, the procedure is limited in scope, as complaints can only be filed in relation to failures in the provision of healthcare services,[785] leaving a substantial range of abuses, as discussed above, outside its scope.

781 Prosecutor General's Office, *The Phenomenon of Torture in Figures: 2013*, 2014, available at: http://www.procuratura.md/md/com/1211/1/5671.

782 Prosecutor General's Office*, The Phenomenon of Torture in Figures*: *2014*, 2015, available at: http://www.procuratura.md/md/com/1211/1/6052/; and Prosecutor General's Office, *The Phenomenon of Torture in Figures*: *2015*, 2016, available at: http://www.procuratura.md/md/newslst/1211/1/6532.

783 Law on Mental Health, (Law No. 1402 of 16 December 1997), Article 37.

784 *Ibid.*

785 *Ibid.*

Complaints can also be made to a specialist Ombudsman for Psychiatry,[786] who is mandated to monitor psychiatric hospitals and institutions by Article 37 of the Law on Mental Health. The Ombudsman for Psychiatry has considerable powers, including a right to freely access any institution and room, as well as to access and review documents including personal files, records, and registers.[787] However, while in law the Ombudsman for Psychiatry has extensive monitoring, consultancy and control powers,[788] in practice, the infrastructure is not in place to enable the Ombudsman to work effectively. The Ombudsman can only initiate discussions with the administration of healthcare facilities and document violations. Any conclusions and recommendations made are not binding and the Ombudsman cannot intervene directly, as they must comply with the general procedure of reporting such cases to competent authorities. Moreover, the mandate holder is working alone, which severely limits their capacity.

Beyond allegations of physical, mental and sexual abuse, research for this report found other examples of mistreatment of persons in psycho-neurological residential institutions, as the following interview, conducted by Equal Rights Trust researchers with A. indicates.

> *I have lived for 18 years in Badiceni psycho-neurological internat [residential institution]. They force us to do work on the territory of the institution: to sweep, to maintain the ground, to paint, to do repairs. They tell us "If you do not work you will not eat and will have to sleep outside or in the toilet." Sometimes they take us to their homes to work. They give very little money. For working from 8am until 9pm, they pay us only 30 lei [€1.5 Euro] per day. When we ask for more, the nurse says: "You want more? At the institution they give you medicine and feed you for free". I buy many drugs. I go to the pharmacy to*

786 Ministry of Health Order on Services to Protect the Rights of Patients in Psychiatric Institutions (*Ombudsman for Psychiatry*) (Order No. 1185 of 29 October 2014), available at: http://www.cnms.md/ro/departamente/serviciul-pentru-ap%C4%83rarea-drepturilor-pacien%C5%A3ilor-%C3%AEn-sta%C5%A3ionarele-de-psihiatrie.

787 *Ibid.*

788 *Ibid.*

> *buy them with my own money. The medicines that they give me in the institution are out of date, with expiry dates from 2002 or 2003. Once, they made me clean the garbage from a sewer and I refused. They beat me very hard with a stick. Many people died from beatings and injections and negligence of the medical staff. We live 25 people in the same room but there are many rooms that are reserved for visitors from the ministry. We bathe only once a week. The room stinks. We do not have a dining room or canteen, so we eat in the room.*[789]

In May 2015, researchers for this report visited the Bălţi psycho-neurological residential institution to interview residents.[790] The complaints heard from residents included humiliating treatment by staff, including the Director; the prohibition on leaving the institution; and searches when entering or leaving the institution. Residents with physical disabilities stated that the facility was not adapted to their needs, making it difficult to move independently. Residents also expressed concern about the lack of access to legal assistance.

Equal Rights Trust interviewed two female residents of the Bălţi facility, who spoke about their treatment by the institution's staff. S.T. stated that she was pregnant but that the food she was given did not meet her nutritional needs; she also said that the administration of the institution was exerting pressure on her to give up the child for adoption.[791] She stated that all of her documents are held by the administration, which had also confiscated her mobile phone so she could not complain to human rights organisations. Another patient, O.C., who had married another patient, a man with a physical disability, in a religious ceremony, complained that medical staff were preventing her from becoming pregnant.[792] She stated that she had been subjected to numerous gynaecological exams and that medical staff force her to use contraception

789 Equal Rights Trust interview with A, 7 June 2015, Bădiceni, Soroca rayon.

790 Equal Rights Trust field visit and interviews with 15 participants, 28 May 2015, Bălți psycho-neurological internat, Bălți city.

791 Equal Rights Trust interview with S.T. on 28 May 2015, Bălți psycho-neurological Internat, Bălți city.

792 Equal Rights Trust interview with O.C. on 28 May 2015, Bălți psycho-neurological "Internat, Bălți city.

against her will. She said she was obliged to use a contraceptive coil (which was implanted by medical staff), which she eventually removed herself.

The Equal Rights Trust also held a focus group with persons with disabilites from the psycho-neurological residential institution in Cocieri.[793] A large number of participants complained that the institution fed them very badly. Older residents in receipt of a pension stated that the majority of their pension was taken by the institution to pay for their maintenance, including food, but even then they did not receive adequate food.

Transnistrian Region

As in the rest of Moldova, guardianship and the removal of legal capacity from persons with disabilities is an issue of concern in the Transnistrian region.[794] The UN Special Rapporteur on Extreme Poverty and Human Rights in 2013 urged the Transnistrian *de facto* authorities to begin de-institutionalisation of adults with disabilities and urged regional authorities to remove guardianship provisions from the Transnistrian legal framework.[795]

Conclusion

People with disabilities face significant stigma, ranging from outright fear and association with "sin" to a paternalist view that perceives persons with disabilities as objects of charity. This has consequences both in terms of direct discrimination and failure to accommodate the needs of persons with disabilities. Accessibility is a major obstacle preventing the participation of persons with disabilities in all areas of social life. Problems of access, compounded by prejudice and direct discrimination, limit the participation of persons with disabilities in employment and education. The situation of people with mental impairments represents one of the biggest concerns: legislation permitting the deprivation of legal capacity and the appointment of a legal guardian is both problematic in itself and a major factor in increasing the risk of abuse or mistreatment. Institutonalisation of persons with mental disabilities is a

793 Equal Rights Trust field visit and interviews with 11 people with locomotor disabilities, 13 June 2015, Cocieri psycho-neurological "internat", village Cocieri, Dubasari rayon.

794 See above, note 146, pp. 44–48.

795 See above, note 84, Para. 60.

major concern, and there is disturbing evidence of abuse and other forms of mistreatment against those held in institutions.

2.6 Discrimination on the Basis of Religion or Belief

As a party to the ICCPR, Moldova is required to guarantee freedom of thought, conscience and religion, by virtue of Article 18. Beyond the obligation to ensure universal enjoyment of the right to religious freedom, Moldova is required to ensure the enjoyment of all rights guaranteed under the ICCPR and the ICESCR without discrimination on the basis of religion by virtue, respectively, of Article 2(1) of the ICCPR and Article 2(2) of the ICESCR. In addition, Moldova is required by Article 26 of the ICCPR to ensure that its law prohibits discrimination on grounds including religion. Further, the ECHR requires Moldova to prohibit discrimination based on religion in respect to all Convention rights, by virtue of Article 14.

The proportion of Moldovans who consider themselves religious is high, especially when compared to many other countries in Europe. According to a 2012 Gallup poll, 83% of respondents considered themselves to be religious,[796] while just 5% stated that they were atheist.[797] In a 2011 Gallup survey 96% of those surveyed indicated an affiliation to one of two Orthodox Christian groups: 86% to the Moldovan Orthodox Church (MOC) and 13% to the Bessarabian Orthodox Church (BOC).[798]

As a 2011 survey indicates, Orthodox Christianity is the predominant religion in Moldova. According to a poll conducted by the Human Rights Information Centre in 2012, active membership in non-Orthodox religious groups is estimated at just 150,000 people.[799] According to the poll, the largest non-Orthodox religious groups, with between 15,000 and 30,000 adherents each,

796 WIN-Gallup International, *Global Index of Religiosity and Atheism*, 2012, p. 10, available at: http://www.wingia.com/web/files/news/14/file/14.pdf.

797 *Ibid*., p. 11.

798 United States Department of State, *International Religious Freedom Report for 2014: Moldov*a, 2015, p. 2, available at: http://www.state.gov/documents/organization/238622.pdf.

799 Human Rights Information Centre, *Report on the Snapshot Study of the Right to Freedom of Thought, Conscience and Religion (Fundamental Religious Freedoms and Rights) in the Republic of Moldova*, 2012, p. 4, available at: http://www.cido.org.md/attachments/article/79/Report%20EN.pdf.

are Catholics, Pentecostalists, Seventh Day Adventists, Jehovah Witnesses, Evangelists and Baptists, and Jews.[800] Smaller religious groups include Lutherans, Presbyterians, members of the Unification Church, other Christians, and Krishna Consciousness followers.[801]

Political and Social Context

The current relationship between the Moldovan state and Orthodox religion has its roots in the country's complex past. According to a report by the Foreign Policy Centre, the relationship is informed both by the position of Orthodoxy in the culture of the state before and during the Soviet regime, and by the position of the Russian Orthodox Church as the defender of "traditional values" and unofficial partner to the Russian Government in promoting its official external policies.[802] During the Soviet period, the official state ideology of Moldova was atheism; those who defied official prohibitions on religious observance were excluded and marginalised.[803] The sole path to building a career was through the Communist party, and public association with any religion would limit career opportunities. The result was that religious observance became concentrated in older generations, as younger people shunned religion. This practice persisted for more than two generations, with the result that a large proportion of people in the USSR (at least in the European part) came to genuinely identify as atheists.[804]

As indicated above, the results of social surveys and population censuses indicate that atheism in Moldova has rapidly dissipated following the end of Soviet restrictions on religious observance. Indeed, by the time of the 2004 census, more than 96% of census respondents identified as religious, with the majority of these identifying as Orthodox Christian,[805] while trust in the

800 *Ibid*., p. 4.

801 See above, note 798.

802 Foreign Policy Centre, *Traditional Religion and Political Power: Examining the Role of the Church in Georgia, Armenia, Ukraine and Moldova*, 2015, p. 57, available at: http://soros.md/files/publications/documents/Traditional%20religion%20and%20political%20power.pdf.

803 *Ibid.*

804 *Ibid*.

805 National Bureau of Statistics of the Republic of Moldova, *On the Results of the 2004 Population Census*, 2006, available at: http://www.statistica.md/newsview.php?l=ro&idc=168&id=2358.

Church was higher than for any other public institution.[806] As of May 2016, official data related to religion on the latest census, conducted in 2014, has not been made public.[807]

Legal and Policy Framework

Moldova has no state religion and the Constitution states that freedom of conscience is guaranteed and must be exercised in a spirit of tolerance and mutual respect.[808] Article 31 of the Constitution provides that:

> *The freedom of religious worship is guaranteed and religious bodies are free to organise themselves according to their own statutes under the rule of law.*
>
> *In their mutual relationships religious bodies are forbidden to use, express or incite to hatred or enmity.*
>
> *Religious groups are autonomous vis-a-vis the State and shall enjoy the latter's support, including that aimed at providing religious assistance in the army, in hospitals, prisons, homes for the elderly and orphanages.*

Law No. 125 of 2007 on Freedom of Conscience, Thought, and Religion, which implements these constitutional provisions, reiterates that every individual has the right to freedom of religion and that the rights the Law provides must be exercised in the spirit of tolerance and mutual respect. The law guarantees the right to belong to a religion, to change religion or belief, and to practice religion or belief independently or as a group, in public or in private.[809] According to the law, religious freedom can be restricted only if necessary to ensure public order and security, to protect public health and morality, or to

806 Institute for Public Policy, *Barometer of Public Opinion*, 2015, p. 35, available at: http://ipp.md/public/files/Barometru/Brosura_BOP_11.2015_first_part_ENGLISH_V1.pdf.

807 National Bureau of Statistics of the Republic of Moldova, available at: http://www.statistica.md.

808 See above, note 196, Article 31.

809 Law on Freedom of Conscience, Thought and Religion (Law No. 125 of 11 May 2007), Article 4(1).

protect a person's rights and freedoms.[810] The law also prohibits discrimination based on religious affiliation.[811]

Discriminatory Legal Provisions

One of the most significant concerns related to discrimination on the basis of religion or belief in Moldova is the privileged status of the Moldovan Orthodox Church (MOC). While Article 31 of the Constitution defines Moldova as a secular state where religious and state institutions are autonomous, in practice the MOC enjoys "privileged treatment in many fields".[812] This is reflected in the legal framework. Article 15 of the Law on Freedom of Conscience, Thought and Religion states that:

> *[T]he state acknowledges the special and primordial role of the Christian Orthodox religion and, consequently, of the Moldovan Orthodox Church, in the lives, history and culture of the people of Republic of Moldova.*

While the recognition of the historical and cultural role of Christian Orthodox religion is not necessarily, in itself, problematic, in 2012, the UN Special Rapporteur on Freedom of Religion or Belief noted that formal recognition of Orthodoxy as having a special role "can easily be seen as justifying privileged treatment of one religious tradition at the expense of the principles of equality and non-discrimination".[813] The Special Rapporteur found that this privileged position is not a simple legal formality: it has tangible results, as the MOC is privileged in various ways, including in the restitution of property confiscated during the Soviet era, and the presence of priests in public schools.[814] Civil society organisations have advocated for the repeal of Article 15, but their efforts have so far been unsuccessful.[815]

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810 *Ibid.*, Article 4(2).

811 *Ibid.*, Article 15(1).

812 Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt*, *Addendum*, UN Doc. A/HRC/19/60/Add.2, 2012, Para. 29.

813 *Ibid.,* Para. 28.

814 *Ibid.*, Para. 29.

815 See above, note 802, p. 60.

The MOC is also given a privileged role in the infrastructure of the state, particularly in the provision of state services, where it is permitted access while other religious bodies are not. In 2013, a cooperation agreement was concluded between the Ministry of Justice and the MOC, which grants the MOC access to detention facilitates to offer religious services, without the prior permission of the prison administration.[816] An agreement between the Ministry of Defence and the MOC gives special privileges in relation to the army, including a right to preach to National Army units, and to distribute religious literature to libraries within the army.[817] In 2013, a further cooperation agreement between the Ministry of Labour, Social Protection, and Family and the MOC came into effect,[818] which allows the MOC to develop a network of Christian social assistance services, including day care centres and temporary shelters on church property.[819]

In addition to the disadvantage experienced by minority religious groups as a result of the privileged position of the MOC, these groups may be disadvantaged by legal provisions related to legal registration, which place smaller groups at an inherent disadvantage. The Law on Freedom of Conscience, Thought and Religion (Law No. 125 of 11 May 2007) provides for a registration process under which a religious group must present the Ministry of Justice with a declaration including its exact name, fundamental principles and beliefs, organisational structure, funding sources, and the rights and obligations arising from membership.[820] The Law also requires a group to show it has at least 100 founding members and that it has access to premises where it can conduct its religious activities.[821] The Ministry of Justice is required by law to register a religious group within 30 days if the registration request is made according to law, though this period can be extended in certain circumstances. Registration

816 Moldovan Orthodox Church, *Cooperation Agreement between the Ministry of Justice (MOJ) and the MOC*, 2013, available at: http://mitropolia.md/acord-de-cooperare-intre-mitropolia-moldovei-si-ministerul-justitiei-al-republicii-moldova.

817 See above, note 798, p. 7.

818 Moldovan Orthodox Church, *Cooperation Agreement between the Ministry of Labour, Social Protection and Family and the MOC*, 2013, available at: http://mitropolia.md/acord-de-colaborare-intre-mitropolia-moldovei-si-ministerul-muncii-protectiei-sociale-si-familiei-din-republica-moldova.

819 See above, note 798, p. 7.

820 See above, note 809, Article 18.

821 *Ibid*., Article 19(1).

gives rise to various benefits for religious bodies, including the right to conduct religious services, to publish religious texts, to undertake religious education, to employ staff, to own property and to benefit from tax incentives.[822] At the request of the Ministry of Justice, a court can suspend the registered status of a religious group if it "carries out activities that harm the constitution or laws"[823] or "affects state security, public order, [or] the life and security of the people".[824] The Law also provides for the suspension or revocation of a religious group's registration in case of violation of international agreements or for political activity.[825] The ECRI in a 2013 report called for Article 19(1)(d) – which requires the signatures of 100 Moldovan citizens for the registration of a religious community – to be repealed, because it discriminates against non-citizens.[826] The Commission also recommended that the government initiate and lead an interfaith dialogue with a view to promoting tolerance between and towards the different religious groups in Moldova.[827]

In recent years, the number of registered religious entities has been on the rise and the registration process has been simplified.[828] As of April 2016, the state registry of Non-Profit Organisations recorded 1,258 organisations which were categorised as "religious denominations and component parts".[829] Nevertheless, some religious groups still find it difficult to register. For example, the Spiritual Gathering of Muslims of Moldova felt that it had no option but to register as a non-governmental organisation after repeated unsuccessful attempts to register as a religious group.[830] The group's previous applications were denied because, according to the Ministry of Justice, it had not submitted the correct documentation. The group is reported to have stated that it would make no further attempts to register, as it did not believe that registration was likely.[831]

822 *Ibid.*, Article 43.

823 *Ibid.,* Article 24(2)(a).

824 *Ibid*., Article 24(2)(b).

825 *Ibid.,* Article 24(2)(a).

826 See above, note 17, Para. 149.

827 *Ibid*.

828 See above, note 802, p. 61.

829 State Register of Non-Profit Organisations, 2016, available at: http://rson.justice.md/organizations?hash=5daa1cab9f6e99b977f48ecffbac738929f5fcdb.

830 See above, note 798, p. 8.

831 *Ibid*.

An additional challenge relates to the activity of religious denominations and bodies in Transnistria: the Moldovan authorities cannot ensure the rule of law in the region, and the self-proclaimed administration restricts the exercise of the right to freedom of conscience and religion.[832] A separate procedure has been introduced under which the administration conducts a parallel registration of denominations and bodies, without regard to their registration by the responsible body in Moldova. As the *de facto* authorities in Transnistria are strongly attached to one religious denomination – the MOC, which is subordinated to the Russian Orthodox Church – denominations that are not approved by the Russian Orthodox Church are persecuted or subject to unequal treatment compared to the church followed by the majority.[833]

A number of other legal provisions in Moldova limit the religious freedom of individuals, and may lead to discrimination on the basis of religion or belief. Article 54(4) of the Code of Administrative Offences makes it an administrative offence for foreign citizens to perform "religious activities (…) in public places without notifying in advance the mayor's office of that locality". Until 2014, the law required that persons being photographed for identity cards could not have their faces covered, and this resulted in cases in which Muslim women were not permitted to wear the hijab while being photographed.[834] However, under new legislation, a person can have their head covered while being photographed if their religious belief requires it.[835]

Discrimination by State Agents

In addition to maintaining a number of discriminatory laws, certain patterns of activity by national and local authorities provide cause for concern. In particular, concerns arise regarding the refusal of the state to recognise certain minority denominations, failure to restitute seized property, and the obstruction of efforts to purchase land or commence construction of places

832 See above, note 718,p. 61.

833 *Ibid.,* p. 62.

834 Discriminare Media, "Unequal conditions for obtaining identity documents of Muslim women in Moldova", 11 August 2014, available at: http://discriminare.md/conditii-inegale-de-obtinere-a-actelor-de-identitate-in-cazul-femeilor-musulmane-din-moldova.

835 Decision approving the Regulation on Issuing Documents of Identity and Evidence of Inhabitants of the Republic of Moldova (Government Decision No. 125 of 18 February 2013), available at: http://lex.justice.md/md/346754.

of worship by minority groups. These cases raise concerns both about discrimination on the basis of religion or belief, and about denial or limitation of freedom of religion itself.

In 2001, the European Court of Human Rights found that Moldova had violated Article 9 of the European Convention on Human Rights by persistently failing to register the Metropolitan Church of Bessarabia.[836]

Case Study:
Metropolitan Church of Bessarabia and Others v Moldova

In 1992, the Metropolitan Church of Bessarabia was established; almost one million Moldovan nationals were affiliated to the church, which had been recognised in several states around Europe. On 8 October 1992, the Church made the first of many applications for official recognition, but the state refused recognition, on the basis that it was unwilling to intervene in what it saw as a schism within the Metropolitan Church of Moldova. The Metropolitan Church of Bessarabia brought a complaint against the state, alleging denial of religious freedom.

In 1997, the Supreme Court of Justice ruled against the applicants, finding that there had been no breach of the right to manifest religious belief, stating that the dispute in question was an administrative one, within a single church, and that hence the State was under no obligation to intervene.

The European Court of Human Rights was asked to consider whether the refusal to recognise the Metropolitan Church of Bessarabia constituted an interference with the applicants' right to freedom of religion under Article 9 of the Convention. The Court ruled against Moldova, stating that "the refusal to recognise the applicant Church has such consequences for the

836 *Metropolitan Church of Bessarabia and Others v Moldova*, European Court of Human Rights, Application No. 45701/99, 13 December 2001.

applicants' freedom of religion that it cannot be regarded as proportionate to the legitimate aim pursued or, accordingly, as necessary in a democratic society". In 2002 the Metropolitan Church of Bessarabia was registered by the Government of the Republic of Moldova.

According to the Law on Freedom of Conscience, Thought and Religion, only those with "religious" beliefs can constitute a denomination and practice religious activities. Between 2009 and 2011, two Falun Gong organisations were registered as Public Associations, reflecting the fact that Falun Gong is not a religion but a system of spiritual beliefs.[837] In 2013, the Association for the Protection of the Disabled and Veterans "Echitate" filed a request to place the Falun emblem – which uses swastikas based on traditional Chinese religious usage – into the register of materials of an extremist character which is held by the Ministry of Justice pursuant to the Law on Counteracting Extremist Activity (Law No. 54 of 2003). Despite an earlier ruling to the contrary,[838] a court in January 2014 held that the Falun symbol was considered "extremist".[839] The same court in April 2014 adopted a decision to remove the two associations from the State Register of Public Associations on the grounds that they promoted extremist activities and used a symbol similar to the Nazi swastika.[840] The Falun Gong groups appealed these rulings, but were ultimately unsuccessful, as the Supreme Court upheld the decisions of the lower courts.[841] However, on 23 November 2015, the Constitutional Court declared unconstitutional Article 21(b) of the Law on Counteracting Extremist Activity, accor-

837 Falun Dafa Information Centre, *Falun Gong: An Ancient Tradition for Mind, Body, and Spirit*, 2015, available at: http://www.faluninfo.net/category/11.

838 Promo-LEX Association, *Human Rights in Moldova 2009–2010*, 2011, p. 456, available at: https://promolex.md/upload/publications/en/doc_1319534382.pdf.

839 Buiucani Court, Decision No. 2e-320/14 of 20 January 2014, available at: http://www.jbu.instante.justice.md/apps/hotariri_judecata/inst/jbu/get_decision_doc.php?decision_key=D2FBB3A4-CD8C-E311-9DF1-005056A5D154&case_title=Dosar-14-2e-9423-13122013-12178.

840 See above, note 798, p. 7.

841 Supreme Court of Justice, Decision No. 2rac-1/15 of 28 January 2015, available at: http://jurisprudenta.csj.md/search_col_civil.php?id=16524; and and Supreme Court of Justice, Decision No. 2rac-5/15 of 11 February 2015, available at: http://jurisprudenta.csj.md/search_col_civil.php?id=16858.

ding to which the Falun emblem was placed into the register of materials with extremist character.[842] According to the Civil Procedure Code,[843] this decision enables representatives of these Falun Gong organisations, to lodge an application for review of the judgment of the Supreme Court. As of April 2016, there are no court records indicating that the Falun Gong organisations have lodged such an application, though media reports indicate that an appeal has been lodged with the European Court of Human Rights.[844]

In a decision of 21 January 2014, the CPEDEE found that the Chioselia council had discriminated against the Pentecostal Church and that it had violated the petitioner's right to freedom of expression and the right to freedom of assembly by denying the Pentecostal Church permission to manifest its religion in public, for example by readings, hymns or other manifestations of religion.[845]

One significant problem for minority religious groups is the reluctance of local authorities to allocate land for the construction of places of worship[846] in the public tender process. A related problem is the refusal of local authorities to issue construction authorisations. On two occasions, in June and July 2014, in Mereni village, the mayor denied the Jehovah's Witness community authorisation to use its completed Kingdom Hall.[847] The Jehovah's Witness community reported that the mayor refused authorisation because he did not want to upset the local Orthodox priest or local residents.[848] The local Orthodox priest allegedly threatened to demolish the Kingdom Hall and called on local villagers to oppose the spread of the Jehovah's Witness faith and to obstruct meetings of the Jehovah's

842 Constitutional Court, Decision No. 28 of 23 November 2015, available at: http://www.constcourt.md/download.php?file=cHVibGljL2NjZG9jL2hvdGFyaXJpL3JvLWgyODIzMTEyMDE1cm83ZGY3Mi5wZGY%3D.

843 See above, note 756, Article 449(e^1).

844 Epoch Times, "The Constitutional Court Decides: Falun Dafa Association Wins in Moldova", 24 November 2015, available at: http://epochtimes-romania.com/news/asociatia-falun-dafa-castiga-in-moldova---241220.

845 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 029/2013 of 21 January 2014, available at: http://egalitate.md/media/files/files/ decizia_cauza_nr_029_2013_cultul_penticostal_9910224.pdf.

846 See above, note 798.

847 *Ibid*.

848 *Ibid.*

Witness community; as a result all religious services in Kingdom Hall ceased.[849] In October 2014, a different Jehovah's Witnesses community brought a claim in the Anenii Noi City Court seeking the mayor's signature on the construction authorisation permit.[850] On 14 September 2015, the Court decided in favour of the Jehovah's Witnesses, forcing the mayor to sign the relevant authorisation.[851]

A further concern for minority religious groups is the failure of national and local authorities to restore ownership of land and building seized by the state during the Soviet era. A 2015 study found that none of the buildings which were under the jurisdiction of the Romanian or Catholic Churches, or other religious groups such as Lutherans, before the Soviet era had been restored to those religious groups.[852]

In 2002, the government adopted a controversial, non-transparent decision to transfer 650 religious buildings, considered architectural monuments, to the administration of the MOC.[853]

In meetings with the UN Special Rapporteur on Freedom of Religion or Belief, in May 2014, representatives of several religious denominations raised concerns regarding restitution of real estate and liquid assets.[854] The Metropolitan Church of Bessarabia noted that the restitution of archives and property had been discussed with the authorities, but without an outcome. The Lutheran Church and the Roman Catholic Diocese of Chișinău, whose property was nationalised in 1940 by the Soviet administration and never returned, also raised the issue.[855]

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849 *Ibid.*

850 *Ibid.*

851 Anenii Noi Court, Decision No. 3-31/15 of 14 September 2015, available at: http://www.jan.instante.justice.md/apps/hotariri_judecata/inst/jb/get_decision_doc.php?decision_key=38CB4868-A571-E511-8A1B-005056A5D154&case_title=Dosar-08-3-2833-20102014-1588.

852 See above, note 802, p. 60.

853 Decision approving Buildings, and Places of Worship (Government Decision No. 740 of 11 June 2002), available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=296736.

854 See above, note 718, p. 64.

855 Casa Providentei, "Freedom of Religion in Moldova in the Focus of UN", 20 May 2014, available at: http://casaprov.org/blog/libertatea-de-religie-in-republica-moldova-in-vizorul-onu.

In addition to these problems of registration and religious property affecting whole religious communities, there is also evidence that individuals from religious minorities face discrimination by state agents. Leaders of the Islamic League, the only recognised Muslim religious organisation in Moldova, have reported profiling and discrimination against Muslims at border crossings when entering and leaving the country. According to the League, Muslims traveling to Saudi Arabia for the Umrah pilgrimage were stopped by the authorities at the airport, with those known to be Muslims subjected to additional scrutiny:

authorities took photocopies of documents and religious literature, hand-checked luggage, and scrutinised video equipment.[856] A case was brought before the CPEDEE in 2014, but the Council found that there was no discrimination on the basis of religion, finding that the actions of the border and customs officials were justified as objective and reasonable.[857] In reaching this conclusion, the Council took into account the evidence provided by the officials that, for example, the publications checked exceeded the limit on the number of books an indiviudal is permitted to transport without filling a declaration.

Discriminatory Violence

A 2012 report by the Human Rights Information Centre found frequent cases of religious discrimination, including physical violence and aggression, threats, and damage to property, affecting Jehovah's Witnesses, Muslims, Pentecostals, and members of minority Christian groups.[858]

During his visit to Moldova in 2012, the UN Special Rapporteur on Freedom of Religion or Belief found that Orthodox priests can exercise a *de facto* veto over public gatherings of religious minorities in their localities, and concluded that even burials by religious minority groups in rural areas can be met with resistance from certain Orthodox groups who want the local cemetery (which is usually owned by the municipality) to remain free of graves from members

856 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 129/2014 of 22 September 2014, Paras 4.3–4.4, available at: http://egalitate.md/media/files/files/decizie_129_14_depersonalizat_6409413.pdf.

857 *Ibid*.

858 See above, note 799, pp. 16–17.

of other religions.[859] His report presents examples including the case of a Jewish Hanukkah menorah being removed and demolished by a group of people, instigated and led by an Orthodox priest.[860] None of these cases were prosecuted and the MOC failed to offer official apologies.[861] The Special Rapporteur could not find any examples of the MOC clearly condemning acts of violence or hostility perpetrated in the name of Orthodox Christianity.[862] The Special Rapporteur also expressed concern about the efficiency of the judiciary and other formal mechanisms of adjudication provided by the state.[863]

During 2014, Promo-LEX reported several cases of religious intolerance, manifested in discriminatory violence.[864] According to the US State Department's International Religious Freedom Report for 2014, Jehovah's Witnesses reported "approximately 30 cases of verbal harassment, threats of physical violence, and physical abuse in rural areas", while the Baptist Church also reported cases of "intimidation and harassment".[865] However, the report found evidence of "reduced discrimination against Muslims".[866]

Research for this report identified cases of individuals being subjected to violence or other forms of abuse because of their religion. One parent, interviewed for this report, stated:

> C*hildren of one of my neighbours snatched my child's cross from his neck (…) told him not to wear the cross because the cross is devil. At school they shamed my child, pointing at him in front of other children, and laughed because he wears cross. This happens because my neighbour converted to another religion and I think*

859 See above, note 812, Para. 36.

860 Union of Councils for Jews in the Former Soviet Union, "Moldovan Jewish Community Denied Right to Install Hanukkah Menorah in Capital", 4 January 2013, available at: http://www.ucsj.org/2013/01/04/moldovan-jewish-community-denied-right-to-install-hanukkah-menorah-in-capital.

861 See aove, note 812, Para. 38.

862 *Ibid*., Para. 37.

863 *Ibid*.

864 See above, note 718, p. 61.

865 See above, note 798.

866 *Ibid*.

> *that they say bad things about my religion, and their child are doing exactly what they hear from their parents (…) I threatened to go to police, and I saw that after one month the situation calmed down.*[867]

Education

Many educational institutions in Moldova display religious symbols or objects, or have religious monuments on their grounds, and there is evidence of schools including religious practices in the curriculum. In 2013, it was found 30% of schools had religious artefacts such as icons and crosses on display on their premises.[868] Equally, many schools have churches or religious monuments on their land.[869]

There is also evidence of the organisation of religious ceremonies or practices in schools without the consent of parents or guardians.[870] The failure to discuss the content of classes in advance and obtain consent from parents or guardians for classes on religion is a cause for concern. Interviewees cited in a report by the Human Rights Information Centre in 2013 expressed concern with the inclusion of religious elements in the academic curriculum:

> *I am not satisfied. Children learn prayers. The priest invites children to the church, and those who do not want to go are marginalised, as they refer only to Orthodoxy. The priest comes once a week.*[871]

In some settlements, religious classes in schools are taught by Orthodox priests or their wives, who present educational material only from the perspective of Christianity:

> *"We had the history of religion for one year (with a specialist – he talked to us about all of the religions, about*

867 Equal Rights Trust interview with A., 6 April 2015, Village Fundurii Vechi, rayon Glodeni.

868 See above, note 88, p. 9.

869 Curaj TV, "Orthodox Church Infiltrates Schools", 18 January 2013, available at: http://curaj.tv/reportaj/biserica-ortodoxa-se-infiltreaza-in-scoli.

870 See above, note 88, p. 9.

871 *Ibid*.

> *morality in general), then Religion became an optional course (with a priest – only about Christianity). Then it disappeared because it was boring, as the priest would impose his viewpoint".*[872]

Students interviewed by Equal Rights Trust researchers for this report reported cases in which teachers were replaced by priests, who taught "History of religion", discussing the role of the Orthodox Christian religion in Moldova and speaking of a Christian lifestyle as a moral one.[873]

Transnistrian Region

Discrimination on the basis of religion and belief is particularly severe in the Transnistrian region. Article 3 of the Law on Freedom of Conscience and Religious Organisations, which applies only in Transnistria, guarantees the right to freedom of religion, which is subject to restriction "if necessary to protect the constitutional order, morality, health, citizens' rights and interests, or state defence and security".[874] In practice, however, the authorities restrict religious freedom in a number of ways, in particular through imposing a system of registration which minority communities find difficult to navigate.

Registration is necessary in Transnistria for religious groups to conduct religious rites and ceremonies, as well as to exercise rights in respect of publishing and printing of materials, constructing places of worship and owning property.[875] Minority religious groups have experienced difficulties in registering. For example, Jehovah's Witnesses in the Transnistrian region have been struggling for official registration for more than twenty years.[876]

For other communities, problems arose as the result of 2007 amendments to the rules regualting the establishment of religious communities. According

872 *Ibid*., p. 10.

873 Equal Rights Trust focus group with pupils during a visit to Lyceum "Andrei Straistă" Anenii Noi, 24 April 2015, Chișinău.

874 Law on Freedom of Conscience and Religious Organisations, 1995 (Transnistria), Article 3, available at: http://zakon-pmr.com/DetailDoc.aspx?document=62486.

875 *Ibid*., Article 19.

876 See above, note 146, p. 43.

to the new rules, the *de facto* Ministry of Justice assumed responsibility for registration issues, and was empowered to conduct a religious assessment of religious communities, which can further delay the registration process.[877] The new rules also established a probation period of 10 years from the date of registration, during which religious groups are barred from various forms of public communication, including the distribution of religious documents or appearances in the media.[878] The purported objective of the probation period was to allow time to ensure that the group in question is "loyal to society" and "to prevent extremism".[879] As a result of these rules, the Lutheran community, which was registered in 2004, was prohibited from communicating with the public until 2014.[880]

The Baptist community in Tiraspol was registered but was asked to seek re-registration after the 2007 amendments. In order to register the community, the authorities requested a copy of the minutes of a meeting held in 1966 at which the community was founded. The document could not be located, the community believing it to be archived in Chişinău.[881]

Two Jehovah's Witnesses communities, one in Tiraspol and one in Râbniţa, which had been registered since 1991, also faced problems when they were required to re-register following the 2007 amendments. For a period of five years, the authorities in Tiraspol created obstacles to the registration of these communities. Without registration, the groups were vulnerable to the loss of their assets, the organisation can be liquidated at any time, and their meetings were at risk of being shut down. Although the courts allowed the community to challenge such decisions, the *de facto* Supreme Court prevented legal resolution of the problem. Victor Dornicenco, vice-president of the Jehovah's Witnesses in Transnistria, spoke to journalists, stating:

> *I presented several experts from the Russian Federation. Ministry of Justice wants to ensure that the community in Tiraspol once belonged to Russia, but we believe*

877 See above, note 812, Para. 19.

878 *Ibid*.

879 *Ibid*.

880 See above, note 146, p. 43.

881 *Ibid*., p. 39.

> *it is an unlawful decision. Re-registration procedure is one unnecessary and has created many impediments to conduct religious meetings. We are close to being liquidated. Transnistrian law provisions are good, but their application raises several questions. In the last five years we have been refused to register other new branches. We are considered as dangerous to society.*[882]

As this statement indicates, Jehovah's Witnesses are particularly vulnerable to discrimination at the hands of the Transnistrian authorities. Jehovah's Witnesses have reported they have received threats from the Transnistrian Prosecutor's Office to the effect that the community's registration would be repealed and it would be forced to cease its activities.[883] The community has also reported seizure of its religious literature and materials by the *de facto* authorities.[884] The authorities have refused to accredit the leaders of the Tiraspol and Rybnita Jehovah's Witnesses, thus preventing the registration of these groups, and have refused to register new charters for Jehovah's Witnesses in Tiraspol, Rybnita, Grigoriopol, and Tighina.[885]

Military service is mandatory in Transnistria,[886] posing a problem for conscientious objectors, particularly Jehovah's Witnesses. In recent years, 30 Jehovah's Witnesses have been prosecuted for refusing to undertake military service, with some being imprisoned, while others were fined.[887] A Law on alternative civilian service was adopted in Transnistria in 2014,[888] though there is still no mechanism for enforcement.[889]

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882 Discriminare Media, "Jehovah's Witnesses Risk being Persecuted in the Transnistrian Region", 27 July 2015, available at: http://discriminare.md/martorii-lui-iehova-risca-sa-fie-prigoniti-din-regiunea-transnistreana.

883 See above, note 798.

884 See above, note 799, p. 38.

885 See above, note 798.

886 Law on Universal Military Service, 2000 (Transnistria), Article 1, available at: http://vspmr.org/file.xp?file=26411.

887 See above, note 146, p. 43.

888 Law on Alternative Civilian Service, 2014 (Transnistria), available at: http://pravopmr.ru/View.aspx?id=niqClDvNfh9Zu%2bLz%2flsE5A% 3d%3d&q=%D1%81%D0%BB%D1%83%D0%B6%D0%B1%D0%B5.

889 Promo-LEX Association, *Rights of the Enlistees from the Left Side of Nistru River: Between Myth and Reality*, 2014, available at: https://promolex.md/upload/ebulletin/ro/nr89_1422621462ro.pdf.

Restitution of property seized during the Soviet era is particularly difficult for minority religious groups in Transnistria. Of all religious denominations registered in the region, only the Orthodox Church of Tiraspol Diocese managed to reclaim places of worship seized during the Soviet period.[890] The Lutheran Church has claimed the restitution of the property seized by the Soviet regime, namely the Lutheran churches in Camenca town and Hlinaia and Colosovo villages (which were transformed into night clubs). One of its former worship places in Carmanovo village was transferred to the Orthodox Church.[891] A primary building of the Lutheran community in Camenca is currently being used as offices by the security services. The community has been endeavouring to recover the building, as yet without success.

Other minority religious groups have also reported examples of discrimination by the Transnistrian authorities. Muslim groups have stated their belief that they have been subject to surveillance by the security services.[892] According to Promo-Lex and other human rights NGOs monitoring religious freedom in Transnistria, religious groups were reluctant to report problems with the authorities.[893]

Conclusion

While the national legal system guarantees freedom of religion and prohibits discrimination on the basis of religion, research for this report found many examples of disadvantage faced by minority religious communities. National law grants the Moldovan Orthodox Church privileged status, a status reinforced by a number of discriminatory laws and policies that grant rights to the Church not enjoyed by others. Minority religious groups face challenges in securing legal registration which is necessary to exercise certain rights, though in recent years, an apparently been simplified process has led to an increase in the number of registered religious entities. Minority groups also face discrimination in attempts to secure allocation of land and construction permits to build places of worship, and to secure restitution of church property. Both the Moldovan Orthodox Church and the government have failed to effectively prevent intolerance, hate speech, and violence by adherents of the Church.

890 See above, note 87, p. 192.

891 *Ibid*.

892 See above, note 146, p. 42.

893 See above, note 718, p. 65.

In Transnistria, minority religious communities – including in particular Jehovah's Witnesses – face even more severe challenges than in the rest of Moldova, though the nature of these challenges is similar, with registration of religious groups proving to be a common problem.

2.7 Discrimination on the Basis of Age

As of early 2015, there were 576,600 persons aged 60 years and older living in Moldova, constituting 16% of the total population.[894] A recent study on perceptions of discrimination found that 47% of respondents considered elderly people to be one of the social groups most exposed to discrimination in Moldova.[895] The survey also revealed contradictory views of elderly people: while over 80% of respondents felt that older people were "very wise", and agreed that the State should ensure they have a decent standard of living by providing health services and social assistance, 69% felt that older persons "cannot cope with complex requirements", 54% felt they had an "old mentality" and 29% believed they were a burden on society.[896]

Research conducted for this report has found that older persons in Moldova face discrimination in employment and are at high risk of poverty.

Legal and Policy Framework

Discrimination on the basis of age is prohibited by the Law on Ensuring Equality, which provides protection from discrimination across a wide range of areas of life.[897] In addition, Article 8 of the Labour Code prohibits discrimination at the workplace on the grounds of age.[898]

894 National Bureau of Statistics of the Republic of Moldova, *Elderly in Moldova in 2014*, 2015, available at: http://www.statistica.md/newsview.php?l=ro&idc=168&id=4916.

895 See above, note 40, p. 26.

896 *Ibid*., pp. 26–29.

897 See above, note 14, Article 1(1).

898 See above, note 395.

Discriminatory Legal Provisions

According to the Law on State Social Insurance Pensions (Law No. 156 of 1998), the retirement age in Moldova is set at 57 for women and 62 for men.[899] The inclusion of the retirement age as a basis for termination or as a criterion to determine eligibility for different types of employment means that there are a number of laws and regulations that directly discriminate on the basis of age. For example, the Law on the Public Function and Status of Civil Servants[900] and the Labour Code,[901] respectively, allow civil servants and teachers who reach the retirement age to be dismissed.

Of even greater concern, there is evidence of the Moldovan courts accepting the state's reasoning that reaching retirement age is a legitimate basis for terminating a person's employment. On 22 March 2011 the Constitutional Court found that Article 62 (1)(d) of the Law on Public Function and Status of Civil Servants, which provides that employment may be terminated "when the public official reaches the age required for obtaining the age pension", did not violate the constitutional right to non-discrimination on the basis of age.[902] The Court explained that the goal of the Law is to ensure a stable, professional, impartial, transparent and efficient public service in the interest of society and asserted that this necessitated a high standard of professionalism for those holding public office. The Court did not provide arguments as to why age is considered an essential professional requirement for civil servants. In its judgment, the Court stated that age is not expressly stipulated as a protected ground in Article 16 of the Constitution. The Court also noted that similar age restrictions could be applied in relation to other professions, including positions such as prosecutor or public notary.[903] Such reasoning gives significant cause for concern, given the discriminatory impact of policies that

899 See above, note 393, Article 41.

900 Law on the Public Function and Status of Civil Servants, (Law No. 158 of 4 July 2008), Article 62(1)(d).

901 See above, note 395, Article 301(1)(c).

902 Constitutional Court, Decision No. 6 of 22 March 2011, available at: http://www.constcourt.md/download.php?file=cHVibGljL2NjZG9jL2hvdGFyaXJpL3JvXzIwMTFfaF8wNi5wZGY%3D.

903 Legal Resource Centre of Moldova, *Compatibility Analysis of the National Legislation with the European Standards in the Field of Non-Discrimination in Employment,* 2015, pp. 60–61, available at: http://crjm.org/wp-content/uploads/2015/02/CRJM-Raport-nediscriminare-in-munca.pdf.

determine employability solely on the basis of an age-related status. Indeed, Moldovan human rights experts have argued that the provisions of the Labour Code should be amended.[904]

In 2013, the Constitutional Court went even further, extending the concept of age as an essential professional requirement in a judgment on the constitutionality of Article 301(1)(c) of the Labour Code, which allows for the termination of teachers' labour contracts when they reach pension age.[905] The Court noted that setting requirements or limitations for certain types of employment could not be considered a violation of the constitutional right to work[906] or a case of unjustified discrimination. The Court found that such limitations can have a mandatory character, as, for example, in the teaching profession, which imposes certain physical and mental requirements which may not be met by older people, or in cases where such measures are applied to optimise the labour force in certain areas of activity.[907] These two cases illustrate a deeply concerning lack of understanding of the dangers of stereotyping and the resulting discrimination at the highest levels of the Moldovan judicial system.

In 2013, the CPEDEE initiated a review of legislation aiming to identify laws that discriminate on grounds of age and draft a series of amendment proposals. The Council noted that Government Decision No. 314 of 23 May 2012 regarding the approval framework of "Personal Assistance" Social Service is discriminatory on grounds of age.[908] The Regulation was established to allow persons with disabilities the opportunity to pay for a personal assistant, in order to promote independent living, prevent institutionalisation and promote equality of access to education and employment. Under the Regulation, personal assistants could be any person – including a family member – who fulfilled a number of basic conditions, one of which was not having reached the retirement age. As many persons with disabilities already received assistance from family members – parents in particular – the effect of the Regulation was that some parents were eligible to receive financial support, while others

904 *Ibid*.

905 Constitutional Court, Decision No. 5 of 25 April 2013, Para. 58, available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=347904.

906 See above, note 196, Article 43.

907 See above, note 903, p. 61.

908 See above, note 335, pp.12–13.

were not. In 2015, Government Decision No. 374 of 16 June 2015 repealed the discriminatory provision concerning the age limit for personal assistants.

In 2015, the CPEDEE noted that the Regulation on the Organization of Higher Education Doctoral Cycle III, approved by Government Decision No. 1007 of 2014,[909] includes a discriminatory provision which limits the ability of persons over the age of 65 from becoming PhD supervisors on the same basis as others. The Regulation provides that persons over the age of 65 can only accept PhD students only in joint supervision with another supervisor. The CPEDEE noted that the provision is discriminatory and that it is not an objectively justified means of achieving a legitimate aim.[910]

Employment

In 2014, the number of older persons (aged 60 and over) who were economically active was 92,200, constituting just 16.4% of the persons in that age group; persons over 60 constituted just 7.6% of the total labour market.[911]

Discrimination against older people in employment is common. In its annual report for 2015, the CPEDEE noted a significant trend of employment discrimination, including on grounds of age.[912] The report indicated that 7.9% of all cases in which the Council made a finding of discrimination involved discrimination based on age, with more than two thirds of these cases concerning employment discrimination.[913] In 2015, CPEDEE issued 3 decisions finding discrimination on grounds of age.

Research by the Soros Foundation in 2011 found that older persons are frequently forced to leave their job when they reach the retirement age, even though they would be capable of work after that time.[914] The survey found

909 Decision approving the Regulation of the Organisation of Higher Education (Government Decision No.1007 of 10 December 2014), available at: http://lex.justice.md/md/356044.

910 See, Council on the Prevention and Elimination of Discrimination and Ensuring Equality, above, note 389, p. 15.

911 See above, note 894.

912 See above, note 910, p. 3.

913 *Ibid*., p.10.

914 Soros Foundation Moldova, *Perceptions of the Population of the Republic of Moldova on Discrimination: Sociological Study,* 2011, p. 23, available at: http://soros.md/files/publications/documents/Studiu_sociologic_EN.pdf.

that older persons face significant stigma in the workplace, where they are considered obsolete, and their views and opinions are disregarded.[915]

A 2012 study found that over 13,000 people lost their jobs as a result of company restructures.[916] Older persons accounted for a disproportionate number of these job losses, as they were considered to be less productive.[917] In the same year, almost 16,000 people registered as unemployed at the National Employment Office were aged between 50 and 65, but few of them succeeded in finding a job. The study found that 4,000 of older persons seeking employment had been registered for years, and only 2,800 had been able to find a job in 2012.[918] National Employment Office data for 2015 reveals that the situation has not improved, with 16,607 people aged between 50 and 65 registered as unemployed for 6 months or more.[919]

A number of legislative measures intended to promote the employment of older persons have been implemented in recent years. For example, Article 55 (f) of the Labour Code allows pensioners to be employed on fixed term contracts for a two-year period, which can be extended by agreement, in order to incentivise the employment of older persons, in practice the difficulties persist. In 2014, the Labour Code was amended to provide that persons who have five or less years until retirement have preferential right to maintain their job in case of staff redundancies.[920]

However, interviews conducted for this report, and for other publications indicate that significant problems remain. The case of Z., set out below, illustrates the prejudice against older people, and the resulting difficulties which they face in maintaining or securing new employment.[921]

915 *Ibid*.

916 Ghilascu, N., "Too Old for Employment, Too Young for Retirement", *Discriminare Media*, 12 December 2012, available at: http://discriminare.md/prea-batrani-pentru-angajare-prea-tineri-pentru-pensionare.

917 *Ibid.*

918 *Ibid.*

919 See above, note 95, p. 6.

920 See above, note 395, Article 183(2)(l).

921 Equal Rights Trust interview with Z. 1 May 2015.

Case Study: Z.

Between 1989 and 2012, Mrs Z. was employed at S.A. "Moldtelecom". In January 2012, when she was in her early 50s, Mrs Z.'s manager informed her that her position was being eliminated and that she would be dismissed as the number of staff was being reduced. While this was the official reason she was given, Mrs. Z, later learned that her position was given to a younger person.

From January 2012 to January 2013, Mrs Z. was registered at the National Employment Office, during which time she received unemployment allowance. In this time, despite her experience, she was offered only one job, as a salesperson. From January 2013 to 2015, Mrs Z. continued to be registered with the National Employment Office, but is now ineligible for unemployment allowance, which is payable for a maximum of 12 months.

Employees from the National Employment Office repeatedly told Mrs Z. that it would be virtually impossible for her to find a job, considering her age. In addition, during that period, Mrs Z tried to get a job on her own as well. She applied for a position at the S.A. "Apa-Canal" Chişinău as a dispatcher but was refused on the grounds of age.

In another case, the CPEDEE found that a school had discriminated against an experienced teacher, in dismissing her in favour of a recent graduate:[922]

Case Study: G.T.

In 2015, the CPEDEE ruled on the case of G.T., a teacher who alleged discrimination on the grounds of age in employment. The school authorities had refused to allocate her to civic education classes and the principal of the secondary school refused to extend G.T.'s employment contract, citing her poor performance and refusal to follow instructions.

922 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 222/15 of 10 April 2015, available at: http://egalitate.md/media/files/files/decizie_222_2015_depersonalizat_6906358.pdf.

> The Council found that the principal discriminated against G.T. on the grounds of age. The principal chose not to extend G.T.'s contract, despite her experience and professional qualifications. It found that the principal preferred a younger teacher without experience and qualifications because she was a young graduate. CPEDEE also noted that G.T., despite having reached retirement age, had continued to work in the school for seven years, and that her ability and teaching skills were never challenged.

The courts have a mixed record in responding to age discrimination in employment. In 2013, in the first case concerning age discrimination, the Edineț District Court ruled[923] that termination of a labour contract when the employee reached the pension age did not constitute discrimination on the basis of age, as the Labour Code permitted such terminations.[924]

Nevertheless there have been some valuable recognitions of discrimination on the basis of age, notably from the CPEDEE. In 2014, the Council found that certain job announcements can constitute age discrimination. In the case in question, an employer was found to have discriminated on the basis of age by advertising jobs that included age as a selection criterion.[925] However, cases similar to this continue to occur, making it very difficult in practice for elderly to find a job. In many cases, while job announcements no longer include age limitations, the practice of not selecting older people for employment prevails. One interviewee told us:

> *Every time a during a job interview or on the phone when the potential employer contacts you, the first question is: "What is your age?" Sometimes I lie that I am 5 years younger, hoping to at least be invited for a job interview,*

923 Edineț District Court, Decision No. 2-206/13 of 20 March 2013, available at: http://www.jed.instante.justice.md/apps/hotariri_judecata/inst/jed/get_decision_doc.php?decision_key=13423C31-E899-E211-B0BC-00215AE0E41D&case_title=Dosar-28-2-33-10012013-4559.

924 Ghilascu, N., "The First Case of Discrimination Based on Age was Lost in Court", *Discriminare Media*, 4 April 2013, available at: http://discriminare.md/primul-caz-de-discriminare-in-baza-de-varsta-a-fost-pierdut-in-instanta-de-judecata.

925 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 050/14 of 22 February 2014, available at: http://egalitate.md/media/files/files/decizia_cauza_050_gavriloi_rodion_catre_legis-com_srl_5733279.pdf.

> *but even that does not help. At one point, I decided to call an announcement for a nanny/ babysitter and they also asked about my age. I told them I am pension age and the person who placed the ad, said: "no, no, we need a younger person." When I was looking for a job my age was an obstacle at both public and private companies. So I stopped looking for a job. All failures experienced considerably affected my desire to continue looking for a job. This whole experience was a real humiliation.*[926]

Poverty

In part as a result of the problems they face in accessing employment, but also because of an inadequate state pension, older persons are highly vulnerable to poverty. In 2014, the poverty rate for those aged 60 and over was 12.8%, 1.4 percentage points higher than the national average.[927] The highest poverty rate among the elderly is recorded in rural areas, where approximately 17% of older people are classed as living in poverty, compared to 7% in urban areas.[928]

In 2011, the CESCR noted with concern that the "average contributory pension in the State party is well below the minimum subsistence level, and that non-contributory social assistance benefits are even lower" and recommended that pensions be increased to a level that would provide for an adequate standard of living.[929] The government is due to report on its progress in implementing these recommendations on 30 June 2016. However, the pension remains below the subsistence level. As of 1 July 2015, the subsistence minimum for pensioners was defined as 1,444.6 lei (€65 Euro) per month,[930] which represented 83.8% of the average for the total population. The average

926 Equal Rights Trust interview with Mrs Valentina, 24 April 2015, Anenii Noi town, Anenii Noi region.

927 See above, note 894.

928 *Ibid*.

929 See above, note 30.

930 National Bureau of Statistics of the Republic of Moldova, *The Subsistence Minimum in the First Semester of 2015*, 2015, available at: http://www.statistica.md/newsview.php?l=ro&id=4885&idc=168.

monthly pension, as of 1 July 2015, was 1,170.8 lei (€53 Euro),[931] only 81.1% of the defined minimum subsistence level.

Healthcare

There is limited publically available information on discrimination against older people outside the area of employment. Nevertheless, a focus group with the elderly, conducted for this report revealed discrimination in healthcare:

> *Elderly face discrimination and discriminatory attitudes in access to health care and in other areas of life all the time: it's either an ambulance is not coming, or ignores them; or the doctors treat them with indifference. It is difficult to get out of the house. The infrastructure is not accessible for elders with limited mobility (high stairs, lack of handrails, lifts, etc.). There are cases where doctors refuse or avoid prescribing subsidised drugs. For example, at the request of an old lady to give her a prescription for subsidised eye drops, the doctor said that with this money he would rather feed four children with formula.*[932]

Transnistrian Region

In the Transnistrian region, the problems for older persons are similar to those in the rest of Moldova. Accessing employment is extremely difficult for older persons and disproportionate numbers of older persons live in poverty. Interviews with S. and T., presented below, give an insight into the problems faced by older persons:

> *Seniors are now below the poverty line, in despair. My pension is small and was recently cut by 30%. Pensioners struggle to survive. Recently, the store "Veteran"*

931 *Ibid.*

932 Equal Rights Trust focus group, 24 June 2015, Vasieni village, Ialoveni rayon.

> *opened for the poor. It is better to open a canteen for the poor so they could eat.*[933]

> *The biggest problem now is to get a job. No one employs people over 40 or 45 and the pensioners are also dismissed. I cannot get a job even as a housekeeper or cleaner: I am 52 years old and I do not know where to go. Employers ask about my age right away: "How old are you?" And they say: "No vacancy".*[934]

Another interviewee, M., told our researchers that impoverished pensioners are asked to pay for healthcare and medicines which are supposed to be free:

> *Healthcare (…) It's like a joke (…) Medicine – one needs to pay for everything: money! money! I recently was due to be examined, and I had to pay for everything, for each medical exam and test and that was in a public clinic where it should be free of charge.*[935]

Conclusion

Discrimination against older persons in Moldova is legitimised by the presence of discriminatory laws and policies, particularly in employment. The failure of the courts to recognise that laws which make retirement age a basis for dismissal from employment are discriminatory, and the state's continued introduction of regulations which restrict access to work for persons over the retirement age contribute to the difficulties which older persons face in accessing employment. These difficulties, together with an inadequate state pension, place older persons at disproportionate risk of poverty. While there is limited published data on the position of older persons in Transnistria, interviews conducted for this report indicate that many of the same problems exist in that region.

933 Equal Rights Trust interview with S., 23 October 2015, Tiraspol.

934 Equal Rights Trust interview with T., 23 October 2015, Tiraspol.

935 Equal Rights Trust Interview with M., 23 October 2015, Tiraspol.

2.8 Discrimination on the Basis of Language

Language is one of the characteristics explicitly listed in Article 2 of both the ICCPR and the ICESCR, and as such Moldova is required to ensure the enjoyment of all civil, political, economic, social and cultural rights provided in these Covenants without discrimination on this basis. Further, as with other characteristics discussed elsewhere in this Part, Moldova is required, by virtue of Article 26 of the ICCPR, to prohibit discrimination on the basis of language in areas of life subject to legal regulation. In addition, Moldova is required by Article 27 of the ICCPR to ensure that persons belonging to linguistic minorities are not denied the right, "in community with the other members of their group, (…) to use their own language".

The ECHR requires Moldova to prohibit discrimination based on language in respect to all Convention rights, by virtue of Article 14. Moldova also has obligations under the Council of Europe Framework Convention for the Protection of National Minorities (FCNM), Article 5(1) of which requires Moldova to:

> *[P]romote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, **language**, traditions and cultural heritage(emphasis added).*

The FCNM contains further obligations in respect of ensuring freedom to hold opinions and to receive and impart information and ideas in minority languages (Article 9), the right to use freely and without interference a minority language, in private and in public, orally and in writing (Article 10), and to receive education in minority languages (Article 14).

According to Article 13 of the Constitution, the official language of Moldova is Moldovan. However, in 2013, the Constitutional Court of Moldova ruled that the Declaration of Independence, which declares the official language to be Romanian, takes precedence over the Constitution and that therefore the state language should be referred to as Romanian.[936] Moldovan and

936 Constitutional Court, Decision No. 36 of 5 December 2013, available at: http://www.constcourt.md/download.php?file=cHVibGljL2NjZG9jL2hvdGFyaXJpL3JvLWhfMzZfMjAxMy5wZGY%3D.

Romanian are essentially the same language, with the difference between them likened to that between British and American English. A number of other languages are spoken as primary languages in Moldova: among the population that do not identify as speaking Moldovan or Romanian, the primary languages are Russian (16%), Ukrainian (3.8%), Gagauz (3.1%), and Bulgarian (1.1%).[937] Article 13 of the Constitution provides that the State is required to protect the right to "the preservation, development and use" of both Russian and other languages spoken within the country.

According to a study conducted in 2015, 14% of respondents felt that they had been discriminated against on the basis of language.[938] In total, between October 2013 and April 2016, 12.62% of the cases in which the CPEDEE found discrimination involved findings of discrimination on the basis of language.[939] During this period, the Council received cases of discrimination based on language in accessing justice[940] and public information.[941]

Social Attitudes towards Language

Language is a politicised issue in Moldova, and perceptions of the Russian-speaking minority in particular are strongly influenced by the association of the Russian language with a person's perceived political position. According to a 2005 study, less than 10% of non-Russian speakers stated that they had negative feelings towards Russian speakers.[942] However, while over half of respondents in this survey (52.1%) considered that Russian speakers living in Moldova care about the country, over one third (34.2%) stated that they

937 *Ibid.*

938 See above, note 40, p. 33.

939 Information provided by the Council on the Prevention and Elimination of Discrimination and Ensuring Equality, as of 30 April 2016.

940 See, for example, Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 009/2013 of 2 December 2013, available at: http://egalitate.md/media/files/files/decizia_009_4237096.pdf.

941 See, for example, Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 007/2013 of 30 November 2013, available at: http://egalitate.md/media/files/files/decizia_din_30_11_2013_in_cauza_007_2013_s_perunov_catre_primari_balti_si_fmssp_1610134.pdf.

942 See above, note 3, p. 46.

are not patriotic. Just under half of all respondents (44.7%) agreed with the statement that Russian speakers do not feel the need to study Romanian as they can be well understood in Russian, but almost the same proportion (41.6%) stated that Russians simply did not want to study Romanian. Almost a third of respondents (35.9%) stated that Russian speakers consider themselves to be superior to Romanian speakers.[943] In the same survey, a considerable proportion of the group – 48.1% – expressed the belief that Russian speakers wished to see the country dissolved as an independent state and join Russia.[944]

Legal and Policy Framework

There are several laws that regulate the use of Romanian, Russian, and other languages on the territory of the Republic of Moldova. As noted above, Article 13 of the Constitution provides that:

(1) The State language in the Republic of Moldova is Moldovan[945] language, and its script is based on the Latin alphabet.

(2) The State shall acknowledge and protect the right to the preservation, development and use of the Russian language and other languages spoken within the territory of the State.

Article 1 of Law No. 3465 of 1989 on the functioning of spoken languages on the territory of Moldovan Soviet Socialist Republic states that, as a state language, the Romanian language is used in all spheres of political, economic, social and cultural spheres and ensures interethnic communication in Moldova. Article 3[946] of the Law provides that the Russian lan-

943 *Ibid.*

944 *Ibid.*

945 According to Article 13 of the Constitution, the official language of Moldova is Moldovan. However, as noted above, in 2013, the Constitutional Court of Moldova ruled that the Declaration of Independence, which names the official language as Romanian, takes precedence over the Constitution and that therefore the state language should be referred to as Romanian. See above, note 936. Hereafter, in this chapter, the Moldovan language will be called Romanian (including in the case of older Laws and provisions which still use the name Moldovan language).

946 *Ibid.*

guage ensures bilingualism in Moldova. Article 11[947] states that state bodies, government and public associations should both issue documents in writing and receive and examine documents submitted by citizens using the Romanian or Russian languages and the Gagauz language, in the case of Gagauz populated areas. In addition, Article 12 of Law No. 382 of 2001 on the rights of persons belonging to national minorities and the legal statute of their organisations, provides that persons belonging to national minorities have the right to address public institutions verbally and in writing, in either the Romanian or Russian language, and to obtain a reply in the corresponding language.

Access to Justice

Article 24 of the Code of Civil Procedure, provides that civil cases are to be conducted in Romanian, but that individuals who want to initiate a case and who do not speak Romanian language are entitled to review the case file materials and to speak at trial through an interpreter. The Article also provides that, by the decision of the Court, the process can be conducted in a language acceptable to the majority of trial participants, although if this is the case, the court must issue its decision in Romanian as well as the language of the proceedings.

Despite the provisions of Article 24, there are particular problems for non-Romanian speakers in accessing justice. For example, in 2014, I.V. complained about language discrimination in access to justice, based on the fact that resolutions issued by a court not to act on a request for summons were not written in Russian. The CPEDEE established that I.V. had encountered obstacles in exercising his procedural rights only because he is a speaker of Russian, a language that is recognised in national law as a language of interethnic communication.[948]

947 *Ibid.*

948 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 206/2014 of 17 March 2015, available at: http://egalitate.md/media/files/files/decizia_009_4237096.pdf.

After examining and ruling on several complaints during 2013,[949] 2014,[950] and 2015,[951] the CPEDEE concluded that the right of access to justice of linguistic minorities is violated by the courts.[952] It found cases in which courts had rejected complaints submitted in Russian, referring to the provisions of Article 24(2) of the Code; the Council established that this practice constitutes discrimination on the basis of language.[953] In its decisions on such cases, the Council has stated that Article 24(2) provides a right to communicate with the Court through an interpreter should not be applied restrictively, as the right to address a court envisages both verbal and written communication and thus the responsibility to translate complaints rests with the court.[954] Therefore, the CPEDEE ruled that complaints submitted in Russian should be considered by the Courts and not rejected as complaints submitted in a foreign language.

Experts from the Legal Resource Centre of Moldova consider that these problems may arise from the fact that the legal provisions regulating the language of court complaints is confusing and internally inconsistent. [955] Thus, for example, the legislation does not clearly state whether the courts are obliged to accept complaints submitted in the Russian language, does not provide a clear basis for the rejection or return of court complaints submitted in a language other than Romanian, and does not provide a clear obligation for interpreters to translate court complaints from Russian into the state language.[956]

949 During 2013, the Council issued three decisions on complaints where petitioners alleged they their access to justice had been limited on language grounds. See above, note 334, p. 19.

950 During 2014, the Council issued six decisions on complaints where petitioners alleged their access to justice had been limited on language grounds. See above, note 359, p. 19.

951 2.6% out of the total number of decisions issued by the Council on the Prevention and Elimination of Discrimination and Ensuring Equality in 2015 on cases of discrimination in access to justice based on language. Council on the Prevention and Elimination of Discrimination and Ensuring Equality, *General Report on the Situation in the Field of Prevention and Combating Discrimination in Moldova: 2015*, 2016, p. 10, available at: http://egalitate.md/media/files/Raport%20general%202015.pdf.

952 See above, note 335, p. 24.

953 See above, note 359, p. 19.

954 See above, note 940.

955 See above, note 903, pp. 151–152 and 156.

956 *Ibid.*

The ECRI has recommended the ratification and implementation of the European Charter for Regional and Minority Languages.[957] Ratifying the Charter and adopting one or more options thereunder could provide national authorities with a means to clarify the issue of the use of regional or minority languages in different social spheres, including in the field of justice.[958]

Provision of Public Information

In 2013, the CPEDEE ruled on a case which revealed discrimination on the basis of language in access to public information.[959] The applicant had complained about discrimination against the Romanian speaking population of Bălți city in access to public information and social protection services, on the basis that that City Hall Bălți and Bălți Municipal Fund for Social Support of the Population only displayed relevant information in the Russian language.[960]

Participation in Public Office and the Civil Service

The Law on Public Functon and the Status of Civil Servants (Law No. 158 of 4 July 2008) provides that anyone wishing to take a position in the Moldovan civil service must have command of both Romanian (as the official state language) and Russian (as the language of interethnic communication).[961] However, representatives of ethnic minorities and civil society organisations working with these groups have repeatedly raised concerns about the poor quality of teaching of the Romanian language in educational institutions, stating that this limits the ability of linguistic minorities to participate in the civil service and political life.[962] In this context, for example, in 2015, the Governor of Gagauzia, Irina Vlach, urged Chișinău to support the organisation of courses in the state language so that young people from Gagauzia can also work in parliament and government.[963]

957 See above note 17, Para. 7.

958 See above, note 903, p. 156,

959 See above, note 941.

960 *Ibid.*

961 See above, note 900, Article 27(1) (b).

962 Antem, „More than 160 Young People Learn Romanian for Free", 24 December 2015, available at: http://www.antem.org/peste-160-de-tineri-alolingvi-au-invatat-gratuit-limba-romana/.

963 Surdu, I., "Irina Vlah Admits, in Russian, that Gagauz do not Know Romanian Language", *Adevarul*, 1 April 2015, available at: http://adevarul.ro/moldova/actualitate/irina-vlah-recunoaste-limba-rusa-gagauzii-nu-cunosc-limba-romana-1_551c0b8d448e03c0fd1ecae8/index.html.

In its 2015 report on Moldova, the ECRI recommended that:

> *To achieve proportional representation of ethnic minorities on executive bodies and in the judicial system (…) ECRI recommends that the Moldovan authorities implement recruitment of candidates from under-represented minorities in public services and continue to offer them linguistic support measures to enable them to achieve the required level of proficiency in the official language.*[964]

To address this problem, in 2015 the government adopted the National Programme for Improving the Quality of Learning of the Romanian Language in General Education Institutions with Instruction in Minority Languages 2016-2020.[965] The Ministry of Education is responsible for enforcing the Programme, the purpose of which is to ensure conditions for improving communication skills in the Romanian language for students at education institutions where the language of instruction is one of the minority languages.[966] The Programme envisages, *inter alia*, that the Ministry will ensure educational and methodical learning of the Romanian language in early education institutions; increase the effectiveness of the assessment of Romanian communication skills amongst students who speak other languages; improve the educational process with appropriate textbooks and curriculum support; modernise the training of teachers; and implement a shift to instruction of some school subjects in Romanian.[967]

Access to Goods and Services

Discrimination on the basis of language can also impact upon equality of access to goods and services, with both Romanian and Russian speakers experiencing problems when seeking goods or services from those who speak

964 See above, note 17, Para.125.

965 Decision approving the National Program for Improving the Quality of Learning of Romanian Language in General Education Institutions with Instruction in Minority Languages 2016-2020 (Government Decision No. 904 of 31 December 2015), available at: http://lex.justice.md/viewdoc.php?action=view&view=doc&id=362694&lang=1.

966 *Ibid.*

967 *Ibid.*

the other language as their primary language. In 2015, Equal Rights Trust researchers undertook several interviews with Romanian and Russian speakers who complained about prejudice and resulting discrimination when they sought to purchase goods or services. For example, S. stated:

> *Two years ago, I had to prepare a work paper in high school on the subject of language and literature about national values, so I went to the National Library looking for information. I was directed to the room where I could find relevant information to my subject. There I met a librarian, an old woman who was sitting at the computer, browsing on a social network. I told her I need some information and asked where I can find it. I asked in Romanian but the librarian answered in Russian. She did not even turn her head towards me and did not want to help me. She told me just to look on the shelves. I looked for a few minutes but could not find any relevant book. The librarian did not even try to help me. She continued to answer me in Russian. I was outraged because of her attitude. This is a public institution, especially a library and the librarian answered only in Russian and not in the state language. I drafted a complaint and left it in the "box of recommendations and complaints", but I am not sure they will consider it. I think the librarian behaves like this, because I did not speak in Russian to her. Maybe she told me some relevant information in Russian, but I could not understand her. I repeated in Romanian, but again she answered in Russian. As for the Romanian language, very often, salespeople answer only in Russian language, especially in small food shops.*[968]

Another person, X., recounted their experience of discrimination in accessing health services:

> *My doctor was on vacation, so after I had undergone some tests, I was referred to another doctor. The doctor*

968 Equal Rights Interview with S, 22 April 2015, Chișinău.

> *did not react in any way when I sat beside his table. The first thing he told me was to talk to him in Romanian. I told him I did not know the Romanian language. He replied with an angry tone of voice that he did not know Russian. He said that I had lived all my life in Moldova and asked why I do not speak the Romanian language. While saying all of this, he handed me my medical card and refused to speak with me. After that, I talked to a nurse who recommended that I speak to a different doctor who will listen to me, and indeed that doctor listened and spoke to me in Russian.*[969]

Transnistrian Region

As noted in section 1.3 above, in the Transnistrian region the official languages are Russian, Ukrainian, and Moldovan based on the Cyrillic alphabet.[970] The use of the Latin alphabet is forbidden and reading or writing in the Latin alphabet is punishable by a fine of approximately 70 Euro.[971] There is no publically available data on the enforcement of this provision.

In 2015, there were eight Moldovan language schools that taught the Romanian language in the Latin script, teaching an estimated 1000 students.[972] A civil society study found that teachers, students and parents of students at these schools are subject to intimidation and threats.[973] For example, on 29 May 2015 at 9:15 p.m., a television channel broadcasting in Transnistria broadcast an hour-long film disseminating hatred towards those who attend schools teaching Romanian in the Latin script.[974] Head teachers at the schools

969 Equal Rights Trust interview with X, 22 June 2015, Bălți city.

970 See *Catan and Others v Moldova and Russia*, European Court of Human Rights, Application Nos. 43370/04, 8252/05 and 18454/06, 19 October 2012, Paras. 43–44.

971 Contravention Code (Transnistria), Article 5.28, available at: http://vspmr.org/file.xp?file=21209.

972 Promo-LEX Association, *Observance of Human Rights in the Transnistrian Region of the Republic of Moldova 2015 Retrospect*, 2016, p. 17, available at: https://promolex.md/upload/publications/en/doc_1456905480.pdf.

973 *Ibid.*

974 Pridnestrovian State TV and Radio Company, "Education – Two Worlds, Two Approaches", 29 May 2015, available at: https://tv.pgtrk.ru/show/1772/32034.

alleged that the footage was broadcast during prime time as part of an ongoing denigration and intimidation campaign.[975]

Conclusion

Language is a political issue in Moldova and the use of either Romanian or Russian as a primary language carries strong associations with a particular political opinion. Research for this report found that laws that provide guarantees for speakers of Russian and other minority languages in access to justice are not effective. It is also clear that inadequate education in Romanian – the official state language – for persons who speak other languages as a primary language presents a barrier to participation in the civil service and in public life more broadly. As with other patterns of discrimination reviewed in this report, information on the situation in the Transnistrian region is incomplete, but the information which is available indicates that language is an even more politicised issue in the region than in the rest of Moldova, with harassment and intimidation of those who continue to use Romanian in the Latin script a cause for serious concern.

2.9 Conclusion

Research for this report has found evidence of discrimination on the basis of **race and ethnicity, sexual orientation and gender identity, health status, gender, disability, religion or belief, age and language**.

One common factor which unites many of these patterns of discrimination is the **role of prejudice, stereotype and stigma**. Roma, lesbian, gay, bisexual and transgender (LGBT) persons, persons living with HIV and tuberculosis and persons with mental disabilities are subject to severe social stigma, which in some cases legitimises abuse and ill-treatment by the authorities, and in others leads to inaction in responding to hate speech and hate crime. Women and persons with physical disabilities interviewed for this report spoke of their experiences of overt, direct discrimination resulting from a reliance on stereotypes about their abilities. Perceptions about the political affiliations of people who practice minority religions, or speak minority languages, underpin some of the discrimination experienced by these groups.

975 See above, note 972.

In respect of discrimination on the basis of **nationality, race and ethnicity** this report has found that **Roma** are the single ethnic group most exposed to discrimination in Moldova. Negative stereotypes about Roma persist and underpin discrimination in many areas of life. Roma face discrimination by law enforcement agents and other state agents and experience discrimination – often overtly – by private actors in employment, education, housing, healthcare and access to goods and services. Although the development of Action Plans in Support of the Roma is to be welcomed, their effectiveness has been inhibited by lack of financial resources and an apparent lack of political will to drive forward positive change. Other r**acial minorities** in Moldova, particularly those of African descent, are subject to prejudice which is translated into discriminatory violence. There is also evidence of discrimination in access to employment and housing.

The report found that clear patterns of discrimination on the grounds of **sexual orientation and gender identity**. LGBT persons are stigmatised and recent surveys reveal widespread prejudice against gender and sexual minorities. These prejudices are openly propagated by both public and religious officials. Although there have been some positive developments, such as the repeal of "gay-propaganda" laws and the relaxation of requirements concerning Pride Marches, discriminatory legal provisions, particularly in the area of family law, remain in force. More broadly, the lack of explicit protection from discrimination on the basis of sexual orientation and gender identity in the Law on Ensuring Equality leaves LGBT persons in Moldova vulnerable to discrimination. Interviews conducted for this report found evidence of discrimination in education and in access to goods and services,

Persons living with HIV/AIDS experience stigmatisation and discrimination in all areas of life on the grounds of their **health status**. Although the Law on Prevention of HIV/AIDS Infection has strengthened the legal status of persons living with HIV/AIDS, there are widespread reports of the failure by medical professionals to keep patients' health status confidential. Our research found that for people whose status is public, discrimination in education, employment and health services can be a consequence. There are also grounds for concern about the stigmatisation of persons living with tuberculosis, with a diagnosis being considered "shameful". Of particular concern are the powers under the Regulation on Coercive Temporary Hospitalisation to forcibly detain and treat tuberculosis sufferers if they are deemed to have "avoided treatment".

Patriarchal social norms and widely accepted stereotypes about the roles and capabilities of men and women mean that **women** in Moldova continue to experience discrimination and disadvantage in many areas of life. There is high social tolerance of gender based violence against women, coupled with a weak response from law enforcement to allegations of such violence. Despite the existence of a robust legal framework providing for gender equality in employment, education, healthcare and other areas of life, the persistence of gender stereotypes mean that gender inequality persist in all areas of life, particularly employment and political life.

Persons living with **disabilities** experience considerable prejudice and stigma, with mental disability in particular being the subject of profound stigma. Despite Moldova's ratification of the Convention on the Rights of Persons with Disabilities, and the existence of a strong legal framework, accessibility to infrastructure, transportation and information continues to pose an obstacle to the full participation of persons with disabilities in many areas of life. Much work is needed adapt the environment and accommodate the needs of persons with disabilities. Beyond issues of access and reasonable accommodation, our research identified cases of direct discrimination in access to employment, education and healthcare. The situation of persons with mental disabilities is a major concern as the current legal framework permits both the deprivation of legal capacity and institutionalisation, contrary to Moldova's international obligations. Shocking reports of abuse and mistreatment in institutions only heightens these concerns.

Although freedom of **religion** is guaranteed under the national legal system, research for this report revealed numerous examples of disadvantage and discrimination faced by minority religious communities, some of which could impinge upon the exercise of religious freedom. The national legal framework has mainstreamed the Moldovan Orthodox Church to the exclusion of smaller religious groups; minority religious communities face difficulties in securing legal registration, land and construction permits to build places of worship and restitution of church property. Discrimination against minority religious communities, in particular the Jehovah's Witnesses is also evident in Transnistria where difficulties securing registration are also a problem.

Research for this report has revealed discrimination on the grounds of **age**, in particular against older persons in Moldova in the area of employment.

Discriminatory laws serve to restrict the access of older persons to employment and fail to effectively protect them from dismissal on the grounds of age. These laws, combined with an inadequate state pension, place older persons at a disproportionate risk of poverty.

Finally, this report finds concerning evidence of discrimination on the basis of **language** against those who speak Russian and other minority languages. Language is a politicised issue in Moldova, and recent public opinion surveys find significant numbers of people with negative perceptions of those who speak Russian as a primary language. Russian speakers face difficulties in accessing public services, in particular the courts, where the unclear legislative framework means they are often denied effective access to justice. As in other areas reviewed for this report, concrete evidence of practice in Transnistria was limited, but those reports which do exist present a worrying picture of prejudice and stigma against those who use the Romanian language.

3. THE LEGAL AND POLICY FRAMEWORK RELATED TO EQUALITY

This chapter of the report examines the legal and policy framework related to equality in the Republic of Moldova (Moldova). It examines both Moldova's international legal obligations and the domestic legal and policy framework which protects the rights to equality and non-discrimination. In respect of domestic law, it examines the Constitution, specific anti-discrimination laws, and non-discrimination provisions in other areas of law. It also examines government policies which have an impact on inequality, before turning to an assessment of the enforcement and implementation of existing laws and policies aimed at ensuring equality, including an examination of the most significant specialised body whose functions are related to equality, the Council on the Prevention and Elimination of Discrimination and Ensuring Equality. Finally, this chapter reviews existing judicial practice related to discrimination. In order to assess the full picture of the Moldovan legal and policy framework as it relates to equality, this part should be read together with, and in the context of, the previous part, which contains an appraisal of laws that discriminate overtly or are subject to discriminatory application.

3.1 International and Regional Law

Moldova has signed and ratified (or acceded to) a number of international treaties since its independence in 1991. Through these ratifications, Moldova has committed to respect, protect and fulfil the rights contained in these instruments, and to be bound by the legal obligations contained therein.

3.1.1 Major United Nations Treaties Related to Equality

Moldova has a mixed record of participation in the UN human rights treaty system. While it has ratified seven of the nine core UN human rights treaties, State Party Reports are often delivered late,[1] while a report to the Committee against Torture (CAT) is currently outstanding. The UN human rights treaties that Moldova has ratified are: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimina-

1 State Party Reports have been submitted late to the HRC, CRC, CEDAW, CERD, CESCR and CRPD.

tion of All Forms of Discrimination against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of Persons with Disabilities (CRPD); and the Convention on the Rights of the Child (CRC).

Individual complaints may be made to several Treaty Bodies; specifically, the Human Rights Committee under the first Optional Protocol to the ICCPR; the Committee on the Elimination of Racial Discrimination under Article 14 of the ICERD; the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the CEDAW; and the Committee against torture under the Optional Protocol to the CAT.

Instruments Relevant to Equality[524]	Signed	Ratified/Acceded Succeeded
International Covenant on Civil and Political Rights (1966)	n/a	26 January 1993 (Acceded)
Optional Protocol to the International Covenant on Civil and Political Rights (1966)	16 September 2005	23 January 2008 (Ratified)
Second Optional Protocol to the International Covenant on Civil and Political Rights (1989)	n/a	20 September 2006 (Acceded)
International Covenant on Economic, Social and Cultural Rights (1966)	n/a	26 January 1993 (Acceded)
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)	n/a	No
Convention on the Elimination of All Forms of Racial Discrimination (1965)	n/a	26 January 1993 (Acceded)
Declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (allowing individual complaints)	n/a	8 May 2013
Convention on the Elimination of All Forms of Discrimination against Women (1979)	n/a	1 July 1994 (Acceded)
Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women (1999)	n/a	28 February 2006 (Acceded)

2 Excluding acceptance of communication procedures. Where a cell is highlighted in grey, Moldova has submitted a declaration or reservation to the relevant treaty.

Instruments Relevant to Equality	Signed	Ratified/Acceded Succeeded
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	n/a	28 November 1995 (Acceded)
Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2002)	16 September 2005	24 July 2006 (Ratified)
Convention on the Rights of Persons with Disabilities (2006)	30 March 2007	21 September 2010 (Ratified)
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	No	No
Convention on the Rights of the Child (1989)	n/a	26 January 1993 (Acceded)
Optional Protocol I to the Convention on the Rights of the Child (2000) (involvement of children in armed conflict)	8 February 2002	7 April 2004 (Ratified)
Optional Protocol II to the Convention on the Rights of the Child (2000) (sale of children, child prostitution and child pornography)	8 February 2002	12 April 2007
Optional Protocol III to the Convention on the Rights of the Child (2011) (communicative procedure)	No	No
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	No	No
International Convention for the Protection of All Persons from Enforced Disappearances (2006)	6 February 2007	No

During its most recent performance at the Universal Periodic Review (UPR), Moldova committed to study the implications of ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), as well as the Optional Protocols to the ICESCR, the International Convention for the Protection of All Persons from Enforced Disappearances (CED), CMW and CRPD. However, to date, no progress has been made.[3]

3 Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Moldova, Addendum*, UN Doc. A/HRC/19/18/Add.1, 2012, Para 3.

Likewise, despite Moldova's commitment to ratify CED at the UPR, this has not yet happened.[4]

Moldova has made declarations to the first and second Optional Protocols to the ICCPR and the second Optional Protocol to the CRC (on the sale of children, child prostitution and child pornography). These declarations limit the territorial application of the Protocols in the Transnistrian region of Moldova. The European Court of Human Rights has determined that Moldova owes a positive obligation to secure the rights of those persons within its jurisdiction, including nationals in the Transnistrian region.[5] It follows that the denial of rights contained within the protocols to those individuals contravenes both the object and the purpose of the protocols and could amount to a violation of Article 1 of the European Convention on Human Rights (ECHR).

3.1.2 Other Treaties Related to Equality

Moldova has a good record in relation to other international treaties which have a bearing on the enjoyment by all of the rights to equality and non-discrimination. Moldova ratified the 1951 Convention Relating to the Status of Refugees in 2002. Moldova has also ratified the key Conventions relating to statelessness: the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

In the field of labour standards, Moldova has ratified all eight of the fundamental International Labour Organisation (ILO) Conventions including the Equal Remuneration Convention and the Discrimination (Employment and Occupation) Convention. In the field of education, Moldova has ratified the 1960 UNESCO Convention against Discrimination in Education.

4 Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Moldova*, UN Doc. A/HRC/19/18, 2011, Para 75.1.

5 *Ilaşcu and Others v Moldova and Russia*, European Court of Human Rights, Application No. 48787/99, 8 July 2004, Para 335.

Instruments Relevant to Equality	Signed	Ratified/Acceded Succeeded
Convention relating to the Status of Refugees (1951)	n/a	31 January 2002 (Acceded)
Convention relating to the Status of Stateless Persons (1954)	n/a	19 April 2012 (Acceded)
Convention on the Reduction of Statelessness (1961)	n/a	19 April 2012 (Acceded)
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	n/a	No
UN Convention against Transnational Organised Crime (2000)	14 December 2000	16 September 2005 (Ratified)
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)	14 December 2000	16 September 2005 (Ratified)
Rome Statute of the International Criminal Court (1998)	8 September 2000	12 October 2010 (Ratified)
UNESCO Convention against Discrimination in Education (1960)	n/a	17 March 1993 (Succeeded)
Forced Labour Convention (1930) (ILO Convention No. 29)	n/a	23 March 2000 (Ratified)
Equal Remuneration Convention (1951) (ILO Convention No. 100)	n/a	23 March 2000 (Ratified)
Discrimination (Employment and Occupation) Convention (1958) (ILO Convention No. 111)	n/a	12 Augusts 1996 (Ratified)
Worst Forms of Child Labour Convention (1999) (ILO Convention No. 182)	n/a	14 June 2002 (Ratified)
Indigenous and Tribal Peoples Convention (1989) (ILO Convention No. 169)	n/a	No

Moldova has made reservations to the UN Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, stating that until full territorial integrity has been established, the provisions of the Convention and Protocol will only be applied on territory controlled by State authorities.

3.1.3 Regional Human Rights Treaties (Council of Europe)

Moldova has ratified several European treaties which have a bearing on the rights to equality and non-discrimination. In particular, Moldova ratified the European Convention on Human Rights in 1997.

Instruments Relevant to Equality	Signed	Ratified/Acceded Succeeded
European Convention on Human Rights (1950)	13 July 1995	12 September 1997
Protocol No. 12 to the European Convention on Human Rights (2000)	4 November 2000	No
European Social Charter (revised) (1996)	3 November 1998	8 November 2001
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)	2 May 1996	2 October 1997
European Charter for Regional or Minority Languages (1992)	11 July 2002	No
Framework Convention for the Protection of National Minorities (1995)	13 July 1995	20 November 1996
European Convention on Nationality (1997)	3 November 1998	30 November 1999
Convention on Action against Trafficking in Human Beings (2005)	16 May 2005	19 May 2006
Convention on Preventing and Combating Violence against Women and Domestic Violence (2011)	No	No

As with other international instruments, Moldova has made several declarations restricting the application of rights to the Transnistrian region.[6] In its instrument of ratification to the European Convention, Moldova declared:

> *The Republic of Moldova (...) will be unable to guarantee compliance with the provisions of the Convention in respect of omissions and acts committed by the organs*

6 See, for example, the Convention on Action against Trafficking in Human Beings, C.E.T.S. No. 197, 2005.

> *of the self-proclaimed Trans-Dniester republic within the territory actually controlled by such organs, until the conflict in the region is finally settled.*[7]

However, the European Court of Human Rights has held that this declaration is not valid within the meaning of Article 57 of the Convention.[8] Even "in the absence of effective control over the Transnistrian region", Moldova has a positive obligation "to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the applicants the rights guaranteed by the Convention."[9] The Moldovan Government should therefore review its commitment to apply international human rights instruments only in territory controlled effectively by the authorities of Moldova.

In addition, Moldova has not yet ratified Protocol 12 to the ECHR, which provides a freestanding right to non-discrimination, despite recommendations from the Council of Europe.[10] Similarly, Moldova has not ratified the European Charter for Regional or Minority Languages. In March 2016, the Parliamentary Assembly of the Council of Europe urged Moldova to ratify the Charter.[11]

3.1.4 Treaties Not Ratified by Moldova

While the few treaties which have not been ratified by Moldova do not bind the state they, together with comments of their respective treaty bodies, do have an important interpretative function when determining the obligations

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7 Decision approving Ratification of the Convention on Human Rights and Fundamental Freedoms (Parliament Decision No. 1298-XIII of 24 July 1997), Para 1, available at: www.lhr.md/docs/hot.parl.1298.doc.

8 See above, note 5, Para. 324.

9 Ibid., Para 331. This finding has been reaffirmed in recent case law. See *Catan and Others v Moldova and Russia*, European Court of Human Rights, Application Nos. 43370/04, 8252/05 and 18454/06, 19 October 2012, Para. Para 110; and *Mozer v Republic of Moldova and Russia*, European Court of Human Rights, Application No. 11138/10, 23 February 2016, Para 100.

10 European Commission against Racism and Intolerance, *ECRI Report on the Republic of Moldova (Fourth Monitoring Cycle)*, 2013, p. 8, available at: https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Moldova/MDA-CbC-IV-2013-038-ENG.pdf.

11 Parliamentary Assembly of the Council of Europe, *Application of the European Charter for Regional or Minority Languages: Biennial Report by the Secretary General of the Council of Europe to the Parliamentary Assembly*, 2016, p. 7, available at: https://www.coe.int/t/dg4/education/minlang/sgreports/SGreport2015_en.pdf.

of Moldova. They should be used to elucidate: (i) Moldova's obligations under the treaties to which it is a party, to the extent that the treaties to which it is not a party can explain concepts which are also found in those treaties to which it is a party; (ii) the content of the right to equality and non-discrimination for persons covered by the ratified treaties who are vulnerable to multiple discrimination on grounds which include those protected by other treaties or in areas of life covered by other treaties; and (iii) Moldova's obligations under customary international law.

3.1.5 Customary International Law

Under international law, binding legal obligations on states derive from customary international law as well as from treaty law. Customary international law is deduced over time from the practice and behaviour of states. [12]Customary international laws are particularly significant when they reach a level at which certain norms known as peremptory norms are binding on all states and from which there can be no derogations.[13] It is largely accepted that the prohibition of racial discrimination is a peremptory norm of international customary law.[14] In addition, it can be said that the prohibition of discrimination on other grounds, such as gender and religion, may now be part of customary international law, although not yet reaching the status of a peremptory norm.[15] Some argue, and it has been stated by the Inter-American Court of Human Rights, that the broader principle of non-

12 Shaw, M., International Law, Fifth edition, Cambridge University Press, 2003, p. 69.

13 Para 153; Parker, K. And Neylon, L. B., "Jus Cogens: Compelling the Law of Human Rights", *Hastings International and Comparative Law Review*, Vol. 12, 1988–1989, p. 417. See also Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 1969, Article 53.

14 De Schutter, O., *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010, pp. 64–68 and the materials referred to therein; Pellett, A., "Comments in Response to Christine Chinkin and in Defense of Jus Cogens as the Best Bastion against the Excesses of Fragmentation", Finnish Yearbook of International Law, Vol. 17, 2006, p. 85; cf Shaw, M., International Law, Sixth edition, Cambridge University Press, 2008, p. 287, who refers to it as part of customary international law, with no reference to it being a peremptory norm.

15 *Ibid.,* Shaw, p. 287; *Ibid*., Pellett, p. 85; and Cassel, D., "Equal Labor Rights for Undocumented Migrant Workers", in Bayefsky, A. (ed), *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick and Arthur Helton*, Martius Nijhoff Publishers, 2006, pp. 511–512.

discrimination is a peremptory norm of customary international law[16] but this is subject to debate.[17] Accordingly, it is clear that, as a matter of customary international law, Moldova cannot derogate from the obligation to protect, respect and fulfil the right to be free from racial discrimination; it is obliged to protect, respect and fulfil the right to be free from gender and religious discrimination; and it is arguably obliged to protect, respect and fulfil the right to be free from discrimination on other grounds.

3.1.6 Status of International Obligations in National Law

While Moldova's Constitution does not expressly state that international treaties to which it is a party automatically form part of domestic legislation, the provisions discussed below establish that international treaties are privileged over domestic legislation, even in the absence of statutes formally incorporating such treaties into national law.

The commitment of Moldova to abide by international law is introduced in Article 8(1) of the Constitution. While framed in broad terms, there is no jurisprudence suggesting that the undertaking is merely aspirational. Article 8(1) provides:

> *The Republic of Moldova pledges to observe the Charter of the United Nations Organisation and the treaties to which it is a party, to institute relationships with other states on the basis of unanimously recognized principles and norms of the international law.*

The relationship between the Constitution and international treaties is addressed in Article 8(2), which provides that "[t]he coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter." At least theoretically, therefore, a ratified treaty

16 *Juridical Condition and Rights of Undocumented Migrants,* Inter-American Court of Human Rights, Advisory Opinion OC-18/03, No. 18, 17 September 2003, p. 23. See also, by way of example, Martin, F.F. and others, *International Human Rights and Humanitarian Law: Cases, Treaties and Analysis*, Cambridge University Press, 2006, pp. 34–35.

17 See Bianchi, A., "Human Rights and the Magic of Jus Cogens", *The European Journal of International Law*, Vol. 19, 2008, p. 506; see Cassel, above, note 15, pp. 511–512; see Pellett, above, note 14, p. 85.

cannot come into force until inconsistent provisions of the Constitution have been amended accordingly. However, there are no examples of constitutional revisions having been effected in order to ensure the entry into force of an international treaty. Further, in the absence of a decision of the Constitutional Court, it is difficult to determine whether any Constitutional provisions would be read as incompatible with any treaty provisions. As such, it may be that the obligation in Article 8(2) is a superficial one, consisting in the government refraining from ratifying treaties which are obviously inconsistent with the Constitution.

Article 4(1) of the Constitution states that "constitutional provisions on human rights and freedoms shall be interpreted and enforced in accordance with the Universal Declaration of Human Rights, other conventions and treaties to which the Republic of Moldova is a party". Of course, if such provisions are clearly incompatible with an international treaty then pursuant to Article 8(2) of the Constitution the treaty should not have entered into force. The effect of Article 4(1) is to ensure that at a general level, the Constitution is interpreted in the spirit of the UDHR and that more specifically, to the extent that the language permits it, constitutional provisions are interpreted in accordance with international treaties, such that the question of inconsistency and its consequences is avoided.

The supremacy of international human rights law over domestic law is effected in Article 4(2), which provides that: "[w]herever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations." The Constitutional Court has recognised that the provisions of the ECHR must be enforced in the same manner as national legislation and prevail to the extent of any inconsistency with domestic law.[18] In accordance with Article 4(2) of the Constitution, provisions of other international human rights treaties to which Moldova is a party enjoy a similar status.

The status of domestic law that is inconsistent with international treaties that do not concern human rights is unclear. If Moldova's pledge in Article 8(1) of the Constitution establishes a binding obligation on the legislature not to deviate from international law then it may render inconsistent domestic legislation invalid – however, there has been no jurisprudence to this

18 Constitutional Court, Decision No. 55 of 14 October 1999.

effect. In any case, the national laws considered in this report concern discrimination, and are considered from the perspective of the unified human rights framework so Article 4(2) applies to the interpretation of the laws which are discussed herein.

3.2 National Law

In addition to a certain degree of protection from discrimination in the Constitution, Moldova has comprehensive anti-discrimination legislation, two further pieces of legislation which specifically seek to tackle inequality on the basis of gender and disability respectively, and a variety of standalone non-discrimination provisions within pieces of legislation regulating various fields of activity. This section contains an analysis of constitutional and legislative provisions both in terms of their substance and their impact in practice.

3.2.1 The Constitution

The Constitution of the Republic of Moldova was adopted on 29 July 1994 and entered into force on 27 August 1994.[19]

Title 1 of the Constitution establishes the general principles in pursuance of which the Constitution was drafted. One of these general principles, as set out in Article 1(3), is that:

> *The Republic of Moldova is democratic and governed by the rule of law, in which human dignity, his/her [sic] rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values and shall be guaranteed.*

The substantive text of the Constitution contains a number of provisions regarding the right to equality and non-discrimination. Article 16, headed "Equality", provides in its first paragraph that "[t]he foremost duty of the

19 Between Moldova's independence from the Soviet Union in 1991 and the introduction of the current Constitution, the Constitution of the Moldavian Soviet Socialist Republic, adopted in 1978, remained its governing statute.

State shall be the respect and protection of the human person." This provision imposes both a positive and a negative duty on the government, such that it is both prohibited from taking actions which might infringe a person's right to equality and required to take action to prevent those within its jurisdiction facing inequality or discrimination.

The right to equality itself is conferred in Article 16(2):

> *All citizens of the Republic of Moldova shall be equal before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin.*

The Constitutional Court has considered the scope of Article 16 in several cases.[20] In a recent case about whether differential insurance payments between lawyers, notaries and bailiffs was unconstitutional, the applicant argued that Article 16 includes both the right to non-discrimination and the right to equality. In its judgment, the Court did not differentiate between these two principles, stating that:

> *[T]he violation of the principle of equality and non-discrimination occurs when a treatment is applied differently in cases equal, without any objective and reasonable motivation, or there is a disproportion between the aims and means used.*[21]

However, on no occasion has the Court provided a comprehensive analysis of the full extent of Article 16 and its above comment did not amount to a statement that this was the only circumstance in which Article 16 would apply. It would be problematic if the Court were to hold that Article 16 only imports a right to non-discrimination: as is shown in Part 1 of this report, the right to

20 In 2014 it ruled that the Article protects the right of persons deprived of legal capacity to petition the Ombudsman: Constitutional Court, Decision No. 42 of 8 June 2014. In 2015 it held that certain age limits as to eligibility for doctoral studies infringed Article 16: Constitutional Court, Decision No. 14 of 15 June 2015, available at: http://www.constcourt.md/ccdocview.php?tip=hotariri&docid=540&l=ro.

21 Constitutional Court, Decision No. 16 of 12 June 2007.

equality is wider than that of non-discrimination, encompassing as it does equal enjoyment of all human rights as well as equal protection of law.[22] Nevertheless, in the absence of any judgment construing Article 16 in its entirety, it is unclear whether the provision would be interpreted in line with international law and best practice.

The list of protected characteristics in Article 16(2) is shorter than lists found in international instruments to which Moldova is a party. For example, Article 14 of the ECHR prohibits discrimination on grounds of colour and language. Further, the list of protected grounds in Article 14 of the ECHR includes the words "or other status" and is thus open-ended; Article 2(1) of the ICCPR is similarly framed.[23] The protected characteristics in Article 16(2) of the Constitution, in contrast, are exhaustive, making it difficult to apply the protection to persons marginalised because of characteristics not considered at the time of drafting. Additional criteria omitted from Article 16(2) include place of domicile, disability status, sexual orientation, HIV/AIDS status and gender identity.[24]

The text of the Constitution does not make clear whether the effect of Article 16 is that all rights must be afforded without discrimination on the protected grounds, regardless of their source, or whether only those rights conferred in the Constitution itself must be granted without discrimination. The Constitutional Court of Moldova has found that Article 16 only concerns the application of rights found elsewhere in the Constitution, stating that:

> *Article 16 (...) supplements other substantial provisions of the Constitution and does not exist independently, being applicable only in relation with the en-*

22 The content of the right to equality is set out in Part 1 of this report.

23 Article 2(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that rights are to be provided "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

24 See, for example: United Nations General Assembly, *Declaration of Commitment on HIV/AIDS*, G.A. Res S-26/2, 27 June 2001; Convention on the Rights of Persons with Disabilities, 2515 U.N.T.S. 3, 2006, Article 1; International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, 1965, Article 1; Convention for the Protection of Human Rights and Fundamental Freedoms, C.E.T.S. No. 005, 1950 (European Convention on Human Rights), Article 14.

> *joyment of rights and freedoms guaranteed by the constitutional provisions. Consequently, Article 16 shall be combined with another constitutional Article that guarantees a right.*[25]

Article 16 is also problematic in that it expressly applies only to "citizens of the Republic of Moldova", and not to stateless persons or foreign citizens. Refusal to afford protection from discrimination to non-citizens is at odds with international treaties to which Moldova is a party. For example, Article 5 of the ECHR affords to right to liberty and security to "everyone" and Article 1 of UDHR provides that "[a]ll human beings are born free and equal." Article 26 of the ICCPR provides that "all persons are equal before the law" and that the law should guarantee "to all persons equal and effective protection against discrimination". Article 5 of CERD similarly requires state parties to guarantee "the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law".

Article 19 of the Constitution provides that foreign citizens enjoy "similar" rights to Moldovan citizens unless an exception is provided by law. The legislature has enacted several statutes conferring rights on citizens only: for example, the Electoral Code of the Republic of Moldova (No. 1381-XIII of 21 November 1997) excludes non-citizens from voting. This appears to be in compliance with Article 19 of the constitution. In a 1996 case, the Constitutional Court held that the constitutional right to equality was not absolute and therefore non-citizens could be limited in their rights under domestic legislation.[26]

The following table shows whether a constitutional right is enjoyed by all or just citizens.

25 Constitutional Court, Decision No. 14 of 8 October 2013, available at: available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=350284.

26 Constitutional Court, Decision No. 168 of 21 February 1996.

Constitutional Rights and Rights Holders in the Constitution of Moldova

Article	Right	Right-Holders
16	The right to equality before the law (…)	Citizens
20	Access to justice	Everyone
21	Presumption of innocence	Everyone
23	The right to know their rights and duties	Everyone
24	The right to life and physical integrity	Everyone
25	The right to freedom and personal security	Everyone
26	The right to defence	Everyone
27	Freedom of movement	Citizens
28	The right to private life and family	Everyone
29	Inviolability of the domicile	Everyone
30	Secrecy of correspondence	Everyone
31	Freedom of conscience	Everyone
32	Freedom of opinion and expression	Citizens
33	Freedom of creation (intellectual property)	Citizens
34	Right to information	Everyone
35	Right to education	Everyone
36	Right to health	Everyone
37	The right to a healthy environment	Everyone
38	The right to vote and to be elected	Citizens
39	Right to administration	Citizens
40	Freedom of assembly	Everyone
41	Freedom of parties and other socio-political organisations	Citizens
42	The right to form and to join unions	Everyone
43	The right to work and labour protection	Everyone
45	The right to strike	Everyone
46	The right to private property and its protection	Everyone
47	The right to social assistance and protection	Citizens
49	Protection of family and orphaned children	Everyone
50	Protection of mothers, children and young people	Everyone

Article	Right	Right-Holders
51	Protection of the handicapped persons	Everyone
52	Right to petition	Citizens

Positive Action

The Constitution does not expressly provide that positive action is to be taken by the state in order to overcome past disadvantage and accelerate progress towards equality of marginalised groups. However it does contain provisions which, on their face, require the enactment of measures designed to protect certain historically disadvantaged groups. For example, Article 43(2), which regulates the right to work and labour protection, provides that:

> *All employees shall have the right to social protection of labour. The protecting measures shall bear upon labour safety and hygiene, working conditions for women and young people, the introduction of a minimum wage per economy, weekends and annual paid leave, as well as the difficult working conditions and other specific situations.*

By stipulating that "protecting measures" should bear upon "working conditions for women and young people", the Constitution provides the foundation upon which laws that overcome past disadvantage of women and young people can be based. Indeed, the Parliament of Moldova relied on this Constitutional provision when enacting the Labour Code of the Republic of Moldova (Law No. 154 of 28 March 2003) (Labour Code), Article 62 of which prohibits employers from dismissing individuals during their probationary period where those individuals fall within specific groups who are considered to be in a different position from others or more vulnerable, including pregnant women, people with disabilities and young professionals. Article 62 has been seen as an important measure through which to tackle practices such as employers in Moldova using probationary periods as a means through which to dismiss women from their jobs once they announce that they are pregnant.

However, the instruction to implement measures to "protect" women is problematic and has, in practice, been seen as justifying paternalistic measures

which discriminate unjustifiably against women. The promotion of equality for women should not include measures curtailing the agency or autonomy of women. In practice, several Moldovan laws which purport to be positive action actually amount to direct discrimination. For example, Article 103(5) of the Labour Code prohibits women from working at night, and Article 105(1) prevents pregnant and postnatal women from working overtime. These laws should be repealed.

Article 51 of the Constitution provides for the protection of the rights of persons with disabilities. As with Article 43, it appears to provide for positive action:

> *Handicapped persons shall enjoy special protection by the whole society. The State shall ensure normal conditions for medical treatment and rehabilitation, education, training and social integration of handicapped persons.*

The injunction that persons with disabilities will receive "special protections", along with the Moldova's ratification of the CRPD on 21 September 2010, has led to the enactment of laws aimed at accelerating progress towards the quality of persons with disabilities. For example, the Law on Social Inclusion of Persons with Disabilities (Law No. 60 of 30 March 2012) provides that persons with disabilities shall receive favourable treatment in terms of access to mainstream education[27] and employment.[28]

While the direction in Article 51 to afford "special protections" to persons with disabilities is positive, the language used throughout the Constitution to refer to persons with disabilities is inconsistent with international best practice. For example, Article 51 uses the term "handicapped persons", a collocation at odds with the CRPD's use of the phrase "persons with disabilities."[29]

A further problem with Article 51 is that the obligation to ensure "normal conditions" is insufficiently clear. What constitutes "normal conditions" is unquan-

27 Law on Social Inclusion of Persons with Disabilities (Law No. 60 of 30 March 2012), Article 29.

28 *Ibid*., Article 34.

29 The Labour Code of the Republic of Moldova (Code No. 154 of 28 March 2003) also uses the term "handicapped".

tifiable and subjective, and it is difficult to see how one can measure whether this standard has been met.

Restriction of Fundamental Rights and Liberties

Article 54 of the Constitution deals with the circumstances in which rights or freedoms may be curtailed. Paragraph 1 contains a blanket prohibition on laws which "curtail or restrict the fundamental rights and liberties of the person and citizen." There is nothing in the language of this provision to suggest that only those rights and freedoms conferred in the Constitution are protected.

Paragraph 2 of Article 54 limits the prohibition in paragraph 1, setting out various objectives in pursuance of which rights and freedoms can be curtailed:

> *The pursuit of the rights and freedoms may not be subdued to other restrictions unless for those provided for by the law, which are in compliance with the unanimously recognised norms of the international law and are requested in such cases as: the defence of national security, territorial integrity, economic welfare of the State, public order, with the view to prevent the mass revolt and felonies, protect other persons' rights, liberties and dignity, impede the disclosure of confidential information or guarantee the power and impartiality of justice.*

Paragraph 4 of Article 54 qualifies this limitation, providing that even where legitimate aims are pursued, laws curtailing rights and freedoms must be "proportional to the situation that caused it and may not affect the existence of that right or liberty."

3.2.2 Special Laws in the Field of Equality and Non-Discrimination

As a party to the ICCPR and the ICESCR, Moldova has an obligation to provide protection from discrimination by state and non-state actors through the adoption of equality legislation. The HRC has stated that under Article 26 of the ICCPR, all states parties have an obligation to ensure that the

"law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds."[30] It has also noted that Article 2 "requires that States Parties adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations".[31] The CESCR has stated that "[s]tates parties are therefore encouraged to adopt specific legislation that prohibits discrimination in the field of economic, social and cultural rights".[32] Under the ECHR, Moldova is required to prohibit discrimination on the same list of grounds in respect of the enjoyment of other rights enshrined in the Convention.

Law on Ensuring Equality

The Law on Ensuring Equality (Law No. 121 of 25 May 2012) (the Law on Ensuring Equality) is the primary non-discrimination statute in Moldova. It prohibits discrimination on a number of grounds and in all spheres of life, subject to limited exceptions. The Law also establishes the regulatory body charged with hearing complaints of discrimination and promoting equality.

The Law provides protection for all people in Moldova from discrimination on a wide variety of grounds, in a large number of areas regulated by law and prohibits a range of conduct understood to fall within the international right to be free from discrimination. Its exceptions are relatively limited. Accordingly, the Law goes some way to meeting the abovementioned international obligations.

The Law regulates the prohibition of discrimination in "political, economic, social, cultural and other spheres of life."[33] However, it does not include discrimination in the areas of family (including marriage), adoption relations and religious institutions.[34] Chapter 2 of the Law contains specific provisions

30 Human Rights Committee, *General Comment No. 18: Non-discrimination*, UN Doc. HRI/GEN/1/Rev.1 at 26, 1989, Para 12.

31 Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add. 13, 2004, Para 7.

32 Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/20, 2009, Para 37.

33 Law on Ensuring Equality (Law No. 121 of 25 May 2012), Article 1(1).

34 *Ibid*., Article 1(2).

on the prohibition of discrimination in respect of three areas of life, namely employment,[35] access to goods and services[36] and education.[37]

Article 1 specifies that the Law prohibits discrimination on grounds of "race, colour, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political view, or any other similar criteria." Accordingly, various important grounds of discrimination are not explicitly covered by the Law. It does not explicitly prohibit discrimination on grounds of citizenship, place of domicile, gender identity, sexual orientation, health and HIV/AIDS status. However, the phrase "or any other similar criteria", means that further grounds of discrimination may be protected insofar as they can be shown to be similar to the included grounds. This is to be contrasted with the Constitution, Article 16(2) of which prohibits discrimination in respect of an exhaustive list of grounds.

Pursuant to Article 3, "natural and legal persons in the public and private sectors" incur obligations under the Law. Thus, while the Law goes on in Article 4(a) to designate the "promotion or practice of discrimination by public authorities" as among the "worst forms of discrimination", it also regulates the activity of private actors. There is nothing to suggest that private actors performing public functions fall within the term "public authorities" for the purpose of Article 4(a) and whether quasi-public institutions such as statutory corporations are covered by the provision is unclear.

The Law protects "all persons in the Republic of Moldova".[38] It is not limited to Moldovan citizens; rather, all those within the state's jurisdiction may avail themselves of rights conferred under the Law.

Discrimination is defined in Article 2 as:

> *[A]ny distinction, exclusion, restriction or preference in the rights and freedoms of an individual or a group of*

35 *Ibid*., Article 7.

36 *Ibid*., Article 8.

37 *Ibid*., Article 9.

38 *Ibid*., Article 1(1).

> *individuals, as well as the support of the discriminating behaviour based on real or supposed criteria stipulated in the current law.*

This definition resembles definitions of discrimination used in international instruments including the CEDAW.[39] While the ECHR does not include a definition of discrimination,[40] the European Court of Human Rights has provided a definition of discrimination and its elements.[41] For example, in *Willis v United Kingdom*,[42] the Court stated that discrimination involves applying differential treatment to persons in similar situations without a reasonable and objective reason.

Article 2 of the Law lists five forms of prohibited discrimination: direct discrimination, indirect discrimination, discrimination by association, racial segregation, harassment, incitement to discrimination and victimisation. Direct discrimination is defined as treating a person less favourably than another person in a comparable situation, based on any of the protected characteristics. Indirect discrimination is defined in Article 2 of the Law as:

> *[a]ny provision, action, criteria or practice, apparently neutral, which has as effect the disadvantaging of an individual towards another person, based on the criteria stipulated in the present Law, except where such provision, action, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are proportionate, appropriate and necessary.*

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39 Article 1 describes discrimination as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

40 See, for example, European Convention on Human Rights, Article 14.

41 *Abdulaziz, Cabales and Balkandali v United Kingdom*, European Court of Human Rights, Application Nos. 9214/80, 9473/81, and 9474/81, 24 April 1985; *Nachova and Others v Bulgaria*, European Court of Human Rights, Application Nos. 43577/98 and 43579/98, 6 July 2005; *D.H. and Others v Czech Republic*, European Court of Human Rights, Application No. 57325/00, 7 February 2006.

42 *Willis v United Kingdom*, European Court of Human Rights, Application No. 36042/97, 11 June 2002.

Both of these definitions are broadly in line with international best practice and the Declaration on Principles of Equality.[43] However, the Law has not yet been applied often enough to determine whether the courts will apply these definitions in line with international law and best practice. In order for the definitions to be interpreted in line with best practice it will, for example, be necessary to ensure that the comparator they both require, need not be actual, and may be hypothetical.[44]

The Law defines the term "reasonable accommodation" in accordance with international best practice as including modifications and adjustments that are necessary and appropriate for assuring to each person the exercise of rights and freedoms on an equal basis with others. Unlike the Declaration of Principles on Equality, the term does not expressly include anticipatory measures.[45] The law does not refer to the term "reasonable accommodation" beyond its definition in Article 2. However, a failure to make a reasonable accommodation has been held to violate the Law in jurisprudence, with the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (CPEDEE) finding in one decision that a lack of reasonable accommodation on the part of Chisinau Centre District Court and Chisinau Court of Appeal resulted in discrimination in respect of access to justice.[46]

Positive action – or to use the term employed in the statute, "positive measures" – is also identified in the Law as a means of achieving substantive equality, with Article 5(a) stating that discrimination can be eliminated through the

43 *Declaration of principles on equality*, Equal Rights Trust, London, 2008, Principle 5.

44 See, for example, the definitions of direct and indirect discrimination found in the European Union Equality Directives, which allow for hypothetical comparators: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Articles 2(2)(a) and (b); Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Articles 2(2)(a) and (b); Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, Articles 2(a) and (b); and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Article 2(1)(a) and (b).

45 See above, note 43, Principle 13.

46 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 176/14 of 30 December 2014.

erection of positive measures to protect persons at a particular disadvantage when compared to others. However, it is unclear whether the Law mandates (as would accord with the requirements of international best practice) or merely permits positive measures being taken.

The Law contains specific exceptions to the prohibitions of discrimination in the areas of employment and education. Article 7(5) provides that distinctions based on criteria that are essential to the particular requirements of a job do not constitute discrimination:

> *Any distinction, exclusion, restriction or preference regarding a particular job does not constitute discrimination, in the case when by the specific nature of those activities or conditions in which these activities are carried out, it requires certain and determined professional requirements, with the condition that the aim is legitimate and the requirement is proportionate.*

Article 7(6) creates a further exception to discrimination in employment, stipulating that in the official business of religions, differential treatment on the ground of religion does not constitute discrimination so long as a person's religion is an essential requirement of the role and the requirement itself is legitimate and justified.

Such exceptions correspond with international and regional law. Differential treatment in these circumstances is in line with Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.[47] Paragraph 23 of the Council Directive states that, in "very limited circumstances", differences in treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a "genuine and determining occupational requirement", so long as the objective is legitimate and the requirement is proportionate.

Article 9(4) preserves the right of religious educational institutions to refuse to admit a person to study if his or her religious status does not meet the re-

47 The Labour Code of the Republic of Moldova (Code No. 154 of 28 March 2003), Article 8(2), contains a similar exception and is explored later in this section of the report.

quirements for access to the institution. Unlike Article 7(6), the exception is not qualified by a direction that the requirement be legitimate and justified. The absence of this qualification leaves room for such institutions to discriminate in a way which is not in accordance with international best practice, which would require that a requirement that the applicant adhere to a particular belief must be a genuine requirement.

Chapter 3 of the Law establishes the institutional framework through which discrimination is to be combatted. It stipulates that three actors are responsible for addressing discrimination in Moldova, namely the CPEDEE, public authorities (the identities of which are not specified), and courts.[48] The CPEDEE is constituted in Article 11 of the Law as an independent and impartial body empowered to protect against discrimination and ensure equality.[49] Its functions include:

- examining the compliance of legislation with non-discrimination standards and proposing amendments to non-discrimination legislation;
- collecting data on trends in discrimination at the national level and developing reports on this topic;
- give proposals to public authorities to prevent and combat discrimination, raising awareness in the community about discrimination and collaborating with international organisations specialising in non-discrimination; and
- examining the complaints of persons who consider themselves to be victims of discrimination, submitting recommendations to the relevant authorities with regard to the initiation of disciplinary measures, detecting offences under the Contravention Code (Law No. 218 of 24 October 2008) and notifying the prosecutor's office in cases of criminal liability.

The CPEDEE is able to hear complaints of discrimination from individuals and legal entities; it can also examine potential discriminatory conduct on

48 See above, note 33, Article 10.

49 The operation of the CPEDEE is also regulated under the Law on the Council's Work on Preventing and Eliminating Discrimination and Ensuring Equality (Law No. 298 of 21 December 2012), available at: http://lex.justice.md/md/346943.

its own initiative.[50] The CPEDEE has availed itself of this power to investigate acts of discrimination in the absence of complaints. For example, in 2013 it initiated three cases[51] and in 2014 it initiated 12.[52]

It should be noted that victims of discrimination are not confined to lodging complaints with the CPEDEE: they may file civil claims in court as well.[53] The filing of a complaint with CPEDEE is not a precondition to pursuing judicial redress.[54] A case examined by the CPEDEE can also be examined in civil proceedings under Article 18 of the Law; a court can also review a CPEDEE decision administratively or to see whether an offence under the Contravention Code has occurred.

The remedies available under the Law on Ensuring Equality differ according to the type of discrimination that has occurred and the forum in which the victim chooses to pursue their claim. If a victim files a civil discrimination claim, the court is empowered to:

- declare that the claimant's rights were violated;
- prohibit the continuation of the prohibited practice;
- order the reinstatement of the situation prior to the violation of rights;
- order compensation for material and moral damage and recovery of court costs; or
- declare that a discriminatory document is null and void.[55]

Where the CPEDEE examines a complaint and considers that unlawful discrimination has occurred, it can make recommendations aimed at ensuring the restoration of the victim's rights and preventing similar acts from occur-

50 See above, note 33, Article 13(1).

51 See, for example, Council on the Prevention and Elimination of Discrimination and Ensuring Equality, *Activity Report*, 2013, available at: http://egalitate.md/index.php?pag=page&id=850&l=ro.

52 See, for example, Council on the Prevention and Elimination of Discrimination and Ensuring Equality, *Activity Report*, 2014, available at: http://egalitate.md/index.php?pag=page&id=850&l=ro.

53 See above, note 33, Article 18.

54 *Ibid*., Article 13(3).

55 The classes of documents in respect of which a court can make a declaration of invalidity are left unspecified. For example, it is unclear whether the court may declare a private contract invalid.

ring in the future.[56] Where such recommendations are ignored, the CPEDEE can propose to the relevant authority that disciplinary measures be imposed.[57] Finally, in respect of certain types of discrimination amounting to administrative offences as specified in the Contravention Code (Law No. 218 of 24 October 2008), the CPEDEE can record minutes regarding the contravention and send them to court, which may choose to apply the administrative penalty provided for in the Code. The CPEDEE cannot itself impose sanctions.

The CPEDEE also lacks the power to challenge the validity of laws and regulations that it considers discriminatory in the Constitutional Court. Thus, although the CPEDEE is empowered in Article 12(a) to examine the compliance of legislation with standards of non-discrimination, it cannot take steps to render such laws invalid.

Law on Ensuring Equal Opportunities between Women and Men

The Law on Ensuring Equal Opportunities between Women and Men (Law No. 5-XVI of 9 February 2006) (the Equal Opportunities Law)[58] was enacted prior to the Law on Ensuring Equality and remains the primary piece of legislation through which gender equality is pursued. It promotes gender equality, primarily through the imposition of duties on public bodies to make decisions and policies consistent with the notion of equal opportunities between women and men. The Law does not include any enforcement mechanisms or remedies for breach of duty, however, and it is therefore primarily a statement of principle. Indeed the Law's final Article calls for the government to enact legislation giving effect to the rest of the Law.

Due to the lack of any enforcement mechanism or remedies under the Law, victims of gender discrimination will need to rely on the Law on Ensuring Equality and not the Equal Opportunities Law (which, as stated above, allows for the filing of a complaint with the CPEDEE or court) to vindicate their right to freedom from discrimination on grounds of gender. However, a complainant in such proceedings may make reference to the duties imposed in the Equal Opportunities Law when bringing a claim.

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56 See above, note 36, Article 15(4).

57 *Ibid*., Article 15(6).

58 Available at: http://lex.justice.md/viewdoc.php?action=view&view=doc&id=315674&lang=1.

The application of the Equal Opportunities Law extends to the "political, economic, social, cultural and other spheres of life"[59] and includes specific duties with respect to gender equality in public office[60] (including in the electoral sphere),[61] employment,[62] education[63] and healthcare.[64]

The Law protects both women and men: Article 24 provides that "persons" subject to discrimination on grounds of sex are entitled to damages, and neither the definition of direct discrimination nor indirect discrimination stipulate that victims must be women.[65]

The Law imposes obligations on the state, legal persons and natural persons (regardless of age),[66] as well as several public institutions, namely: Parliament, the government, the Governmental Committee for Equality Between Women and Men, the Ministry of Health and Social Protection, ministries and other central administrative authorities and local public administration authorities.[67]

The Law introduces several general prohibitions on actions amounting to discrimination on grounds of sex. It states that competent public authorities shall not promote policies or allow the performance of actions that do not ensure equal opportunities between men and women;[68] it stipulates that actions that restrict or exclude equal treatment of men and women are prohibited;[69] and it provides that any legal document containing discriminatory provisions based

59 Law on Ensuring Equal Opportunities between Women and Men (Law No. 5 of 9 February 2006), Article 1.

60 *Ibid*., Article 6.

61 *Ibid*., Article 7.

62 *Ibid*., Articles 9–12.

63 *Ibid*., Article 13.

64 *Ibid*., Article 14.

65 *Ibid*., Article 2.

66 *Ibid*., Article 3.

67 *Ibid*., Article 15.

68 *Ibid*., Article 5(2).

69 *Ibid*., Article 5(4).

on sex "shall be declared null by the competent bodies."[70] This reference to legal documents includes private contracts.

Chapter 2 of the Law then imposes a number of duties on the participants in six areas of social activity, namely public office,[71] electoral politics,[72] mass-media,[73] employers,[74] educational and training institutions,[75] and healthcare providers.[76] An example of a duty in the area of public office is that the heads of central and local public administration authorities must ensure equal access to public office, without differentiation as to sex.[77] Duties in relation to electoral politics include that the Central Election Commission, election councils and district bureaus shall ensure the observance of gender equality in the electoral sphere.[78] Mass-media is subject to a duty to contribute to the promotion of equality within society by developing materials to overcome gender stereotypes.[79] Employers are subject to numerous duties, including the duty to hire staff through methods which ensure equal access of women and men to a position.[80] Educational and training institutions are enjoined to ensure equality between men and women, for example, "through developing didactic materials and curricula inconformity with the principle of equality between women and men."[81] Finally, healthcare providers are prohibited from discriminating on grounds of sex with respect to access of women and men to medical assistance.[82]

70 *Ibid*., Article 5(5).

71 *Ibid*., Article 6(3).

72 *Ibid*., Article 7(2).

73 *Ibid*., Article 8.

74 *Ibid*., Articles 9–11.

75 *Ibid*., Article 13.

76 *Ibid*., Article 14.

77 *Ibid*., Article 6(3).

78 *Ibid*., Article 7(1).

79 *Ibid*., Article 8(1).

80 *Ibid*., Article 9(1).

81 *Ibid*., Article 13(1)(d).

82 *Ibid*., Article 14.

The Law prohibits both direct and indirect discrimination on grounds of sex.[83] Direct discrimination is defined as "any action that in similar situations discriminates against a person in comparison to another person of another sex, also by reason of pregnancy, maternity or paternity".[84] Indirect discrimination is defined as "any action, rule, criterion, or practice, identical for women and men, but with an effect or result that is unequal for one of the sexes, except for affirmative action".[85]

The definition of direct discrimination is circular, defining discrimination as an action which discriminates. The Law offers a definition of discrimination on the basis of sex distinct from direct and indirect discrimination, stating that "any distinction, exception, or preference aimed at or followed by a limitation or impediment of recognition, exercise, and implementation on an equal gender rights and fundamental freedoms" is discrimination. This definition is arguably problematic in light of international best practice, as the definition of the harm of discrimination as "limitation or impediment of recognition, exercise, and implementation" could be interpreted in a restrictive way. Prevailing models of discrimination tend to define the harm of discrimination broadly, as "less favourabl[e treatment]".[86] In addition, it risks unnecessary confusion and misinterpretation to offer a distinct definition of discrimination, and it would be preferable to provide a clear definition of the conduct which amounts to direct discrimination.

The definition of indirect discrimination is largely in line with international best practice. However, the requirement that the effect of the facially neutral provision or practice is "unequal" may be interpreted in a restrictive manner. As with direct discrimination, it would be preferable to define the "harm" of indirect discrimination broadly, as "particular disadvantage"[87] or equivalent.

Several exceptions to discrimination on grounds of sex are provided for in Article 5(6):

83 *Ibid*., Article 5(3).

84 *Ibid*., Article 2.

85 *Ibid*., Article 2.

86 See above, note 43, Principle 5 and note 32, Para. 10.

87 See above, note 43, Principle 5.

- measures to ensure special conditions for women during pregnancy, recuperation or breastfeeding;
- qualification requirements for activities in which characteristics based on sex constitute a decisive factor;
- advertisements for employments of persons of a certain sex where, given the nature of the job, characteristics of a particular sex are decisive; and
- affirmative measures.

To date, the application of these exceptions has not been explored by the courts. The characterisation of positive action (or affirmative measures) as an exception to indirect discrimination is inconsistent with international best practice, which acknowledges that positive action is necessary for and not inconsistent with non-discrimination. For example, the Declaration of Principles on Equality states that positive action is "a necessary element within the right to equality."[88] Accordingly, international best practice mandates positive action rather than merely giving authorities permission to take such action.

Chapter 5 of the Equal Opportunities Law establishes the institutional framework through which it is envisioned that equal opportunities between women and men will be achieved. The Governmental Committee for Equality between Women and Men (Governmental Committee) is established under Article 18. Described as a "consultative body", the Committee's duties are to:

- promote equality between men and women;
- coordinate the activity of central and local public administration authorities with regard to issues of equality between men and women; and
- develop cooperation between state structures and civil society on issues of equality between men and women.

Article 21 of the Law states that the Ombudsmen shall ensure the guarantee and observance of equality between men and women.

Despite imposing duties on a plethora of public bodies and classes of private actors such as employers, and despite empowering the Governmental

88 See above, note 43, Principle 3.

Committee and the Ombudsman to promote gender equality, the Equal Opportunities Law creates nothing in the way of remedies for breach of duty. Article 24(1) of the Law states that persons subject to discrimination based on sex are "entitled to reparation (…) according to conditions established by legislation". Similarly, Article 24(2) provides that those whose conduct amounts to discrimination based on sex "shall bear liability established by law for the breach of legislation in the field of equality between women and men". The law was intended to be a precursor to the enactment of further legislation providing a means of redress for victims of gender discrimination. This intention is made explicit in Article 25, which provides that within six months, the government shall submit to Parliament "proposals for bringing (…) legislation into conformity with this Law". As no such Law was then enacted, as discussed above, there is no mechanism for enforcing rights contained within the Law, other than seeking to raise complaints under the Law on Ensuring Equality.

The Law on Ensuring Equality, to the extent that it prohibits discrimination on grounds of sex, does to a large extent supply the remedies that are lacking in the Equal Opportunities Law. It would, for example, enable a person who has been refused employment on the basis of sex (prohibited in Article 11(1)(b) of the Equal Opportunities Law) to challenge such a decision in court or at the CPEDEE. However certain duties imposed under the Equal Opportunities Law go beyond the rights and obligations in the Law on Ensuring Equality. For example, Article 10(1) states that employers shall cooperate with employees and trade union representatives to establish internal regulations to prevent cases of discrimination at work. There is currently no way for an aggrieved person under these wider provisions to obtain relief.

Law on Social Inclusion of Persons with Disabilities

The Law on Social Inclusion of Persons with Disabilities was intended to make major progress in the protection of the rights of persons with disabilities and to bring the law in line with Moldova's obligations under international law, in particular the CRPD. Article 5 of the Law states that the implementation of the law is to be guided by principles of, *inter alia*, "non-discrimination",[89]

89 See above, note 27, Article 5(e).

"equality",[90] and "respect for inherent dignity [and] individual autonomy".[91] The Law creates ostensibly robust and far-reaching protections of persons with disabilities, including provisions on access to education, healthcare and employment, the prohibition of discrimination, legal capacity, and social and political participation of persons with disabilities. In practice, however, it is difficult for persons with disabilities to benefit from these protections, and there are a number of significant unresolved conflicts with other areas of Moldovan law.

One of the most significant changes made by the Law is its definition of disability, which is in line with the CRPD's endorsement of a social model of disability. The Law defines a disabled person as "a person with physical, mental, intellectual or sensory disabilities which in interaction with various barriers or obstacles may hinder their full and effective participation in society on an equal basis with others".[92]

Article 8 of the Law provides a number of protections against discrimination for persons with disabilities. Discrimination is defined as:

> *[A]ny distinction, exclusion, marginalisation, restriction or preference, and the refusal to create favourable conditions and reasonable accommodation, that lead to the failure or complication of the recognition, enjoyment or use of civil, political, economic, social or cultural rights and is prohibited and punishable by law.*[93]

This is a broad definition of discrimination, encompassing both direct and indirect discrimination and requiring positive action and reasonable accommodation of disability. In addition, the Law requires the state to "endeavour to ensure that all categories of persons with disabilities (…) are not subject to

90 *Ibid*., Article 5(b).

91 *Ibid*., Article 5(h).

92 *Ibid*., Article 2.

93 *Ibid*., Article 8(6).

multiple discrimination",[94] an important recognition of the growing international consensus on multiple discrimination.[95]

However, Article 8 provides little clarity on the obligations that this prohibition of discrimination creates. It is clear that it places obligations on the state to refrain from discrimination but obligations extend to others only in certain contexts, such as employment. While Article 8(13), provides that the state undertakes to prevent the occurrence of discrimination on the basis of disability, this obligation is not linked to any mechanisms for preventing discrimination.

The Law includes a number of provisions dealing with the integration of persons with disabilities into society and their ability to live independently. Under Article 6(2), Moldova assumes responsibility of drawing up and implementing policies for social inclusion of persons with disabilities. Article 7 of the Law protects the right of persons with disabilities to participate in political and public life on an equal basis with others, including the right to vote and stand for election.[96]

Article 11 imposes a duty on the state and legal persons governed by public and private law[97] to take measures to raise awareness about persons with disabilities. This includes:

- promoting a positive perception and an active social role for people with disabilities;[98]
- cultivating a respectful attitude towards persons with disabilities in the education system;[99]

94 *Ibid*., Article 8(12).

95 See, for example: Convention on the Rights of Persons with Disabilities, Article 6; *Alyne da Silva Pimentel Teixeira v Brazil*, Committee on the Elimination of Discrimination against Women, Communication No. 17/2008, UN Doc. CEDAW/C/49/D/17/2008, 2011; and Committee on the Elimination of Racial Discrimination, *General Recommendation No. 25: On Gender-Related Dimensions of Racial Discrimination*, UN Doc. A/55/18, 2000, Annex V, p. 152.

96 See above, note 27, Article 7(2)(b).

97 Limited to public auhorities, legal entities, and NGOs.

98 See above, note 27, Article 11(2)(a).

99 *Ibid*., Article 11(2)(b).

- promoting the recognition of skills, merits and abilities of persons with disabilities, as well as the contribution made by them at their workplaces;[100]
- encouraging media outlets to report on people with disabilities in a manner that would contribute to their social inclusion;[101] and
- conducting public awareness programs regarding persons with disabilities and their rights.[102]

A major development for the ability of persons with disabilities to integrate into society is Article 8(2), which provides that persons with disabilities shall enjoy legal capacity on an equal basis with others, in all areas of life. It also states that, where necessary, protective measures and legal aid must be afforded to disabled persons so as to enable them to enjoy such legal capacity on an equal basis.

Article 8(7) imposes an obligation on the state, through central and local public authorities and the human rights Ombudsman, to:

> *[E]nsure that persons with disabilities are provided with the right to benefit from legal capacity on an equal basis with other persons, in all areas of life, and guarantees them equal and effective legal protection against discrimination on any grounds.*

This commitment is however substantially undermined by the continued use of Article 24 of the Civil Code (No. 1107 of 22 June 2002),[103] which allows, in certain circumstances, courts to deprive persons with "intellectual disabilities" of legal capacity in certain circumstances. In practice persons with disabilities are regularly deprived of their legal capacity using the Civil Code without adequate safeguards.[104]

As is discussed in Part 2.5 above, the continued use of Article 24 is deeply problematic in light of Moldova's obligations under Article 12 of the CRPD and the

100 *Ibid*., Article 11(2)(c).

101 *Ibid*., Article 11(2)(d).

102 *Ibid*., Article 11(2)(e).

103 Available at: http://lex.justice.md/md/325085.

104 See above, Discrimination on the Basis of Disability.

constitutional requirement that international law has precedence over domestic law to the extent of inconsistency.[105] Article 12(2) of the CRPD provides that "States Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life". The Committee on the Rights of Persons with Disabilities has clarified that this requires that states "should refrain from any action that deprives persons with disabilities of the right to equal recognition before the law"[106] and to move from a "substitute decision-making paradigm to one that is based on supported decision-making".[107]

The effect of this is to require the abolition of "denials of legal capacity that are discriminatory on the basis of disability in purpose or effect".[108] This is an extensive prohibition, as the Committee made clear that:

> *Where, after significant efforts have been made, it is not practicable to determine the will and preferences of an individual, the "best interpretation of will and preferences" must replace the "best interests" determinations.*[109]

Recent comments by the Committee on the Rights of Persons with Disabilities make clear that Article 12 prohibits all deprivations of legal capacity in relation to persons with disabilities.[110] This emphasis on the preferences of the individual, even where the individual's preference cannot be determined, is entirely inconsistent with the practice of depriving persons with disabilities of legal capacity.

The European Court of Human Rights has not explicitly incorporated the "paradigm shift"[111] of the CRPD towards a supported decision-making model

105 Constitution of the Republic of Moldova, 29 July 1994, Article 4.

106 Committee on the Rights of Persons with Disabilities, *General Comment: No. 1: Article 12: Equal recognition before the law*, UN Doc. CRPD/C/GC/1, 2014, Para 24.

107 *Ibid*., Para 3.

108 *Ibid*., Para 25.

109 *Ibid*., Para 21.

110 Committee on the Rights of Persons with Disabilities, *Concluding Observations: Ukraine*, UN Doc. CRPD/C/UKR/CO/1, 2 October 2015, Para 27; Committee on the Rights of Persons with Disabilities, *Concluding Observations: Czech Republic*, UN Doc. CRPD/C/CZE/CO/1, 15 May 2015, Para 22.

111 Council of Europe Commissioner for Human Rights, *Who gets to Decide? Right to Legal Capacity for Persons with Intellectual and Psychosocial Disabilities*, 2012, p. 24, available at: https://www.coe.int/t/commissioner/source/prems/IP_LegalCapacity_GBR.pdf.

in respect of legal capacity but nevertheless is deeply suspicious of deprivations of legal capacity. In *Salontaji-Drobnjak v Serbia*,[112] the Court held that any deprivations of legal capacity should be a proportionate means of achieving a legitimate aim.[113] In recent cases, the Court has subjected deprivations of the legal capacity of persons with disabilities to heavy scrutiny, in line with the CRPD.[114] Other bodies of the Council of Europe have made it clear that persons with disabilities should enjoy legal capacity on an equal basis, and "[…] when assistance is needed to exercise that legal capacity […] that this is appropriately safeguarded by the law".[115]

Some attempts have been made to minimise the effects of deprivations of legal capacity. On 7 May 2015, Parliament passed the Law Amending and Supplementing Certain Laws,[116] which guaranteed the right to vote to persons deprived of legal capacity. However, the President of the Republic of Moldova refused to promulgate the Law, due to the mistaken belief that Article 12 of the CRPD ensured equal access to legal aid, not legal capacity. It appears that this phrase was erroneously translated as "legal aid" when referenced in the Law.[117]

Accordingly, while the Law on Social Inclusion of Persons with Disabilities contains important protections, there remain significant issues with its implementation. In addition, while much of the Law incorporates the CRPD into national law, Article 19 of the CRPD, guaranteeing the right to an independent life and integration into the community, is notably absent. As the CRPD Committee has noted, the possibility of living independently and the ability to make one's own choices are pre-requisites for the fulfilment of the right to

112 *Salontaji-Drobnjak v Serbia*, European Court of Human Rights, Application No. 36500/05, 13 October 2009.

113 *Ibid*., Para 144.

114 *Stanev v. Bulgaria*, European Court of Human Rights, Application No. 36760/06, 17 January 2012, Paras 244–250.

115 Council of Europe Committee of Ministers, *Recommendation Rec (2006) to Member States on the Council of Europe Action Plan to Promote the Rights and the Full Participation of People with Disabilities in Society: Improving the Quality of Life of People with Disabilities in Europe 2006–2015*, 2006, Para 3.12.

116 Law Amending and Supplementing Certain Laws (Law No. 87 of 7 May 2015).

117 President of the Republic of Moldova, Note No. 01/1-06-50 of 22 July 2015.

legal capacity of disabled persons on an equal basis with others.[118] The EIDHR has also commented that the provisions of Articles 12 and 19 of the CRPD are yet to be fully implemented in practice in Moldova.[119]

A substantial part of the Law is concerned with improving accessibility in key areas such as employment, healthcare, and education for persons with disabilities. Primarily obligations in these parts of the Law fall on the State, though some provisions have a much wider scope, imposing obligations on others, including employers, legal entities, and NGOs.

Chapter 3 of the Law contains provisions that pertain to the creation of state policies on accessibility and the design and construction of social infrastructure so as to meet the needs of persons with disabilities. The Chapter refers to the need for disabled persons to access public transport,[120] housing,[121] cultural and touristic sites[122] and information.[123] The Chapter also imposes liability for breach of the duty to provide accessibility to persons with disabilities. Despite the obligations imposed under this Chapter, lack of access to many goods and services[124] remains a problem for persons with disabilities in Moldova.[125]

Chapter 4 of the Law regulates education, training and professional development of persons with disabilities. It provides for equal access to all lev-

118 See above, note 106, Para 44.

119 United Nations Development Programme, *Report on Preventing and Combating Torture in Residential and Neuropsychiatric Institutions: Analysis of the National Legal Framework and International Standards*, 2015, pp. 30–31, available at: http://www.md.undp.org/content/dam/moldova/docs/Publications/Proiect_Raport_legislatia_nationala_tortura_in_institutii_psihiatrice_draft_27%2011%202015_2.pdf.

120 See above, note 27, Article 20.

121 *Ibid*., Article 22.

122 *Ibid*., Article 23.

123 *Ibid*., Article 25.

124 See Section 2.4 of this report.

125 Association "Motivation", *Report on Regulatory Acts and Technical Standards in the Accessibility Area for the Persons with Locomotor Disabilities*, 2012, p. 34, available at: http://www.soros.md/files/Raport%20analiza%20MOTIVATIE.pdf. See also, Human Rights Council, Report of the Special Rapporteur on the Rights of Persons with Disabilities on her Mission to the Republic of Moldova, UN Doc. A/HRC/31/62/Add.2, 2016, Paras 28–31.

els of education by imposing obligations on the Ministry of Education and local authorities to create the conditions necessary for children to access education.[126] This is a broad obligation that includes ensuring there are adequately trained teachers,[127] and other reasonable accommodations.[128] The Chapter supplements provisions in the Education Code of the Republic of Moldova (No. 152 of 17 July 2014),[129] discussed below, which regulate the education of persons with disabilities. The Law seems to offer a greater level of protection than the Education Code in some ways, for instance it provides for "persons with disabilities [to] follow general education, specialised secondary education and higher education in educational institutions, as established by the Government".[130]

Chapter 5 of the Law is concerned with employment and provides for a range of protections, including the right to work from home,[131] availability of leave and opportunities for professional development,[132] and obligations on employers to make arrangements for employees who have lost their capacity to work.[133]

Of particular note, is Article 34(4) of the Law which places a positive obligation on employers with at least 20 staff to create or reserve jobs for disabled people amounting to 5% of their total number of employees. This is broadly in line with the proportion of persons with disabilities in the general population, 5.2% in 2015.[134] However, the efficacy of this provision is substantially undermined by the failure to establish how this quota will be implemented or provide for any sanctions for employers who do not comply. It has been

126 See above, note 27, Article 27(2).

127 *Ibid*., Article 27(5).

128 *Ibid*., Article 27(6)(a).

129 Education Code of the Republic of Moldova (Code No. 152 of 17 July 2014), Article 634.

130 See above, note 27, Article 29(2).

131 *Ibid*., Article 35.

132 *Ibid*., Articles 39 and 40.

133 *Ibid*., Article 37.

134 National Bureau of Statistics of the Republic of Moldova, *The Situation of People with Disabilities in Moldova*, 2015, available at: http://www.statistica.md/newsview.php?l=ro&id=4976&idc=168.

observed that these deficiencies have compromised the achievement of the 5% standard in enterprises to which the duty applies.[135]

Chapter 6 of the Law includes a provision establishing a right to healthcare for persons with disabilities. The right is wider than any of the rights conferred on disabled persons in the Law on Healthcare,[136] discussed below. Article 42 sets out a range of rights for persons with disabilities, including the right to make decisions about healthcare,[137] the right to accommodation of their disability in how healthcare is accessed.[138]

In summary, the Law provides important provisions to ensure the realisation of the rights of persons with disabilities. However, perhaps in part due to the fact that the Law was only promulgated in 2012, the Law's existence has not yet resulted in any major reduction in the discrimination faced by people with disabilities in Moldova.

Law on Amendments and Addenda to Certain Legislative Acts

The Law on Amendments and Addenda to Certain Legislative Instruments (Law No. 180 of 15 May 2014) (the Amendment Law) has been approved in Parliament and is, at the time of writing, awaiting promulgation by the President. If enacted, it will make several important amendments to existing legislation in relation to equality and non-discrimination, including the Electoral Code of the Republic of Moldova (No. 1381-XIII of 21 November 1997), the Equal Opportunities Law and several other statutes.[139]

The Equal Opportunities Law will be amended in several material ways. Firstly, Article 5(3) will be amended to add discrimination by association and victimisation to the types of discrimination prohibited. Secondly, Article 5(5),

135 IDIS Viitorul, *Social Monitor No. 16: Inclusion of Persons with Disabilities on the Labour Marketing: Realities and Perspectives*, 2012, p. 48, available at: http://www.viitorul.org/download.php?file=cHVibGljL3B1YmxpY2F0aW9ucy80MDY5 MzUzX21kX21vbml0b3J1bF9zb2NpLnBkZg%3D%3D.

136 Law on Healthcare (Law No. 411 of 28 March 1995), Article 373.

137 See above, note 27, Article 42(7).

138 *Ibid*., Article 42(5).

139 Law on Government (Law No. 64 of 31 May 1990).

which currently provides that discriminatory provisions "shall be declared null by the competent bodies", will now specify that such provisions are to be declared null by the "court".

Thirdly, if the Amendment Law is promulgated, exceptions to discrimination under the Equal Opportunities Law will be altered. Article 6(b) currently provides that qualification requirements for activities in which "special characteristics based on sex constitute a decisive factor" are exempted. The new Article 6(b) will narrow this exemption, such that the sex-related characteristic must be a "genuine" occupational requirement, the objective must be legitimate and the requirement must be proportional. Similar qualifications will apply to Article 6(c), which creates an exemption in respect of employment advertisements for occupations in which characteristics of a particular sex are a requirement.

Thirdly, an obligation will be added in Article 10 for employers to provide information to all employees on the prohibition of acts of discrimination and sexual harassment in the workplace and on the rights available to employees for addressing situations of discrimination.

The Law on Government (Law No. 64-XII of 31 May 1990) will be amended so as to include a quota with respect to election lists.[140] Specifically, Article 27 will be altered so as to provide that 40% of the members on each party's list must be women. However, the amendment will not stipulate where on the election list the female candidates must be placed. For candidates lower down the list, a larger share of the vote must be won by the party in order for them to become Members of Parliament. If women are placed at the bottom then it is commensurately less likely that they will end up as representatives.

It will also amend the Law on Advertising (Law No. 1227-XIII of 27 June 1997) to prohibit "sexist advertising". Article 11 of the Law will define sexist advertising as adverts that:

140 An election list is a form on which each political party registers its candidates in an upcoming election. The number of votes won by each party will determine the number of candidates on the election list for that party who become Members of Parliament. For example, if a party gets 10 mandates then the first 10 candidates on its election list will become Members of Parliament.

- show a woman or man as a sexual object, in humiliating, degrading or violent circumstances, and which offends human dignity; or
- promote sexist stereotypes for discriminatory purposes, including the depiction of women as weak, vulnerable and dependent.

Finally, if enacted, the Law will amend Article 124 of the Labour Code to provide for a right of paid paternity leave of 14 calendar days. This leave must be requested within the first 56 days of the birth of the child.

3.2.3 Non-Discrimination Provisions in Other Legal Fields

The Law on Ensuring Equality is the primary piece of legislation with respect to combatting discrimination in Moldova and, subject to several exceptions, covers all spheres of activity. The Equal Opportunities Law and the Law on Persons with Disabilities both concern the rights of marginalised groups, again across various spheres. There are also, however, important provisions with regard to equality and non-discrimination in legislation that regulates specific fields of activity. This section will set out the provisions pertaining to non-discrimination in the civil, criminal and civil procedure codes, labour, education, family law, broadcasting, mental health and religion.

Civil Code

The Civil Code of the Republic of Moldova (Law No. 1007 of 6 June 2002) (Civil Code) is a key aspect of Moldovan anti-discrimination law, as it sets out a set of remedies available where there has been a finding of unlawful discrimination using another statute. The Civil Code is silent on substantive issues of discrimination – it does not offer a definition of discrimination and it is not concerned with particular grounds of discrimination – but it has a crucial supportive function.

The scope of the Civil Code is wide. It applies to any statute that does not fall within administrative or criminal law. This includes many of the Laws relevant to discrimination law discussed in this section, including the Law on Equal Opportunities, the Law on Ensuring Equality and the Law on Social Inclusion of Persons with Disabilities.

Article 11 sets out the remedies available under the Code. These include: damages,[141] including for non-pecuniary loss;[142] invalidation of judicial acts[143] and acts of public authorities;[144] recognition of the right at issue;[145] injunctive relief to suppress acts which violate or threaten to violate the right and restoration of the individual to the condition existing before the violation of the right.[146] Accordingly, a variety of remedies may be available to victims of discrimination.

However, the Civil Code also contains provisions which hinder rather than advance equality in Moldova. The Civil Code also includes provisions regulating the circumstances in which a person's legal capacity can be revoked. As discussed above, these have serious implications for persons with disabilities in Moldova, as they are disproportionately subject to deprivations of legal capacity in a discriminatory manner.

Article 24 states that "a person, who is not able to realise or control his/her actions because of a psychiatric condition (mental illness or deficiency), may be declared incapable by court. This person shall be put under guardianship." It also provides that when the grounds on which the individual was declared incapable no longer exist, the guardianship will be revoked by court order.

As has been discussed above, Article 24 of the Civil Code, to the extent that it facilitates the deprivation of legal capacity of those with "mental disabilit[ies]"[147] without reference to other facts, is in violation of Article 12 of CRPD, as discussed above. It is also inconsistent with Articles 1 and 5 of the Law on Ensuring Equality and Articles 5, 8 and 10 of the Law on of Persons with Disabilities. National authorities and courts tend to prioritise the Civil Code over these statutes. This is despite the injunction in Article 4 of the Constitution and Article 7 of the Civil Code itself, both of which state

141 Civil Code of the Republic of Moldova (Code No. 1007 of 6 June 2002), Article 11(g).

142 *Ibid*., Article 11(h).

143 *Ibid*., Article 11(c).

144 *Ibid*., Article 11(d).

145 *Ibid*., Article 11(a).

146 *Ibid*., Article 11(b).

147 *Ibid*., Article 24(1).

that international treaties apply at the expense of national law when the two are inconsistent.[148]

Civil Procedure Code

Article 22 of the Civil Procedure Code[149] is concerned with non-discrimination in access to justice. It provides that:

> *In civil cases, justice shall be carried on the principle of equality of all persons, without any regard to citizenship, race, nationality, ethnic origin, language, religion, sex, opinion and political affiliation, wealth, social origin, domicile, place of birth, as well as on the principle of equality of all organisations, without any regard to the type of property and legal organizational form, subordination, registered office and other circumstances.*

This list of protected characteristics is broader than that found in other pieces of legislation. Citizenship, job, domicile, and place of birth, are not found in the Law on Ensuring Equality,[150] for instance. As with Article 1 of the Law on Ensuring Equality, the list of characteristics of is open-ended.

The Code also contains provisions relevant to the issue of the deprivation of legal capacity of persons with disabilities, as discussed above in relation to the Civil Code and the Law on Social Inclusion of Persons with Disabilities. Article 305 of the Civil Procedure Code provides that judicial orders that a person be forcefully referred to psychiatric care are not subject to appeal. Article 18 of the Declaration of Principles on Equality states that persons subject to discrimination have the right to "have a right to seek legal redress and an effective remedy". The denial of appeals from orders forcefully referring people to psychiatric care has a profound impact on both access to justice and the right to liberty, and as such is deeply problematic in light of international human rights law and national constitutional law. The UNHRC, in consider-

148 See above, note 105, Article 4; *Ibid*., Article 7.

149 Civil Procedure Code of the Republic of Moldova (Code No. 225 of 30 May 2003).

150 See above, note 33, Article 1.

ing the compliance of psychiatric detention with the ICCPR, stressed the importance of the fact that the detention at issue was "regularly reviewed"[151] by courts to its finding no violation of Article 9(4).[152] The Committee on the Rights of Persons with Disabilities has taken a stronger position, requiring that laws allowing for deprivations of liberty that are "linked to an apparent or diagnosed disability"[153] should be repealed. The Committee has not directly considered whether a right to appeal any decision depriving a person with disability of liberty is necessary, but in light of the high level of scrutiny of deprivations of liberty, it seems likely that they would require robust protections of access to justice in this context.

While Article 5(1) of the European Convention of Human Rights expressly allows for the "lawful detention (…) of persons of unsound mind", this permission relates to the state of mind of the individual, not to their disability status and the Convention requires robust safeguards. In particular, it requires that any person deprived of liberty has a right for their detention to be subject to regular review by courts.[154] The European Court of Human Rights has held "a key guarantee under Article 5(4) is that a patient compulsorily detained for psychiatric treatment must have the right to seek judicial review on his or her own motion"[155] and that the failure to provide a remedy to challenge the lawfulness of detention in psychiatric care violated Article 5(4).[156] Similarly, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), has found that "a person who is involuntarily placed in a psychiatric establishment by a non-judicial authority must have the right to bring proceed-

151 *A v New Zealand*, Human Rights Committee, Communication No. 754/1997, UN Doc. 66/CCPR/C/D/754/1997, 1999, Para 7.3.

152 Article 9(4) of the ICCPR provides that "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful".

153 Committee on the Rights of Persons with Disabilities, *Concluding Observations: Spain*, UN Doc. CRPD/C/ESP/CO/1, 19 October 2011, Para 36.

154 Euopean Convention on Human Rights, Article 5(4); see, for example, *D. D. v Lithuania*, European Court of Human Rights, Application No. 13469/06, 14 February 2012, Para 165.

155 *Gorshkov v Ukraine*, European Court of Human Rights, Application No. 67531/01, 8 November 2005, Para. 44.

156 *Stanev v Bulgaria*, European Court of Human Rights, Application No. 36760/06, 17 January 2012.

ings by which the lawfulness of his detention shall be decided speedily by a court".[157]

It seems clear that this right to challenge the lawfulness of detention must include a right of appeal for the right to be effective. The Committee of Ministers of the Council of Europe, for instance, has recommended in the context of detention of "incapable adults"[158] that any system of dentation must provide for "adequate rights of appeal".[159]

As well as these concerns stemming from international and regional law, Article 305 of the Civil Procedure Code seems to violate the Constitution of the Republic of Moldova. Article 20 of the Constitution guarantees the right of free access to justice for every person, without discrimination. It further provides that no law may deny or limit this right. Given the vulnerability of persons with disabilities, particularly mental and intellectual disabilities, to forced psychiatric care, the denial of an appeal in Article 305 of the Civil Procedure Code is clearly discriminatory on the basis of disability.

Also of concern is Article 306 of the Civil Procedure Code, which stipulates that the hearing of an application for a declaration of legal capacity does not require the person whose capacity is being contested present, instead requiring only the presence of a representative from the Guardianship and Trusteeship Body. This is in direct contravention of the right to a fair trial in Article 6(1) of the European Convention on Human Right. The European Court of Human Rights has consistently held that "Article 6(1) of the Convention must be interpreted as guaranteeing in principle that anyone who has been declared partially incapable (…) has direct access to a court to seek restoration of his or her legal capacity"[160]

157 Council of Europe Committee on the Prevention of Torture, *Report to the United Kingdom Government on the visit to the Bailiwick of Jersey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT),* CPT/Inf (2010) 35, 19 November 2010, Para. 53.

158 Council of Europe Committee of Ministers, *Recommendation No. R (99) 4 On Principles Concerning the Legal Protection of Incapable Adults*, 1999.

159 *Ibid*., Principle 14(3).

160 See above, note 156, Para 245. See also *Kędzior v Poland*, European Court of Human Rights, Application No. 45026/07, 16 October 2012.

Contravention Code

The Contravention Code of the Republic of Moldova (Code No. 218 of 24 October 2008) (Contravention Code)[161] sets out administrative offences, contraventions of which give rise to administrative sanctions. Liability in respect of an administrative offence is separate from both criminal and civil liability: contravention does not need to be established in court. Rather, the Code gives various administrative bodies jurisdiction to establish particular offences.[162] However, at least in the case of the administrative offences relating to discrimination described below, only courts may impose sanctions.

The Code covers all spheres of life and all persons within the jurisdiction of Moldova are subject to the Code. It imposes separate penalties according to whether the contravener is an individual, a legal entity such as a company or a "responsible person".[163] In accordance with Article 7, persons that have committed administrative offences are equal before the law and the same conduct will attract the same liability regardless of "race, nationality, language, religion, sex, political affiliation, wealth, social origins or any other situation."

The Contravention Code contains several administrative offences relevant to equality and non-discrimination. Each offence is punishable by a certain number of penalty units, with each unit amounting to MLE 20 (USD 1).[164]

Under Article 65-1, it is an offence to make a distinction, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion or belief, sex, age, disability, political affiliation or any other criteria, manifested in:

161 Available at: http://lex.justice.md/md/330333.

162 Contravention Code of the Republic of Moldova (Code No. 218 of 24 October 2008), Article 374(2).

163 A responsible person is defined in Article 16 of the Contravention Code as a person with certain rights and obligations in relation to exercising the functions of a public authority, or in relation to the administrative, organisational or economic actions of a company, institution, state organisation or central or local public authority. Such persons will be liable if they intentionally used their authority contrary to work duties, clearly exceeded rights and powers granted by law, or failed to fulfil their work duties.

164 See above, note 162, Article 34(1).

- the provision of access to educational institutions of any type and level;
- the setting of admission principles based on certain restrictions;
- the educational process, including the evaluation of the learnt knowledge; or
- scientific and educational activity.

Persons found to have committed this offence may be fined 100–140 conventional penalty units for individuals, 200–350 units for responsible persons and 350–450 conventional penalty units for legal entities.

Under Article 54-2(1), it is an administrate offence to make a distinction, exclusion, restriction or preference based on grounds of race, nationality, ethnic origin, language, religion or belief, sex, age, sexual orientation, disability, political affiliation or other criteria, which has the effect of undermining equality of opportunity in employment, manifested in:

- advertising for positions using criteria excluding or favouring certain individuals;
- the groundless refusal to hire;
- the groundless refusal to admit individuals into training courses;
- differentiated remuneration for the same type of work; or
- differentiated distribution of tasks so as to treat certain persons less favourably.

Persons found to have committed this offence may be fined 100–140 conventional penalty units for individuals, 200–350 units for responsible persons and 350–450 units for legal entities.

Pursuant to Article 54-2(2), it is an administrative offence for an employer to harass an employee. Harassment is defined as an expression based on race, nationality, ethnic origin, language, religion or belief, sex, age, disability, political affiliation or any other criteria that could create an intimidating or offensive environment at work. Persons found to have contravened this Article are liable for 130–150 conventional penalty units and 250–400 if they are responsible persons.

Under Article 71-1, it is an administrative offence for a public authority to effect any difference, exclusion, restriction or preference based on grounds of

race, nationality, ethnic origin, language, religion or belief, sex, age, disability, political affiliation or any other criterion, manifested in access to health services, social services, banking and finance, transportation, cultural and recreational activity, sale or rental of property and other services. Persons found to have committed this offence are liable for 100–140 units for individuals, 200–350 units for responsible persons, and 350–450 units for legal entities. Under Article 71-2, it is an administrative offence for a person to prevent the CPEDEE form working to prevent and eliminate discrimination in an attempt to influence its decisions, to fail to submit within the prescribed timeframe information required to examine complaints, to ignore CPEDEE guidelines or to prevent any other form of its activity. Persons found to have committed this offence are liable for 50–100 conventional penalty units for individuals and 75–150 units for responsible persons.

Article 260 provides that "discrimination of any kind" against the users of public services in electronic communications, postal and information technology is an administrative offence. Public services found to have committed this offence are liable for 50–100 conventional penalty units for individuals and 200–400 units for legal entities. The Code does not define the term "discrimination of any kind" and therefore the type of conduct prohibited under this Article is unclear.

The CPEDEE is empowered to establish contravention of the administrative offences contained in Articles 65-1, 54-2, 71-1 and 71-2. However, only a court can impose the sanctions provided for in respect of each offence. If the contravener pays half the fine within 72 hours from its establishment, the fine is considered to have been executed. If a person fails to pay the fine within 30 days, a court may replace it with:

- a fine that is double the amount but which shall not exceed the maximum limit of the sanction;
- deprivation of the right to carry out certain activities from six months to a year;
- unpaid community work, with an hour of work amounting to one penalty unit; or
- arrest.[165]

165 See above, note 162, Article 34(4).

Ostensibly, the Contravention Code is an important component in the legislative framework to combat discrimination in Moldova. It gives some teeth to the CPEDEE, empowering it to establish that administrative offences have been committed. Further, under Article 72-2, the Code penalises various forms of conduct that interfere with or otherwise undermine the directions of the CPEDEE. Where no such offences have occurred, the CPEDEE's powers are relatively insipid: under the Law on Ensuring Equality it is able to make recommendations as to the restoration of rights and to propose disciplinary measures to the competent bodies.

In practice, however, courts routinely strike out referrals from the CPEDEE in respect of administrative offences. Indeed, as discussed in part 3.4.2 below, the CPEDEE has aborted the practice of making such referrals. There are other problems with the Contravention Code. Certain administrative offences are ill-defined and therefore potentially unenforceable. In particular, what constitutes "discrimination of any kind" in Article 260 is unclear.

Criminal Code

The Criminal Code of the Republic of Moldova regulates and defines all forms of criminal conduct punishable by law. Article 176 of the Code prohibits aggravated discrimination. Under Article 77, social, national, racial, or religious hatred is to be considered an aggravating factor in the commission of an offence. Further, under Article 346, "hate-speech" is criminalised.

International best practice requires that, for the most part, discrimination be dealt with as a matter of civil rather than criminal law.[166] However, adequate protection from discrimination demands that certain severe manifestations of discrimination be recognised as a criminal offence:

> *Any act of violence or incitement to violence that is motivated wholly or in part by the victim having a characteristic or status associated with a prohibited ground constitutes a serious denial of the right to equality. Such motivation must be treated as an aggravating factor in the commission of offences of violence and incitement to*

166 See, for example, Organisation for Security and Cooperation in Europe, *Opinion on Draft Amendments to the Moldovan Criminal Code related to Hate Crimes*, 2010, Para 10.

> *violence, and States must take all appropriate action to penalise, prevent and deter such acts.*[167]

Where violence is committed on the basis of an individual's personal characteristics, criminal legislation may provide harsher sanctions than the civil law. However, the Moldovan Criminal Code differs from this standard; criminalising discrimination *per se*, including for otherwise civil or administrative offences.

Under Article 176(1) of the Code:

> *Any distinction, exclusion, restriction or preference of rights and freedoms of the person or group of persons, any discriminatory behaviour in political, economic, social, cultural and other spheres of life, based on grounds of race, nationality, ethnic origin, language, religion or belief, sex, age, disability, political affiliation or any other criteria that:*
>
> *(a) is committed by a person in a position of accountability;*
> *(b) causes considerable damage;*
> *(c) is committed by means of placing discriminatory symbols in public places;*
> *(d) is committed on the basis of two or more protected characteristics; or*
> *(e) is committed by two or more people.*
>
> *Is punishable by fine (…) community service (…) or imprisonment for up to two years.*

Increased penalties apply under Article 176(2) and (3) where mass media is used to promote discrimination or where such acts result in death or suicide.

The ambit of Article 176 is wide, potentially capturing many forms of discriminatory acts. Having such a wide reaching provision of the Criminal

167 See above, note 43, Principle 7.

Code is at odds with international law and best practice which recognizes that many acts of discrimination are more appropriately dealt with in the civil law and that criminal law should be reserved for a small number of particularly egregious acts such as inciting hatred against particular groups. It is also a misnomer to categorise multiple discrimination as necessarily more severe than single status-based discrimination, which is the approach taken by Article 167(1)(d). In practice, it appears that Article 167 is being used only very rarely. According to the General Prosecutor's Office, there have never been any convictions for racial discrimination under this provision for example.[168]

Offences Motivated by Hatred

Unlike a general prohibition on discrimination, hate crimes ought to be regulated under criminal law. Under Article 77(d) of the Criminal Code, social, national, racist or religious hatred shall be considered an aggravating factor in sentencing. Additionally, five Articles contain penalty enhancing provisions:

- Deliberate Murder (Article 145(l));
- Intentional Severe Bodily Injury or Damage to Health (Article 151(i));
- Intentional Less Severe Bodily Injury or Damage to Health (Article 152(i));
- Deliberate Destruction or Damaging of Goods (Article 197(b)); and
- Profanation of Graves (Article 222 (2)(b)).

Penalty Enhancing Provisions

Article	Offence	Regular Sentence	Aggravated Sentence
145 (1)(l)	Deliberate Murder	10–15 years of imprisonment	15–20 or life imprisonment
151(2) (i)	Intentional Severe Bodily Injury or Damage	5–10 years of imprisonment	10–12 years of imprisonment

168 Council on Prevention and Elimination of Discrimination and for Equality, *Assessment of the Laws and Practices on Crimes Motivated by Bias*, 2014, p. 17.

Article 152 (2)(i)	Intentional Less Severe Bodily Injury or Damage to Health	200–240 hours of community service or to 5 years of imprisonment	5–7 years of imprisonment
Article 197 (2) (b)	Deliberate Destruction or Damaging of Goods	Up to 1000 conventional units fine or 240 hours of community service	Up to 6 years of imprisonment
Article	**Offence**	**Regular Sentence**	**Aggravated Sentence**
Article 222 (2)(b)	Profanation of Graves	200–500 conventional units fine 180–240 hours of community service, or Up to 1 year of imprisonment	400–600 conventional units fine 200–240 hours of community service, or Up to 3 years of imprisonment

Article 77(d) contains a closed list of protected grounds, and does not include several characteristics such as sex, gender identity, or sexual orientation. Draft amendments to the Criminal Code, which have not yet been passed, would extend the list of characteristics included under Article 77; with the addition of penalty enhancing offences for 37 crimes. These developments are encouraging. However, the total number of penalty-enhancing provisions is very high, reducing their social impact. Moldova should limit the number such sentencing provisions to only "the most frequent forms of hate crimes".[169]

Incitement to Hatred

Under Article 346 of the Criminal Code deliberate actions aimed at inciting hatred, national, ethnic, racist or religious hostility or discord are prohibited:

> *Deliberate actions, public calls including through printed or electronic mass-media aimed at inciting hatred, national, ethnic, racist or religious hostility or discord, for the humiliation of national honour and dignity, as*

169 See Organisation for Security and Cooperation in Europe, *Opinion on Draft Amendments to the Moldovan Criminal and Contravention Codes Relating to Bias-Motivated Offences*, 2016, Paras 28–30, available at: www.legislationline.org/documents/id/19901.

> *well as for the direct or indirect limitations of rights, or for establishing direct or indirect advantages to citizens based on their national, ethnic, racist, or religious affiliations shall be punished by a fine of up to 250 conventional units or by unpaid community service for 180 to 240 hours or by imprisonment for up to 3 years.*

This provision is insufficiently clear, increasing the likelihood of discriminatory application of the law and potentially violating the right to freedom of expression.[170] Proposed amendments to the law do not address the lack of clarity in wording, with phrases such as "national honour and dignity", "direct or indirect limitations", and "direct or indirect advantages for citizens" retained.[171]

Labour Code

The Labour Code[172] is one of many laws regulating labour relations in Moldova. Other relevant Laws include the Law on Ensuring Equality and the Law on Social Inclusion of Persons with Disabilities, both of which are discussed elsewhere in this section. The Labour Code applies to all employers who engage employees under an individual contract of employment.

Article 5 of the Labour Code sets out the basic principles of labour relations, several of which are concerned with non-discrimination in the workplace. Key principles include:

- the prohibition of forced labour and discrimination in employment relations;[173]
- equal rights and opportunities for employees;[174] and
- equality of access to career promotion, without discrimination, taking into account merit.[175]

170 *Ibid*., Paras 66–67.

171 *Ibid*., Para 66.

172 See above, note 29.

173 *Ibid.,* note 32, Article 5(b).

174 *Ibid*., Article 5(e).

175 *Ibid*., Article 11(d).

Article 8(1) prohibits discrimination in the sphere of labour and employment:

> *Any direct or indirect form of discrimination of the employee on grounds of sex, age, race, skin colour, ethnic origin, political convictions, social origin, place of residence, disability, HIV status, memberships of trade unions or participation in trade-union's activity, and also on other criteria which have not been connected to professional qualities of the worker shall be prohibited.*

The list of protected characteristics includes some that are not protected under the Law on Ensuring Equality, namely social origin, HIV status, place of origin, membership of trade unions, and participation in trade union activities. Where a characteristic is covered by both the Law on Ensuring Equality and the Labour Code, it is common for people to make a discrimination claim based on both laws.

Of potential concern are several exceptions contained in Article 8(2), which states it is not discrimination to establish "distinctions, exceptions, preferences or separate rights of the employees determined by the specific requirements of the given kind of work" or the "special care of the state towards persons requiring increased social and legal protection". This suggests that there is scope for minimising the protection from discrimination under the Labour Code by classifying discriminatory criteria as "specific requirements" of the work in question. While "genuine occupational requirements" are permitted in many non-discrimination laws,[176] in so far as they permit direct discrimination, they must be limited to exceptional circumstances where the discrimination "can be justified against strictly defined criteria".[177]

The Labour Code also provides that employers have an obligation to take measures to prevent sexual harassment in the workplace,[178] to ensure equal opportunities and equal treatment of all,[179] to take measures to prevent victimisation,[180]

176 See, for example, Council Directive 2000/78/EC, note 44, above, Article 4(1).

177 See above, note 43, Principle 5.

178 See above, note 172, Article 10(2)(f3).

179 *Ibid*., Article 10(2)(f1) and (f2).

180 *Ibid*., Article 10(2)(f3).

to ensure that men and women have equal opportunity to combine work and family obligations,[181] and to ensure equal pay for work of equal value.[182]

The Code also includes a number of protections for working women, particularly pregnant women and women with young children. Article 251 prohibits the dismissal of pregnant women, women with children under the age of six, and workers who take parental leave, except in the circumstances defined in Article 86 of the Labour Code, which sets out "fair" reasons for dismissal. Article 247 prohibits employers from refusing to employ or reducing the wages of pregnant women or women with children under six.

Alongside these protections, however, are some problematic provisions, which reflect paternalistic presumptions that women are inherently less capable of certain work. Article 248 sets out a range of work that women are prohibited from undertaking, including "hard labour and hurtful and underground works"[183] and manual labour involving loads with weight "exceeding the maximum standards established for them".[184] The UN CEDAW Committee has recently found that similar laws in Russia, which prohibited women undertaking work classed as "arduous [or] with harmful or dangerous working conditions",[185] violated the rights to equal employment opportunities and to freely choose a profession under Articles 11(1)(b) and (c), respectively of the CEDAW.[186]

Article 250 provides that pregnant women and women with young children (aged up to three years) may be transferred to lighter work, while maintaining their average wage. While this provision is valuable in accommodating the needs of pregnant women, the use of pregnancy and maternity as shorthand for capacity is worrying and contravenes international non-discrimination standards.

181 *Ibid*., Article 10(2)(f4).

182 *Ibid*., Article 10(2)(g).

183 *Ibid*., Article 248(1).

184 *Ibid*., Article 248(2).

185 *Svetlana Medvedeva v Russian Federation*, Committee on the Elimination of Discrimiantion against Women, Communication No. 60/2013, UN Doc. CEDAW/C/63/D/60/2013, 2016, Para 2.1.

186 *Ibid*., Para 11.5.

The Labour Code is largely silent on the question of remedies available for breach of the various rights it covers. Therefore remedies contained in the Civil Code, including damages and injunctive relief, are available to employees seeking to vindicate their rights under the Labour Code.

Education Code

The Education Code of Moldova (Code No. 152 of 17 July 2014)[187] regulates the education system Article 2 of the Code refers to numerous relevant sources of international law, including the CRC, the CRPD, and the UNESCO Convention against discrimination in education.

Non-discrimination is a key aspect of the underlying purpose of the Code. Article 5(d) of the Code provides that the "mission" of education in Moldova includes "promoting dialogue, intercultural spirit of tolerance, non-discrimination and social inclusion". Article 7 of the Education Code provides that the "fundamental principles of education" include access to education without discrimination,[188] social inclusion,[189] and ensuring equality.[190] Article 9 makes clear that access to education is available on an equal basis to all, regardless of citizenship or nationality.[191] Nevertheless, there is no general prohibition of discrimination found in the Education Code, nor are the provisions on equality of access defined in terms of forms of discrimination or the characteristics protected.

Despite this commitment to equal access and non-discrimination, the Code does not provide for specific causes of action or remedies for those denied access to education and subject to discrimination in education. However, the general remedies in the Civil Code are available.

Family Code

The Family Code of the Republic of Moldova (Code No. 1316 of 26 October 2000) (Family Code)[192] regulates a broad range of matters relating to the fam-

187 Available at: http://lex.justice.md/md/355156.

188 See above, note 172, Article 7(a).

189 *Ibid*., Article 7(g).

190 *Ibid*., Article 7(h).

191 *Ibid*., Articles 9(1) and 9(11).

192 Available at: http://lex.justice.md/md/286119.

ily, including marriage,[193] children's[194] and parent's rights,[195] and the protection of children without parents.[196]

The Family Code contains scant references to equality, non-discrimination and tolerance. By contrast, it evidences Moldova's placing of a marriage between a man and a woman at the centre of family in Moldova. This approach not only discriminates against same-sex couples but also those for whom marriage is not the centre of their family relationships. Articles 5 and 16 establish the equality of spouses in marriage, with the former providing that "[a]ll married persons have equal rights and obligations in family relationships, regardless of gender, race, nationality, ethnic origin, language, religion, opinion, political affiliation, wealth and social origin". However, Article 2 defines marriage as only being between a man and a woman. Marriage is also limited in this way under Article 1 of the Law on Ensuring Equality. As such, the right to equality does not extend to same-sex couples: indeed, in Article 15, same-sex marriage is expressly prohibited. Accordingly, rather than providing a legal basis for non-discrimination, much of the Family Code contributes to ongoing discrimination against "non-traditional" family relationships.[197] The deficiencies in the Family Code should be mitigated somewhat by the instruction in Article 1 that in the event of divergence between the Code and international conventions and treaties regarding family relations, those international instruments shall prevail. However, there is no jurisprudence in which Article 1 has be applied to interpret progressively some of the Code's more discriminatory provisions.

Broadcasting Code

The Broadcasting Code of Moldova (Code No. 260 of 27 July 2006)[198] regulates a broad area in relation to TV and radio broadcasts, including their

193 Family Code of the Republic of Moldova (Code No. 1316 of 26 October 2000), Title II.

194 *Ibid*., Chapter 10.

195 *Ibid*., Chapter 11.

196 *Ibid*., Title V.

197 For more discussion please see Part 2.2 of this report.

198 Available at: http://lex.justice.md/document_rom.php?id=041D82D8:3A07C731.

content, the manner of transmission, protection of editorial independence and prohibitions of censorship.[199]

The Broadcasting Code includes a number of provisions relating to equality and non-discrimination. Article 19(6)(c) provides that "[a]dvertising, including self-promotional advertising and teleshopping must not include any form of discrimination on grounds of race, religion, nationality, [or] sex". Article 6(1) prohibits the broadcast of programs which incite hatred on grounds of "race, religion, sex [or] nationality".[200] Banning the incitement of hatred is in line with international best practice. However, Article 19(6)(c) provisions on advertising is very broad and measures taken to eradicate discrimination must not overly impeded on the enjoyment of other human rights. Such a broad ban on advertising may be implemented in such a way as to restrict free speech to a disproportionate extent.

Law on Freedom of Conscience, Thought and Religion

The Law on Freedom of Conscience, Thought and Religion (Law No. 125 of 11 May 2007)[201] guarantees to "everyone the right to freedom of thought, conscience and religion"[202] in line with the Constitution and international human rights instruments.

Under Article 4(1) of the law, the right to manifest, change and practice one's religion or belief is established. This provision may only be limited by a restriction pursuing a legitimate aim that is necessary in a democratic society for the protection of public order, morality or health.[203] Article 4(3) of the law ensures that the State cannot endorse a particular religion; whilst under Article 5(1) no one may be prosecuted for their religious belief (or lack of). Moreover, the possession of a particular set of beliefs or religion cannot justify the denial of civil and political rights.

199 Broadcasting Code of Moldova (Code No. 260 of 27 July 2006), Article 8.

200 *Ibid*., Article 6(1).

201 Law on Freedom of Conscience, Thought and Religion (Law No. 125 of 11 May 2007).

202 *Ibid.,* Article 4(1).

203 *Ibid*., Article 4(2).

Under Article 15(1) of the law, religious denominations are independent from the state, with equal rights before the law and public authorities. Article 15(1) also provides that religious discrimination shall be punishable under law.

Despite affording an extensive set of guarantees establishing the right to practice one's own religion, Moldova has tended to favour the Russian Orthodox religious establishment.[204] Under Article 15(5) of the Law on Freedom of Conscience, Thought and Religion, "the state acknowledges the special and primordial role of the Christian Orthodox religion and, consequently, of the Moldovan Orthodox Church, in the lives, history and culture of the people of Republic of Moldova". Special procedures have noted that adherents to this religion have at times committed vandalism, intimidation and violence against religious minorities, including Jews, Muslims and members of different Evangelical groups, including Jehovah's Witnesses.[205]

Law on Mental Health

The Law on Mental Health (Law No. 1402 of 16 December 1997)[206] is the key statute governing the rights of persons with "mental disorders",[207] a broad term which encompasses both intellectual and psycho-social disabilities. The Law contains a broad range of provisions on diagnosis, treatment, patient confidentiality and funding of the mental health system.

The Law does not contain any detailed provisions on discrimination. Article 5(2) of the Law provides that psychiatric care must be provided without discrimination on grounds of sex,[208] and Article 3 provides that both Moldovan citizens[209] and foreign citizens and stateless persons[210] enjoy the same rights

204 Promo-LEX Association, *Report on Human Rights in Moldova: 2014 Retrospective*, 2015, Chapter 7.1, available at: http://www.promolex.md/upload/publications/ro/doc_1437047545.pdf.

205 Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, Addendum*, UN Doc. A/HRC/19/60/Add.2, 2012, p. 27.

206 Available at: http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312970&lang=1.

207 Law on Mental Health (Law No. 1402 of 16 December 1997), Article 1.

208 *Ibid*., Article 5(2)(a).

209 *Ibid*., Article 3(1).

210 *Ibid*., Article 3(2).

under the Law. However, the nature and scope of this protection from discrimination are not elaborated on in the Law.

Contrary to providing important protections for people with mental disabilities, the Law in fact contains many discriminatory provisions. Of particular concern are the provisions regulating when treatment may be provided to persons with "mental disorders" without consent. Article 11(1) establishes that providing treatment under the Law is only possible with that person's freely given written consent. However, the Law provides that consent is not required when applying coercive medical measures in accordance with the Criminal Code[211] and in the case of admission to hospital in accordance with Article 28.[212]

Article 28 establishes the conditions under which a person may be hospitalised without consent and in the absence of a court judgment. It provides that the person's condition must be severe, and there must be either a "direct social threat"[213] or a "serious risk" to the individual's health.[214] Article 28 potentially allows for the arbitrary deprivation of liberty in contravention of Article 14(1)(b) of the CRPD and Article 5, of the ECHR. It may also constitute inhuman treatment in contravention of Article 15 of CRPD and Article 16 of CAT. There is a risk that forced treatment and hospitalisation of those with intellectual and psycho-social disabilities can be abused and used in a discriminatory fashion, particularly given the link between disability and forced hospitalisation in the Law and the lack of safeguards. There is also a risk that the problematic regulation of deprivations of legal capacity, discussed above, will interact with the regulation of forced treatment to place persons with disabilities in a doubly vulnerable position, where their preferences are ignored.

The Law has been criticised by the Ministry of Justice for failing to comply with the obligations under the CRPD and basic principles of human

211 Criminal Code of The Republic of Moldova (Code No. 985 of 18 April 2002), Articles 99, 100, 101, 102 and 103.

212 For further discussion of forced medical treatment, please see section2.1 of this report.

213 See above, note 207, Article 28(a).

214 *Ibid*., Article 28(c).

rights.[215] Of particular concern, the Law contains serious issues regarding the admission of forced treatment, hospitalisation without consent, and ensuring a complaint mechanism for persons that stay in medical or residential facilities.

Law on Citizenship of the Republic of Moldova

The Law on Citizenship of the Republic of Moldova (Law No. 1024 of 2 June 2000)[216] establishes the legal framework for citizenship of Moldova, including how and on whom citizenship is conferred, and outlines the rights and responsibilities which attach to citizenship.

Article 6 differentiates between citizens and non-citizens with Article 6(1) stating that Moldovan citizens are equal before the law and Article 6(3) stating that foreign citizens and stateless persons have their legal status established by law and by international agreements to which Moldova is a party. As identified above, many rights found in Moldovan law are held only by citizens. Article 6(2) provides that only citizens of Moldova have the right to elect and to be elected, to hold positions involving the exercise of public authority and to participate in referendums.

Article 7 guarantees non-discrimination amongst citizens of Moldova, irrespective of the means by which citizenship was acquired. This would, for example, prohibit discrimination against a person who acquired their citizenship by virtue of being a refugee. The Law is silent on causes of actions and remedies stemming from this right to non-discrimination, though the general remedies in the Civil Code will apply.

Law on the Regime for Foreigners in the Republic of Moldova

The Law on the Regime for Foreigners in the Republic of Moldova (Law No. 200 of 16 July 2010) regulates the entry, stay and exit of "aliens" in respect of

215 Ministry of Justice of the Republic of Moldova, *Report on the Monitoring of the Law on Mental Health*, 2015, available at: http://www.justice.gov.md/pageview.php?l=ro&idc=103&.

216 Available at: http://lex.justice.md/md/311522.

Moldova's territory.[217] An alien is defined in the Law as "a person who does not hold Moldovan citizenship or stateless persons". A stateless person is in turn defined as "a person who is not considered a national by any state under their legislation."[218]

The Law does not apply to members of diplomatic missions and consular offices, international organisations and their family members whose status is regulated under international treaties, representatives of other states and members of official delegations.[219] It also does not extend to foreigners whose regime is regulated under the Law on Asylum in Moldova (Law No. 270-XVI of 18 December 2008).[220]

Pursuant to Article 4(1), aliens legally resident in Moldova enjoy the same rights and freedoms as citizens, guaranteed by the Constitution and international treaties to which Moldova is a party. This does not mean that rights conferred to citizens in the Constitution are, by virtue of the Law, extended to aliens. Rather, where a right is not expressly confined to citizens in the Constitution, then by virtue of Article 4 of the Law,[221] it applies to aliens too.

Aliens illegally present in Moldova may be detained in a Temporary Placement Centre for Foreigners (TPCs).[222] Under Article 66(5), aliens accommodated in TPCs will be treated without discrimination on grounds of race, sex, age, culture, nationality, religion or membership of a particular social group. The term "discrimination" is left undefined and it is therefore unclear whether it includes, for example, indirect discrimination or discrimination by association.

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217 Law on the Regime for Foreigners in the Republic of Moldova (Law No. 200 of 16 July 2010), Article 1.

218 *Ibid*., Article 3.

219 *Ibid*., Article 2(1).

220 *Ibid*., Article 2(b).

221 Additioanlly, Article 19 of the Constitution of the Republic of Moldova provides that except as provided by domestic law and elsewhere in the Constitution, foreign citizens and stateless persons enjoy similar rights to citizens.

222 See above, note 220, Articles 52(4) and 64. "Detention" is defined in Article 64(1) as "a measure restricting freedom of movement, ordered by the court against the alien who fails to perform" an order to leave the territory."

The Law is not an adequate means of ensuring that persons in immigration detention are not subject to discrimination, primarily because it contains no enforcement procedure or remedy and because discrimination is left undefined. Nevertheless, this issue has been somewhat addressed since the enactment of the Law on Ensuring Equality, which provides a means of pursuing discrimination claims, in this context on grounds of nationality or ethnic origin.

3.3 National Policies Impacting on Discrimination and Inequality

The previous section of this report showed that Moldovan legislation provides a degree of protection from discrimination on certain grounds. However, formal protection from discrimination in the form of legislation has done little to ensure equality. The Moldovan government has promulgated a number of public policies that seek to translate legislative protections into substantive outcomes, for example by providing guidance to public servants as to how to fulfil their functions in a non-discriminatory manner. This section of the report summarises the most important of these policies.

Public policies are not legally binding. Rather, they are aspirational, identifying areas of inequality and suggesting means of redressing them. Most public policies are developed for specified periods (up to five years), after which they expire. Some policies are renewed for further terms.[223] The structure of public policy documents in Moldova is dictated by legislation: policies must identify an issue, outline the policy's objectives, set out the means of achieving these objectives and summarise the expected social impact of implementing the policy.[224]

There is no public policy in Moldova with respect to equality and non-discrimination generally. Rather, policies tend to focus on a particular sphere of discrimination (for example employment) or a specific group of people.

223 See, for example, Bureau of Interethnic Relations of the Republic of Moldova, "Press Release on the Development of the 2016–2020 Roma Action Plan to Replace the 2011–2015 Roma Action Plan", 21 December 2015, available at: http://www.bri.gov.md/?pag=comunicate&opa=view&id=758&l=.

224 Decision approving Drafting Rules and Single Requirements for Policy Documents (Government Decision No. 33 of 11 January 2007), available at: http://lex.justice.md/viewdoc.php?action=view&view=doc&id=319904&lang=1.

While many marginalised groups are covered in public policies, there are notable exceptions. For example, there is no public policy regarding persons with mental disabilities – a deficiency that has been noted by the UN.[225]

The weight given to national policies and the extent to which the government implements their recommendations varies. In some cases, the government appears to support their implementation in principle but without allocating the funds or personnel necessary to do so. In others, policies and plans are so broadly stated and vague that it is difficult to know whether an obligation has been met. Even where policies are ignored, however, they can be effective advocacy tools. Civil society organisations are able to push for their implementation and have even partnered with public authorities to assist in meeting outcomes.

3.3.1 National Human Rights Action Plan 2011–2014

The National Human Rights Action Plan 2011–2014 (2011 NHRAP)[226] was approved on 12 May 2011, superseding the 2004–2008 National Human Rights Action Plan. It was a catch-all public policy regarding human rights in Moldova and included equality and non-discrimination targets and indicators. The 2011 NHRAP proposed a variety of reforms aimed at strengthening institutional mechanisms to prevent and combat discrimination, including:

- the establishment of the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (CPEDEE) and the implementation of the Law on Ensuring Equality;
- improving the capacity of gender officers to monitor gender equality in public authorities;[227]
- the amendment of legislation, including the Electoral Code of the Republic of Moldova (Code No. 1381-XIII of 21 November 1997)

225 See above, note 119, p. 82.

226 Decision approving the 2011–2014 National Human Rights Action Plan (Parliament Decision No. 90 of 12 May 2011), available at: http://lex.justice.md/md/339395.

227 Under an initiative of the Law on Ensuring Equal Opportunities between Women and Men (Law No. 5 of 9 February 2006), certain employees within an organisation are designated "gender officers" and are given responsibility to monitor and promote gender equality at work. Gender officers are usually in the human resources department of larger organisations.

(Electoral Code) to increase the rate of women's representation in Parliament;
- the exchange of information and expertise between the National Mechanism of Prevention and Combating Discrimination (NMPCD) and similar Moldovan institutions; and
- the conducting of a study of national case law regarding discrimination and the promulgation of national campaigns to promote non-discrimination, including on television and radio programmes (the body charged with executing these campaigns is not specified).

The measures proposed in the 2011 NHRAP were partially implemented. The Law on Ensuring Equality was enacted and the CPEDEE was constituted. The amendment to the Electoral Code is contained in legislation which is, at the time of writing, awaiting promulgation by the President.[228] On the other hand, the NMPCD was never established and according to a 2015 Ministry of Justice Report, several indicators included in the 2011 NHRAP were either reported as unimplemented or not reported at all.[229] Among the gaps in implementation, the Ministry of Justice noted that:

- reforms were often implemented in a perfunctory manner;
- reforms were sometimes reported as implemented on the basis of the completion of activities that were unrelated to the reform in question;
- no clear criteria existed to assess objectively whether reforms were satisfactorily implemented; and
- no mechanism existed through which the Central Public Authorities or Local Public Authorities could monitor the implementation of the 2011 NHRAP.

The deadlines for the implementation of all actions contained in the 2011 NHRAP have now passed. While the Ministry of Justice expressed an intention

228 The Law on Amendments and Addenda to Certain Legislative Instruments (Draft Law No. 180 of 15 May 2014), discussed in section 3.2, makes such an amendment to the Electoral Code, however it has not yet been promulgated by the president.

229 Ministry of Justice of the Republic of Moldova, *Report on the Implementation Status of the 2011–2014 National Human Rights Action Plan for the Year 2014 in the Central Public Authorities*, 2015, available at: http://justice.gov.md/public/files/drepturile_omului/Raport_privind_gradul_de_implementare_PNADO_pentru_anul_2014_in_cadrul_APC.pdf.

to develop a new human rights action plan in the fourth quarter of 2015, no such action plan has yet been released.[230]

3.3.2 2010–2015 National Gender Equality Programme (2010 NGEP)

The 2010–2015 National Gender Equality Programme (2010 NGEP)[231] was approved on 31 December 2009 and aims to combat discrimination on grounds of gender. The Ministry of Labour, Social Protection and Family is responsible for monitoring and coordinating the implementation of the actions contained in the 2010 NGEP. Its goals include:

- increasing employment among women and a decrease in the gender pay gap;
- eliminating all forms of gender-based discrimination in the labour market; and
- economic empowerment of women in rural areas.[232]

The 2010 NGEP focuses to a large extent on increasing the participation of women in public life. It pushes for compulsory consideration of gender equality in all policy documents and at all implementation levels. It also highlights the dearth of women in the public electoral process, suggesting that women continue to face discrimination in political and public activities, due largely to existing gender stereotypes and sexism.[233]

The issue of violence against women is explored in the 2010 NGEP. It notes the particular vulnerability of female migrants, for whom discrimination on grounds of both migrant status and gender can lead to "abuse or trafficking both in the labour market and during migration to the countries of

230 Ministry of Justice of the Republic of Moldova, "Press Release: 2011-2014 National Human Rights Action was almost Entirely Implemented", 31 March 2014, available at: http://www.justice.gov.md/libview.php?l=ro&idc=4&id=1832.

231 Decision approving the 2010-2015 National Gender Equality Programme (Government Decision No. 933 of 31 December 2009), available at: http://lex.justice.md/viewdoc.php?action=view&view=doc&id=333441&lang=1.

232 *Ibid*., Chapter 2.

233 *Ibid*., Para 21.

destination."[234] The 2010 NGEP observes that "there is insufficient awareness in society about domestic violence as a human rights violation" and "poor training of experts from different fields in relation to the identification, registration and reporting of domestic violence cases."[235]

Among the strategies proposed in the 2010 NGEP to combat violence against women are the development of educational programmes and training modules, investment in rehabilitation and resocialisation programmes for victims and perpetrators of gender-based violence and human trafficking, and the increased collection, analysis and distribution of gender-disaggregated statistics on gender-based violence and trafficking. According to the Ministry of Labour, Social Protection and Family, these strategies have only been partially implemented, with insufficient resourcing cited as a key cause.[236] During the process of NGEP implementation, the CEDAW Committee criticised "limited cooperation between existing gender equality bodies and relevant ministries (…) frequent staff turnover (…) [and] insufficient gender mainstreaming within ministries at all levels".[237] Moldovan NGOs raised concern over the sporadic/insufficient activity of the Governmental Commission for Equality between Women and Men and the lack of full time personnel responsible for ensuring gender equality in other ministerial departments.[238]

At the time of writing, the Ministry is developing a National Gender Equality Programme for 2016–2020.[239]

234 *Ibid*., Para 13.

235 *Ibid*., Para 40.

236 Ministry of Labour, Social Protection and Family of the Republic of Moldova, *Evaluation Report on the Degree of Implementation of the National Gender Equality Programme for 2010–2015*, 2015, available at: http://www.mmpsf.gov.md/sites/default/files/document/attachments/raport_evaluare_pnaeg_2010-2015.pdf.

237 Committee on the Elimination of Discrimination against Women, *Concluding Observations: Moldova*, UN Doc. CEDAW/C/MDA/CO/4-5, 29 October 2013, Para 13.

238 Gender Equality Platform and Others, *Joint Submission to the Universal Periodic Review for the Republic of Moldova*, 2016, Para 5.1, available at: http://cdf.md/files/resources/98/UPR-submission-gender-equality-platform-Moldova.pdf.

239 Government of the Republic of Moldova, *Project of the New National Gender Equality Programme for 2016–2020*, 2016, available at; http://particip.gov.md/proiectview.php?l=ro&idd=3140.

3.3.3 2007–2015 National Strategy for Employment Policies

The 2007–2015 National Strategy for Employment Policies (2007 NSEP), approved by the Moldovan government on 31 May 2007,[240] concerned discrimination in the labour market.

The 2007 NSEP called for the reduction of gender gaps in terms of both representation and wages.[241] It also called for the development of additional public policies to improve compliance with provisions of the Labour Code of the Republic of Moldova (Law No. 154 of 28 March 2003) relating to older employees. Finally, the 2007 NSEP recognised the labour market as a site in which social change can occur, noting that employment can integrate marginalised people who are otherwise at risk of exclusion.[242] However, the Strategy lacked sufficient provisions on the employment of persons with disabilities, a fact which may have contributed to poor results in this area.[243] The final report on strategy implementation is not yet available.

3.3.4 2011–2015 Action Plan for the Support of Roma People from the Republic of Moldova

The 2011–2015 Action Plan for the Support of Roma People from the Republic of Moldova (2011 APSRP) was approved on 8 August 2011.[244] The plan called for interventions to improve the outcomes of Roma people in the areas of education, employment, health insurance, living conditions, participation in decision-making and documentation. Particular focus was given to the welfare of Roma women.[245]

240 Decision approving the 2007–2015 National Strategy for Employment Policies (Government Decision No. 605 of 31 May 2007).

241 *Ibid*., Chapter 3.

242 *Ibid*.

243 Legal Assistance Centre for Persons with Disabilities, *Submission to the Committee on the Rights of Persons with Disabilities for Moldova*, 2015. p. 34, available at: http://www.advocacy.md/sites/newadvocacy/files/Raport%20de%20alternativa%20CRPD_ROM.pdf.

244 Decision approving the 2011-2015 Action Plan for the Support of Roma People from the Republic of Moldova (Government Decision No. 494 of 8 August 2011), available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=339319.

245 *Ibid*., Chapter 1.2.

One of the more ambitious objectives of the 2011 APSRP was to introduce "community mediators" to facilitate Roma access to public services and to communicate with public authorities on behalf of Roma people.[246] It called for the employment of 48 such community mediators in 44 settlements inhabited predominantly by Roma people, amounting to an average of one mediator per 150 Roma people.[247]

Throughout its implementation period, public authorities failed to publish interim reports on the status of the 2011 APSRP. In February 2016, the Bureau for Interethnic Relations published a final report on the 2011 APSRP,[248] according to which progress was made in certain respects. In particular, community mediators were set up in up to 12 localities, leading to an increase in Roma persons obtaining administrative and bureaucratic documents, increased school attendance, increased access to social welfare and more efficient communication between the Roma population and other groups at the community level. However, the report lacks statistical data and may not accurately assess the success of the policy's implementation. For example, the figure of 12 mediators employed contradicts the figure of seven which is given by representatives of local public authorities.[249] Ultimately, the 2011 APSRP suffered from a lack of funds being allocated to its implementation. The 2016–2020 Action Plan in support of the Roma population in Moldova was approved by the government on 20 April 2016. However as with the previous iterations, insufficient resources have been allocated for its effective implementation.

3.3.5 2007–2014 National Strategy on Community-Based Actions to Support Children in Difficulty

The 2007–2014 National Strategy on Community-Based Actions to Support Children in Difficulty (2007 NSCASC)[250] was approved on 20 August 2007. The goal, set out in Chapter 2 of the Strategy, was to create opportunities

246 *Ibid*., Annex.

247 *Ibid*.

248 Government of the Republic of Moldova, *Evaluation Report on the Implementation of the 2011–2015 Action Plan for the Support of Roma People from the Republic of Moldova*, 2016, available at: http://www.bri.gov.md/files/3849_Studiu-HG-56_18.01.16.pdf.

249 *Ibid*., p. 14.

250 Decision approving the 2007–2014 National Strategy on Community-Based Actions to Support Children in Difficulty (Government Decision No. 954 of 20 August 2007).

for the social integration of disadvantaged children through relevant Community actions. The 2007 NSCASC set out the objectives that Moldova had to meet in order to comply with the 2009–2013 European Integration: Freedom, Democracy, Welfare Programme[251] and the UN Convention on the Rights of the Child.[252]

The 2007 NSCASC aimed to ensure equality and non-discrimination of children in several vulnerable groups. It also makes reference to the importance of self-realisation of the identity and personality of children and young people. No report assessing the extent to which this strategy was realised has been published.

3.3.6 2010–2013 Strategy on Social Inclusion of People with Disabilities

The 2010–2013 Strategy on Social Inclusion of People with Disabilities (2010 SSIPD)[253] was approved on 9 July 2010 and, among other reforms, called for the development of an efficient mechanism for the provision of vocational guidance, training and rehabilitation services to persons with disabilities.[254] As well as this policy prescription, the 2010 SSIPD noted that the lack of a single legal definition of disability in Moldova was an impediment to effective legislative reform. The Constitution refers to disabled people as "handicapped"[255] and the Law on the State Protection and Guard Service (Law No. 134 of 13 June 2008) uses the term "invalids".[256] The Equal Opportunities Law uses appropriate terminology.[257]

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251 Government of the Republic of Moldova, *2013–2014 Activity Program: European Integration: Freedom, Democracy, Welfare*, 2013, available at: http://www.gov.md/sites/default/files/document/attachments/program_guvern-ro.pdf.

252 Convention on the Rights of the Child, 1577 U.N.T.S. 3, 1989.

253 Law approving the 2010–2013 Strategy on Social Inclusion of People with Disabilities 2010–2013 (Law No. 169 of 9 July 2010).

254 *Ibid*., Chapter 1.

255 See above, note 105, Articles 50 and 51.

256 Articles 40(9) and 46(5), available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=362560.

257 See, for example, Law on Social Inclusion of Persons with Disabilities (Law No. 60 of 30 March 2012), Article 2, available at: //lex.justice.md/md/344149.

The 2010 SSIPD lapsed in 2013 and no corresponding public policy has been introduced. Problems in terminology persist. For example, the Constitution has not been amended so as to remove references to handicapped persons. On the other hand, the Law on Ensuring Equality was enacted during the term of the policy and refers to "persons with disabilities."

The Equal Opportunities Law was promulgated during the implementation period of the 2010 SSIPD so, at least in terms of establishing a legislative framework for disability discrimination, the policy was successful. However, the success of the Law has been hampered by the failure of Parliament to bring other statutes into line with it. For example, while the Equal Opportunities Law provides that buildings must be accessible to disabled persons, planning and construction laws do not require this and the obligation is often ignored. There has been no government report monitoring the extent to which the 2010 SSIPD was implemented.[258]

3.3.7 2014–2016 Programme for Mainstreaming Ageing in Policies

The Programme for Mainstreaming Ageing in Policies (PMAP)[259] was approved on 2 June 2014 and explores ways to facilitate the increased participation of older people, especially women, in socioeconomic life.

Among other objectives, the PMAP seeks to:

- challenge the view that age is associated with a decrease in workplace productivity;[260]
- combat the tendency for older women to be poorer than older men due to having worked for fewer years and at lower wages;[261] and

258 For a government report on Moldova's implementation of the CRPD, see above, note 236. For the views of NGOs on Moldova's implementation of the 2010 SSIPD, see, for example: Institute for Development and Social Initiatives, *Equal Opportunities, Inclusion and Social Protection of Disabled People*, 2010, available at: http://aopd.md/attachments/article/62/MONITORUL_SOCIAL%20dizabilitati.pdf. Also, see above, note 243.

259 Decision approving the Programme for Mainstreaming Ageing in Policies (Government Decision No. 406 of 2 June 2014), available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353338.

260 *Ibid.,* Para 13(a).

261 *Ibid.,* Para 41.

- increase the monitoring of health service delivery to ensure that older people are not discriminated against within the health system.[262]

The PMAP suffers from a lack of specificity. Indeed, what is meant by the term "older persons" is undefined. As its provisions are broad and aspirational, it is difficult to assess the degree to which it has been implemented.

3.3.8 2014–2020 National Youth Strategy and Action Plan

The 2014–2020 National Youth Strategy and Action Plan (2014 NYS)[263] provides that non-discrimination and equality of opportunity should be guiding principles in the formation of policies affecting young people in Moldova.[264] It also notes that victims of discrimination on grounds of age are less likely to access social services and are more likely to be poor and have health problems.[265] The 2014 NYS identifies age discrimination as amongst the most pressing issues affecting young people in Moldova. It notes that around 30.3% of young people, defined in the Law on Youth (Law No. 279 of 11 February 1999)[266] as persons between the ages of 16 and 30, believe that they are discriminated against, particularly in the spheres of employment, education and civil participation (i.e. decision-making at the community level).[267]

The *Ministry of Youth and Sports of Moldova* is responsible for strategy implementation. In 2016, the *Ministry of Youth and Sports of Moldova* issued the first progress report on strategy implementation during 2015.[268] Overall, the report shows an average level of implementation. Overall implementation score is 0.6 (where (0) action not implemented – (1) action

262 *Ibid.,* Para 43.

263 Decision on adoption of the National Youth Strategy 2020 and Action Plan (Government Decision No. 1006 of 10 December 2014), available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=356215. This policy superseded the 2009-2013 Youth Development Strategy.

264 *Ibid*., Annex 1, available at: http://lex.justice.md/UserFiles/File/2014/mo400-403md/anexa%201_1006.docx.

265 *Ibid.*, pp. 11, 13, and Annex 1.

266 Article 2, available at: http://lex.justice.md/md/311644.

267 See above, note 259, pp. 11, 13 and Annex 1.

268 At the time of writing, the report is not available online.

fully implemented) while the score on reaching Strategy Objectives is 0.59. The main deficiencies in implementation that are identified in the report concern core actions related to elaboration and adoption of guidelines and methodologies, public policies, research and studies on youth. The highest scores were achieved in relation to organising various public events, capacity building trainings, seminars, etc., many of which were implemented with support and collaboration from civil society organisations (such as the National Youth Council in Moldova).

3.3.9 2011–2020 National Strategy on Migration and Asylum

The 2011–2020 National Strategy on Migration and Asylum (2011 NSMA)[269] harmonises Moldova's pre-existing policies regarding the processing of migrants and asylum seekers. While the 2011 NSMA is not solely concerned with equality and non-discrimination, it includes measures designed to protect migrants and aliens from discrimination on grounds including race.
For example, the 2011 NSMA states that legal aliens and stateless persons should have freedom of movement within Moldova:

> *Ensuring that the freedom of movement of legally staying aliens or stateless persons in the Republic of Moldova is not subject to unjustified restrictions, including discriminatory measures, based on any ground such as sex, race, colour, ethnic or social origin, genetic features, health status (including HIV/AIDS), language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability or age.*[270]

Unusually, the 2011 NSMA seeks to prevent discrimination against aliens and stateless persons on grounds of their "genetic features". Discrimination on this ground is not prohibited in other Moldovan legislation or policies and it is unclear what the intention behind the inclusion of this protected characteristic was in this context, and what its application would entail.

269 Decision approving the 2011-2020 National Strategy on Migration and Asylum (Government Decision No 655 of 8 September 2011), available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=340066.

270 *Ibid.,* Chapter 5, Para 21.

3.4 Enforcement and Implementation

While there is a relatively comprehensive legal framework protecting the rights to equality and non-discrimination in Moldova, the extent to which the Constitution and legislative provisions are effective depends on how they are enforced and implemented in practice. As this section identifies, there are many areas in which their enforcement and implementation needs to be strengthened.

The focus of this section is on the institutional mechanisms to protect against discrimination established in the Law on Ensuring Equality. In particular, the mandate of the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (CPEDEE) in relation to the investigation and conciliation of complaints will be examined. The treatment of discrimination actions in court is also outlined.

3.4.1 Moldovan Legal System

The structure of Moldova's legal system is set out in the Constitution, Chapter 9 of which concerns the judiciary. The Constitutional Court is established under Article 134 as the "sole body of constitutional jurisdiction" in Moldova, charged with reviewing the constitutionality of legislation, decisions of Parliament, Presidential decrees and other instruments including international treaties.[271] Article 140 provides that laws become null and void from the time at which the Constitutional Court orders a statute invalid, and decisions of the Court cannot be appealed.[272]

Existing in parallel to the Constitutional Court is a hierarchy of other judicial organs: the Supreme Court of Justice, the Court of Appeal and the courts of law. These courts are established under Article 115 of the Constitution, however their structures and areas of competence are set out in legislation,[273] in particular the Law on the Supreme Court of Justice (Law No. 789 of 26 March 1996) and the Law on the Organisation of Judiciary (No. 514-XIII of 16 July 1995) (Law on the Judiciary). The establishment of extraordinary courts is forbidden under Article 115(3) of the Constitution.

271 See above, note 105, Article 135(1).

272 *Ibid.,* Article 140(2).

273 *Ibid.* Article 115(4).

The Supreme Court of Justice is the highest non-constitutional court, tasked with "ensuring correct and unitary implementation of laws by all courts."[274] It has jurisdiction to hear appeals in civil, administrative, criminal and certain procedural matters[275] and can hear certain types of case at first instance.[276] The Court of Appeal sits beneath the Supreme Court of Justice and hears appeals of the decisions of the courts of law and specialised courts, as well as cases at first instance falling within its areas of competence.[277] It hears both criminal and civil matters.[278] There are four appellate courts and each exercises jurisdiction over its own geographic area.

Specialised courts have jurisdiction over cases involving certain subject matters.[279] Examples include the Commercial District Court and the Military Court.[280] Finally, the courts of law function at the district and municipal level, and sit within the jurisdiction of one of the four appellate courts.

The CPEDEE does not have judicial power. Established under the Law on Ensuring Equality, it is tasked with examining the complaints of persons who consider themselves to have been discriminated against.[281] The CPEDEE is unable to impose sanctions when it finds that unlawful discrimination has occurred; rather, it can refer such a case to the relevant public body along with proposed disciplinary steps.[282] The CPEDEE can also establish that a person

274 Law on the Organisation of Judiciary (Law No. 514 of 16 July 1995), Article 43.

275 Law on the Supreme Court of Justice (Law No. 789 of 26 March 1996), Article 2(a).

276 Administrative and civil cases that the Supreme Court of Justice can hear at first instance are contained in Article 10 of the Law on Administrative Litigation (Law No. 793 of 10 February 2000); the criminal cases that the Supreme Court of Justice can hear at first instance include hearings for crimes committed by the President of Moldova and are listed in Article 39 of the Criminal Procedure Code of the Republic of Moldova (Code No. 122 of 14 March 2003).

277 Under Article 33(3) of the Civil Procedure Code (Code No. 225 of 30 May 2003), the Court of Appeal may hear in the first instance disputes relating to the decisions and other acts of the Central Public Authorities and the decisions of the Central Electoral Commission. It may aso hear insolvency cases under the Law on Insolvency (Law No. 149 of 29 June 2012).

278 Civil Procedure Code (Code No. 225 of 30 May 2003), Title 1; Criminal Procedure Code (Code No. 122 of 14 March 2003), Article 38.

279 See above, note 274, Article 15(2).

280 *Ibid.,* Article 25(2).

281 See above, note 33, Article 12(1)(i).

282 *Ibid.,* Article 12(1)(j).

has committed certain administrative offences relating to discrimination, as set out in the Contravention Code of the Republic of Moldova (No. 218-XVI of 24 October 2008) (Contravention Code). However, pecuniary penalties can only be imposed by a court.[283] Decisions of the CPEDEE, comprising either recommendations or findings of administrative offences, can be judicially reviewed in courts. Further, as noted in the discussion of the Contravention Code, it is an administrative offence to prevent the CPEDEE from carrying out its functions, including by failing to submit documents relating to a complaint with the prescribed timeframe.[284]

3.4.2 Enforcement

States do not meet their obligation to protect people from discrimination by simply prohibiting discrimination in the law. They must also ensure that the rights to equality and non-discrimination are effectively enforced in practice. This means that, in addition to improving legal protection from discrimination, Moldova must also put in place mechanisms which guarantee victims of discrimination effective access to justice and appropriate remedies. According to Principle 18 of the Declaration of Principles on Equality:

> *Persons who have been subjected to discrimination have a right to seek legal redress and an effective remedy. They must have effective access to judicial and/or administrative procedures, and appropriate legal aid for this purpose. States must not create or permit undue obstacles, including financial obstacles or restrictions on the representation of victims, to the effective enforcement of the right to equality.*[285]

This means that, besides improving the national regulatory framework in the field of non-discrimination and equality, Moldova is obliged to increase the institutional capacity of the CPEDEE, the courts and other authorities so as to provide effective remedies for violation of the rights to equality and non-

283 See above, note 33, Article 12(1)(k).

284 See above, note 162, Articles 71-2.

285 See above, note 45, p. 8.

discrimination. As a party to the ECHR, Moldova must ensure that the rights it guarantees are substantive and realisable; not theoretical and illusive.[286]

Access to Justice

Access to justice is a tenet of international human rights law[287] and will only be realised where victims of discrimination are able to seek redress unhindered by undue procedural burdens or costs. Remedies must be "accessible and effective"[288] and legal aid must be provided where necessary. Rules on standing which allow organisations to act on behalf, or in support, of victims of discrimination are particularly important in overcoming the disadvantages faced by individuals in the justice system. It is also important to allow groups of victims who have experienced similar discriminatory treatment to bring claims on behalf of a group, if the systemic nature of discrimination is to be effectively addressed.

The means by which individuals in Moldova are able to enforce equality and non-discrimination provisions depend on whether the provision is found in the Constitution or in legislation.

Access to Justice under the Constitution

The Constitution primarily creates institutions and espouses broad principles and rights. The operation of the institutions it creates and the justiciable rights they uphold are then predominantly a matter for legislation. Nevertheless, the Constitution contains several provisions relevant to access to justice.

The right to obtain effective redress for infringement of rights, freedoms and legitimate interests is preserved in Article 20 of the Constitution:

> *(1) Any individual person shall be entitled to obtain effective reparation from the part of competent courts*

286 *Bartenbach v Austria,* European Court of Human Rights, Application No. 3912/03, 20 March 2008; *Tudorache v Romania*, European Court of Human Rights, Application No. 78048/01, 29 September 2005.

287 European Convention on Human Rights, Article 6; International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, 1966.

288 See above, note 31, para 15.

of law against actions infringing upon his/her legitimate rights, freedoms and interests.
(2) No law may restrict the access to justice.

The Constitution also includes provisions relating to the manner in which judicial remedies are to be obtained. Article 117 provides that legal hearings in all courts are to be held in public, except in certain cases as provided for in legislation. Article 118 provides that persons that do not speak the "Moldovan language" are entitled to speak at trial through an interpreter. The right to appeal against sentences delivered by courts of law is preserved in Article 119 of the Constitution, and the right to challenge the constitutional validity of legislation is contained in Article 135.

The Constitutional Court is the sole and authoritative court dealing with questions of Constitutional interpretation.[289] It has the power to review legislation, parliamentary decisions, presidential decrees, government orders, and international treaties.[290] There is no right of direct petition to the Constitutional Court. Instead, the Court has power to hear "pleas of unconstitutionality of the normative acts, upon appeal of the courts of law".[291] Under this system, other courts, upon finding that a normative act violates the Constitution, may refer this normative act to the Constitutional Court to be reviewed. Article 25 of the Law on the Constitutional Court provides that referrals to the Constitutional Court can be made by, *inter alia*, the President, the Government, the Minister for Justice, the Supreme Court, the Prosecutor General, and MPs. In addition, it seems that, in practice, a plea of unconstitutionality can be raised by courts other than the Supreme Court, or by any of the parties to a case which is before the courts.[292] Therefore, individuals, NGOs, and other bodies have only an indirect route to the Constitutional Court. Access to constitutional review therefore is entirely contingent on an individual or group's ability to access the normal judicial process, as discussed below.

289 See above, note 105, Article 134(1).

290 *Ibid.,* Article 135(1)(a).

291 Venice Commission *3rd Congress of the World Conference on Constitutional Justice: Questionnaire: Reply by the Constitutional Court of Moldova*, 2014.

292 *Ibid.,* p. 9.

Where the Constitutional Court finds that a normative act violates the Constitution, that act becomes null and void upon the adoption of the decision.[293] Following the publication of a decision of the Constitutional Court, the government is required to put forward legislation in Parliament which amends the relevant normative act within three months.[294] These proposals take priority in the parliamentary process.[295] However, delays are common resulting in considerable uncertainty.[296] In order to remedy this uncertainty, the Constitutional Court has held[297] that when a normative act is rendered null and void by a decision of the Court and where that act repealed or amended the law, then the law amended or repealed will come back into effect pending the outcome of the legislative process. While this to some extent remedies the uncertainty caused by legislative delays, it does not necessarily ensure that constitutional rights are protected in the interim. In addition to the power to nullify normative acts, the Constitutional Court has the power to suspend the application of the normative act at issue until the case is decided on the merits by other courts.[298]

Access to Justice under Legislation

The administration of justice by courts is largely regulated by the Civil Procedure Code (No. 225 of 30 May 2003). Article 33 of the Code establishes the competence of courts to hear all civil cases involving individuals, businesses and public authorities concerning the violation of rights, freedoms and legitimate interests, including complaints in which discrimination is alleged.

Ordinary courts may adjudicate discrimination actions in civil, administrative and criminal jurisdictions. In civil actions, complaints of discrimination are filed directly to the court, for example pursuant to Article 18 of the Law on Ensuring Equality. Applicants are not obliged to lodge a complaint with the CPEDEE before bringing a discrimination action to court. Similarly, applicants can apply to court after having lodged a complaint with the CPEDEE, so long

293 See above, note 105, Article 140.

294 Law on the Constitutional Court (Law No. 317 of 13 December 1994), Article 281.

295 See above, note 291, p. 11.

296 *Ibid.,* pp. 11–12.

297 Consitutional Court, Decision No. 33 of 10 October 2013.

298 See above, note 294, Article 25^1.

as less than a year has passed since the alleged act was committed and the CPEDEE complaint has concluded.[299]

Article 21 of the Law on Ensuring Equality and Article 85(1)(a) of the Civil Procedure Code provide that persons bringing an action to court on matters of discrimination are exempt from paying filing fees. Pursuant to Article 18(2) of the Law on Ensuring Equality, trade unions or NGOs operating in the field of human rights can initiate civil actions on behalf of persons whom they believe were discriminated against. To be eligible to file this type of representative action, NGOs must show that they are registered at the State Registry of NGOs and have the consent of the victim (or victims).[300]

There are two avenues through which courts may hear discrimination cases in an administrative, as opposed to civil, capacity. Firstly, decisions of the CPEDEE and other public authorities may be challenged in procedures akin to judicial review. Article 277 of the Civil Procedure Code establishes the right of parties aggrieved by an administrative act or failure to petition the courts for cancellation of the act, reinstatement of the right or compensation. Secondly, where the CPEDEE finds that one of the administrative offences in the Contravention Code relating to discrimination has been infringed, it may submit its findings to court, which will decide whether or not to impose sanctions.

Courts may hear prosecutions for criminal offences involving discrimination as set out in the Criminal Code of the Republic of Moldova (No. 985 of 18 April 2002) (Criminal Code). As discussed in part 3.2.2 above, examples of such offences include:

- torture, inhuman or degrading treatment based on discrimination (Article 166(3));
- sexual harassment for discriminatory purpose (Article 173); and
- the violation of the equality of citizens (Article 176(1)).

Under Moldovan law, proceedings involving certain criminal offences, including those discussed above, are initiated by the victim, who must make

299 Law on Ensuring Equality (Law No. 121 of 25 May 2012), Article 20.

300 *Ibid*.

a "preliminary complaint" to the police.[301] The victim can withdraw complaints.[302] Unusually, complaints of sexual harassment and other sexual crimes[303] cannot be withdrawn as they are not listed in the exhaustive list of cases initiated by a complaint in Article 276(1) of the Criminal Procedure Code. Legal proceedings are initiated by the General Prosecutor's Office, which is established in Article 125 of the Constitution, or one of its subordinate territorial or subordinate units. Trials are conducted in accordance with the Criminal Procedure Code of the Republic of Moldova (No. 122 of 14 March 2003). Victims play an active role in prosecutions, as they are required to be party to the case.[304] While it is possible for a victim to refuse to be party to a case, this will result in the termination of the case by the prosecutor.

Both criminal and civil proceedings concerning the same facts can be ongoing at the same time.[305] Civil proceedings can be initiated at any time from the start of criminal proceedings until the "end of the judicial investigation".[306] If a civil claim is not filed before the conclusion of criminal proceedings, a claim can still be brought.[307] However, if a civil claim fails before criminal proceedings begin, a person is not entitled to commence criminal proceedings.[308] Conversely, if the criminal case is unsuccessful, a person cannot then bring a civil claim on the same facts.[309]

The manner of bringing complaints to the CPEDEE is set out in Articles 13 to 15 of the Law on Ensuring Equality. Complaints must contain a description of the violation of the complainant's rights and the facts and evidence supporting this contention. The CPEDEE will then examine the complaint in accordance with Article 15 of the Law, requesting relevant data or explanations

301 See Criminal Procedure Code above, note 278, Article 276(1).

302 *Ibid.,* Article 58(3)(7).

303 See above, note 211, Articles 171–175.

304 See above, note 278, Article 58.

305 *Ibid*., Article 219.

306 *Ibid.,* Article 221(1).

307 *Ibid.,* Article 221(5).

308 *Ibid.*

309 *Ibid.*

about facts forming the subject of complaints. If the CPEDEE, in the course of investigations, thinks that a crime has occurred, it must refer the matter to the prosecutor, as the CPEDEE cannot consider a matter parallel to criminal proceedings. In practice, however, no referrals to prosecutors by the CPEDEE have yet been made.

Legal Aid System

Article 11(1) of the Law on the Judiciary provides that in all trials, parties are entitled to representation or, in the case of criminal trials, a defence attorney. However, there is no entitlement to specialist discrimination lawyers in cases involving discrimination.

Legal aid in Moldova is established under the Law on State-Guaranteed Legal Aid (Law No. 198 of 26 July 2007) (Law on Legal Aid). Article 8 of the Law provides that the system of legal aid is to be managed by three bodies, namely the Ministry of Justice, the Bar Association and the National Council for State-guaranteed Legal Aid (NCLA). The operation of the NCLA is also regulated by the Order of the Minister of Justice (No. 18 of 24 January 2008).

Pursuant to Article 6, legal aid is afforded (a) to Moldovan citizens and (b) to foreign citizens or stateless persons without legal assistance in cases related to public authorities or courts. There are two types of legal aid provided for under the Law: primary and qualified. "Primary" legal aid is provided to persons regardless of their level of income[310] and includes the provision of:[311]

- information about the legal system, legislation in force, the rights and duties of persons under particular laws and how to exploit rights through judicial and extrajudicial means;
- advice on particular legal matters; and
- assistance in the drafting of legal documents.

"Qualified" legal aid may be granted in both civil and criminal matters and is only available to persons regardless of their level of income in certain,

310 Law on State-Guaranteed Legal Aid (Law No. 198 of 26 July 2007), Article 15.

311 *Ibid.*, Article 2.

pressing circumstances. According to Article 19 of the Law on Legal Aid, persons eligible for qualified legal aid include those who:

- lack the means to pay for legal assistance in criminal cases, where assistance is appropriate in the interests of justice;
- require emergency legal assistance on the issue of detention in a criminal trial;
- require legal assistance in cases of civil and administrative jurisdiction, but lack the means to pay for these services, and the legal or procedural issues involved are complex; or
- are children and victims of crime.

Article 20 provides that persons falling into several of the above classes are eligible for qualified legal aid regardless of income, for example those requiring emergency legal assistance in the case of detention at criminal trials, child victims of crime and persons committing an offence for which the penalty is administrative arrest.

The lawyers who provide state-guaranteed legal aid are trained at the NCLA. There are currently no legal aid lawyers specialising in cases of discrimination, although the NCLA has stated that it intends to provide this type of lawyer in the future.[312] As of the publication of this report, there are no signs that intention has led to the creation of a division of specialised discrimination lawyers. However, training has been provided to Moldovan lawyers, including those working in legal aid, on anti-discrimination law by organisations including the Council of Europe,[313] the Soros Foundation,[314] as well as Equal Rights Trust and Promo-LEX.[315]

312 National Council for State Guaranteed Legal Aid, *Instruction and Methodological Assistance for Lawyers who Provide Free Legal Aid in 2014 and Prospects for 2015*, 2014, available at: http://www.cnajgs.md/ro/news/activitatile-de-instruire-si-asistenta-metodica-continua-a-avocatilor-care-acorda-asistenta-juridica-garantata-de-stat-realizate-de-catre-cnajgs-in-anul-2014-si-perspective-pentru-anul-2015.

313 Council of Europe Office in Moldova, *Training for Lawyers and Human Rights Activists on "Discrimination on the Grounds of Mental Health"*, 2014.

314 Promo-LEX Association, "Training Programme for Lawyers in Anti-Discrimination", 7 November 2010, available at: https://promolex.md/index.php?module=announcements&cat=0&item=1363.

315 Promo-LEX Association and Equal Rights Trust, "Competition for the Selection of Participants in Training", 14 June 2010, available at: https://promolex.md/index.php?module=announcements&cat=0&&item=269.

A report from the UN Development Programme in conjunction with the Moldovan government found in 2014 that the quality of legal aid had improved over the previous five years, however a lack of continued training for legal aid lawyers and limited remuneration had contributed to cases in which advice of an insufficient quality was provided to clients.[316]

Furthermore, legal aid lawyers have themselves been found to have engaged in discrimination. In 2014, the CPEDEE investigated cases concerning the substandard provision of legal advice and representation in the Balti Municipality and Chisinau Municipality in respect of persons with mental disabilities. The CPEDEE found that discrimination occurred and recommended that measures be taken to remove the restrictions. Although the decision was annulled at both the initial review[317] and appellate level,[318] the basis for the annulment at both stages was a finding that the CPEDEE had not fulfilled its obligations under statute in relation to the case rather than a dispute as to whether unlawful discrimination had in fact occurred.[319]

Evidence and Proof

International law recognises that it can be difficult for a person to prove that discrimination has occurred, and thus requires that legal rules on evidence and proof are adapted to ensure that victims can obtain redress. Principle 21 of the Declaration of Principles on Equality states that:

> *Legal rules related to evidence and proof must be adapted to ensure that victims of discrimination are not unduly inhibited in obtaining redress. In particular, the rules on proof in civil proceedings should be adapted to ensure that when persons who allege that*

316 Government of the Republic of Moldova and UN Development Programme, *Quality of Legal Aid Services: A Capacity Needs Assessment for the National Council for State-guaranteed Legal Aid from the Republic of Moldova*, 2014, p. 16.

317 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 052/14 of 29 April 2014.

318 Chisinau Court of Appeal, Decision No. 3-282/2014 of 17 July 2014; Supreme Court of Justice, Decision No. 3ra-1486/14 of 26 November 2014.

319 Buiucani Court, Decision No. 3-282/2014 of 19 March 2014.

> *they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination (prima facie case), it shall be for the respondent to prove that there has been no breach of the right to equality.*

As this principle indicates, the "burden of proof" in cases of discrimination should be transferred to the respondent, once facts from which it may be presumed discrimination has occurred have been established. The CESCR has stated in its General Comment No. 20 that:

> *Where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively.*[320]

In line with these principles, Article 19 of the Law on Ensuring Equality provides that, in discrimination court cases, the claimant must adduce evidence of facts from which it may be presumed that discrimination occurred. The burden of proof is not shared by the claimant and the respondent. Unless the facts attract criminal liability, the burden then shifts to the respondent to rebut the presumption, either by proving that the claimant is in a dissimilar position to the comparator, that differential treatment is not referable to a protected ground, or that such treatment is otherwise justified.[321]

The approach to the burden of proof is different in respect of complaints made to the CPEDEE. In accordance with Article 13(2) of the Law on Ensuring Equality, the CPEDEE will strike out complaints unless, among other things, they include the facts and any evidence supporting the complaint of a rights violation. The Law does not set out whether these facts and evidence must be sufficient to show a *prima facie* case of discrimination. Article 15(1) of the Law then provides that the burden of showing that an impugned act does

320 See above, note 32, Para 13.

321 For further discussion of the criminalisation of some forms of discrimination under Moldovan law, see the discussion of the Criminal Code in section 3.2.3 above.

not constitute discrimination lies with the alleged perpetrator. Accordingly, it remains unclear whether the complainant must first make out a *prima facie* case before the onus shifts to the respondent.

The CPEDEE also takes a more expansive approach to what constitutes admissible evidence than do the courts. For example, the CPEDEE conducts on-site verification of circumstances;[322] a procedure in which courts have historically been reluctant to engage. Recent jurisprudence suggests that courts are reluctant to consider evidence procured by way of situational testing, a method of establishing discrimination by having two individuals who differ only in respect of one protected characteristic, interact with an alleged discriminator (e.g. a recruiter, a restaurant choosing who to serve etc) in order to see if they are treated differently.[323] In *Zapescu v Trabo Plus (Andyz Pizza Restaurants)*,[324] two candidates for a job (who knew one another) "tested" an employer's attitude towards them. Both the Chisinau Centru Court and Chisinau Court of Appeal held that evidence of the employer's refusal to hire one of the applicants was inadmissible. However the CPEDEE has accepted evidence from situational testing in the past.[325]

Remedies and Sanctions

It is essential that remedies are designed not only to address the needs of the individual bringing a claim, but to address structural causes of the discrimination experienced by the individual in the case, which are likely to affect others. In this respect, the CEDAW Committee has said:

> *This obligation requires that States parties provide reparation to women whose rights under the Convention*

322 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 155/14 of 11 December 2014.

323 Much has been written on situation testing as a method of proving discrimination. See, for example Centre for Equal Rights, Proving Discrimination Cases: the Role of Situation Testing, 2009, available at: http://www.eccar.info/sites/default/files/provingdiscriminationcases_theroleofsituationtesting_en_03.09.pdf.

324 Chisinau Centru Court, Decision No. 2-472/14 of 27 June 2014; and Chisinau Court of Appeal, Decision No. 2a-3692/14 of 22 January 2015. This is the only litigation to have considered the admissibility of situational testing evidence in Moldovan courts; as such, it cannot be said with certainty that such evidence is per se inadmissible.

325 See, for example, Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 156/14 of 17 October 2014.

> *have been violated. Without reparation the obligation to provide an appropriate remedy is not discharged. Such remedies should include different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition; changes in relevant laws and practices; and bringing to justice the perpetrators of violations of human rights of women.*[326]

The CESCR has also said that "effective" remedies include compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and public apologies.[327] Sanctions imposed on discriminators must be effective, proportionate and dissuasive.[328]

Article 18 of the Law on Ensuring Equality provides that where cases of discrimination are brought to court in a civil capacity, a court may:

- declare that the claimant's rights were violated;
- prohibit the continuation of the discriminatory conduct;
- order the reinstatement of the situation prior to the violation of rights;
- order compensation for material and moral damage and recovery of court costs; or
- declare that a discriminatory document is null and void.

The remedies and sanctions available for administrative offences, as well as the measures that the CPEDEE is itself empowered to undertake, are discussed below.

Administrative Mechanisms

Aside from bringing a case to court, persons who believe themselves to have been the subject of discrimination can file an administrative complaint with the CPEDEE.

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326 Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28: On the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of all Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, 2010, Para 32.

327 Para See above, note 32, Para 40.

328 See above, note 45, Principle 22.

The mechanisms available to the CPEDEE depend on its conclusions as to whether and what type of discrimination has occurred. Where no administrative or criminal offences are considered to have been committed, the CPEDEE can make recommendations under Article 15(4) to ensure the restoration of the victim's rights and to prevent the occurrence of similar acts. Such recommendations are communicated to the perpetrator and if after 10 days the recommendations are not adhered to, paragraph (6) provides that the CPEDEE may inform a superior body to take appropriate measures, or inform the public about the recalcitrant respondent. For example, in response to the CPEDEE's recommendations,[329] the Ministry of Education announced changes to the way that reasonable accommodation of children with disabilities were made when taking exams.[330]

The CPEDEE may also act in a conciliatory role: one of its functions under Article 12(1)(m) is to "contribute to the amicable resolution of conflicts arising from the commission of discriminatory acts".

With respect to administrative offences, the CPEDEE is empowered under Article 423 of the Contravention Code to establish that certain provisions of the Code have been contravened. If it determines that such contraventions have occurred, it may under Article 15(8) refer its findings to a competent court, which can then choose whether or not to impose sanctions. The administrative offences for which the CPEDEE has jurisdiction are outlined in part 3.2.3 of this report.

Finally, pursuant to Article 15(9), if the CPEDEE concludes that facts contain the elements of a criminal offence, it must send its case materials to the prosecutorial authorities. It should also be noted that while the CPEDEE cannot impose sanctions or award damages to victims of discrimination, certain actions which flout or obstruct the CPEDEE's operations are administrative offences.[331]

329 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 122/2014 of 9 September 2014.

330 Ministry of Education of the Republic of Moldova, "Changing Education Examination Ppupils with SEN", 9 March 2013, available at: http://www.aee.edu.md/content/modificarea-instruc%C5%A3iunii-de-examinare-elevilor-cu-ces.

331 See the analysis of the Contravention Code in section 3.2.3 of this report for a discussion of these administritive offffences.

However, the efficacy and impact of the system through which administrative offenses are determined and punished is questionable. According to the latest information provided by the CPEDEE, reports sent from the CPEDEE to courts in relation to administrative offences have been routinely invalidated.[332] This blanket rejection of CPEDEE findings has led it to suspend the procedure of issuing these reports to court. Generally, findings are struck out on the basis that the CPEDEE has failed to comply with the formal requirements of such findings, which are outlined in Article 443 of the Contravention Code.[333] It is clear that a system in which the commission of administrative offences is determined by the CPEDEE while jurisdiction for the imposition of sanctions and confirmation of the offence resides with courts is not working.

Besides CPEDEE and courts, the Ombudsperson's Institution, governed by the Law on the Ombudsperson (Law No. 52 of 3 April 2014), has an important role in preventing and combating discrimination. Among the Ombudsperson's core competencies are:

- the examination of individual complaints on the violation of rights and freedoms;
- the initiation of lawsuits against perpetrators of discrimination; and
- the power to notify and bring actions to the Constitutional Court.[334]

The Ombudsperson represents one of the few means of individual access to the Constitutional Court, albeit in an indirect manner. The Ombudsperson refers only a few cases each year to the Court, however. From 2013–2016 there have been a total of 12 referrals, nine of which occurred in 2013.[335] Nevertheless it can be effective. For example, the Constitutional Court found unconstitutional a provision which limited admission to PhD study to those aged under 35.[336]

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332 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, *Activity Report*, 2015, available at: http://www.egalitate.md/media/files/Raport%20general%202015.pdf.

333 Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Decision No. 004/13 of 22 November 2013.

334 Law on the Ombudsperson (Law No. 52 of 3 April 2014), Article 16.

335 Ombudsman, *Complaints to the Constitional Court*, 2016, available at: http://www.ombudsman.md/ro/advanced-page-type/sesizari-la-cc.

336 Constitutional Court, Decision No. 26 of 19 September 2013, available at: http://lex.justice.md/md/350753.

3.4.3 Jurisprudence on Equality and Non Discrimination

Moldova's equality laws are still young. It is perhaps, therefore, unsurprising that there is very limited jurisprudence to provide guidance on their interpretation. This section is not intended as a review of all equality and non-discrimination related decisions. Some discussion of numerous recent Moldovan cases in the area of equality and non-discrimination can be found in the Legal Resources Centre from Moldova's 2015 report entitled *Compatibility analysis of Moldovan legislation with the European standards on equality and non-discrimination.*[337] Instead, this section focuses on analysing a couple of key issues which are emerging in the case law. In addition, there have been four cases in the ECtHR in which Moldova was found to have breached the right to freedom from discrimination under Article 14 of the ECHR and each of these will also be discussed.

Sexual Orientation as a Prohibited Ground

It has already been noted that, while sexual orientation is not included as a prohibited ground in Article 1(1) of the Law on Ensuring Equality, there have been instances in which the CPEDEE has found discrimination on this ground through the direct application of the European Court of Human Rights (ECtHR) jurisprudence. In Decision No. 028/13 of 21 January 2014, the complainant's ex-husband was awarded custody of their child after their separation. Following an application made by the husband, the relevant child protection authority[338] reduced the length of time the complainant could spend visiting her child. The application cited her alleged homosexuality as a reason for a reduction in visitation rights. The complainant lodged a complaint to the CPEDEE accusing the authority of discrimination on grounds of sexual orientation. The CPEDEE found that as sexual orientation is a ground protected under Article 14 of the ECHR, it is also a ground on which the CPEDEE may uphold unlawful discrimination complaints.

337 Legal Resource Centre of Moldova, *Compatibility Analysis of Moldovan Legislation with European Standards on Equality and Non-Discrimination*, 2015, available at: http://crjm.org/wp-content/uploads/2015/07/LRCM-Compatib-MD-EU-nondiscrim-legisl-2015-07.pdf.

338 The Direction on the Protection of the Rights of Children within the Botanica District of Chisinau City.

The authors of this Report think that CPEDEE was correct to observe that Article 14 of the ECHR protects sexual orientation. While the ground is not expressly included in Article 14, the ECtHR found in *Kozak v Poland*[339] and *Gederdoc-M v Moldova*[340] that discrimination on this basis is prohibited. The CPEDEE was also right to conclude that it is subject to the ECHR and its case law: the Constitutional Court has recognised that, in accordance with Article 4(2) of the Constitution, provisions of the ECHR and ECtHR jurisprudence must be enforced in the same manner as national legislation and prevail to the extent of any inconsistency.[341]

However, in relying on the direct interposition of the ECHR to uphold the mother's claim, the Council forwent the opportunity to conclude that sexual orientation is included in Article 1(1) of the Law on Ensuring Equality by virtue of the phrase "or other similar criteria". Indeed, neither the CPEDEE nor any Moldovan court has been willing to recognise sexual orientation as a protected characteristic under Article 1(1).[342] A constitutional court judgment handed down two months prior to the CPEDEE's decision[343] declined to confirm that sexual orientation is a prohibited under the Law on Ensuring Equality (except to the extent that discrimination occurs in the field of employment, in which case it is specifically protected under Article 7).[344] There is no reason in principle to confine Article 1(1) in this way: the plain language of the Article includes analogous criteria and nothing about sexual orientation that renders it substantively different to, for example, race, sex or language. The Constitutional Court should have found that the Law on Ensuring Equality itself provides protection against discrimination on grounds of sexual orientation.

339 *Kozak v Poland*, European Court of Human Rights, Application No. 13102/02, 2 March 2010.

340 *GENDERDOC-M v Moldova*, European Court of Human Rights, Application No. 9106/06, 12 June 2012.

341 See above, note 19.

342 While the ex-husband twice appealed the CPEDEE's Decision No. 028/13 of 13 December 2013, neither court dismissed his claim on the ground that Article 1(1) includes sexual orientation. See Buiucani Court, Decision No. 3-416/14 of 20 November 2014, and Chisinau Court of Appeal, Decision No. 3a-22/15 of 5 March 2015.

343 Constitutional Court, Decision No. 14 of 8 October 2013.

344 This decision did not affect the later CPEDEE decision because the Court merely declined to answer whether sexual orientation falls within the phrase "or other similar criteria". It did not rule that Article 1(1) does not extend to this characteristic.

Religion and Discrimination

The Law on Ensuring Equality provides a number of specific exceptions to the right to non-discrimination in relation to the activities of religious institutions. The Law is expressed in Article 1(2)(c) not to extend to religious authorities to the extent that the impugned conduct is related to religious belief.[345] In employment, differential treatment in the course of the professional activities of religious authorities on grounds of religion does not constitute discrimination, so long as a person's religion is an essential requirement of the role and the requirement itself is legitimate and justified.[346] A similar concession is included in Article 9(4) in relation to enrolment to study at religious educational institutions.

The Constitutional Court recently upheld the constitutionality of the exception contained in Article 1(2)(c) of the Law on Ensuring Equality.[347] In a decision handed down on 16 May 2016, the Court found that the impugned Article did not infringe the right to equality contained in Article 16 of the Constitution. The Court stated that this right, along with the guarantee of religious autonomy in Article 31 of the Constitution, encompasses the freedom of religious institutions to manifest their beliefs. However, the Court noted that this freedom is not unlimited: it must be consistent with public order, public health, public morals, and the rights and freedoms of others. Thus, Article 1(2)(c) of the Constitution must be interpreted narrowly, so as to cover the teachings, canons and traditions of religions, but not to extend to acts conducted in the name of religion that are aimed at injuring others. Interpreted this way, Article 1(2)(c) was held to be consistent with the right of equality in Article 16.

To the extent that it recognises that the freedom to manifest religious belief is subject to the rights and freedoms of others, this decision is to be commended. Indeed, this qualification is no more than is required under international law: Article 9(2) of the ECHR preserves the freedom to manifest one's religion or beliefs but provides that this freedom can be limited insofar as it is necessary in a democratic society for the protection of the rights and freedoms of others.

345 See above, note 33, Article 1(2)(c).

346 *Ibid*., Article 7(6).

347 Constitutional Court, Decision No. 28g/2016 of 16 May 2016.

However, balancing the right to freedom of religion and the rights and freedoms of others has been approached differently by the courts on the matter of hate speech. In the Supreme Court of Justice case of *Genderdoc-M Information Center v Marchel, Balti and Falesti Bishop,*[348] the Court considered whether the conduct of the Bishop of the Balti and Falesti Diocese of the Orthodox Church had engaged in hate speech and incitement to discriminate against homosexuals. The Bishop stated that:

> *The [Law on Ensuring Equality] has opened the gate and created a heaven for homosexuals. We demand (…) that they not be allowed to find employment in educational institutions healthcare institutions. 92% of homosexuals are carriers of HIV and AIDS.*

The Balti Court found at first instance that the Bishop was liable and ordered that he publically apologise, repudiate the offending information and pay to the victims non-pecuniary damages and legal fees. The Supreme Court of Justice, however, quashed the Balti Court decision, holding that the impugned speech was in fact consistent with the teachings of the Orthodox Church and thus not unlawful.

The Supreme Court of Justice has been willing enough to find discrimination against homosexuals in a non-religious context. In *Genderdoc-M and Angela Frolov v Vitalie Marian*,[349] it found that the publication of an online "blacklist" containing the names of individuals who, in the defendant's opinion, supported homosexuality, was discriminatory. The statements of the Bishop in *Genderdoc-M Information Center v Marchel, Balti and Falesti Bishop* were similar in nature to those contained on the defendant's website, however the former escaped liability because he belonged to a religious institution.

The different approaches of the courts in these cases highlight the need for clearer analysis to be given to the complex issues of hate speech, religious freedom and the rights and freedoms of others. Religion cannot

348 Supreme Court of Justice, Decision No. 2ra-1448/15 of 16 September 2015.

349 Supreme Court of Justice, Decision No. 2ra-731/14 of 19 March 2014, available at: http://jurisprudenta.csj.md/search_col_civil.php?id=8408.

be a means through which hate speech is legitimised. The Supreme Court should only allow discrimination perpetrated by religious authorities to escape liability where such conduct is not inconsistent in a pluralist democratic society. The right to freedom of speech enables people to speak freely, even where their speech may offend, subject to certain limitations. It does not extend to permitting hate speech. The court in *Genderdoc-M Information Center v Marchel, Balti and Falesti Bishop* was too willing to accept that the statements of the Bishop were consistent with the teachings of the Orthodox church and thus did not give sufficient attention to the issue from the perspective of the prohibition on hate speech. It is arguable that, were the case to be heard again, the more recent constitutional court decision, detailed above, would be applied such that a different conclusion were reached.

European Court of Human Rights

The ECtHR has so far handed down four judgments against Moldova in which Article 14 of the ECHR, the right to be free from discrimination in the enjoyment of convention rights, was found to have been contravened. Three of these cases involved gender discrimination, and in particular the lack of effective measures in response to domestic violence, while one case concerned gender discrimination in respect of the right to freedom of assembly.

Case of Genderdoc-M v Moldova

The applicant in the *Case of Genderdoc-M v Moldova*[350] was a Moldovan NGO, whose object is to promote the rights of the Moldovan lesbian gay bisexual and transgender (LGBT) community. At issue was the decision of the Chisinau Municipal Council to refuse to permit the applicant to organise a public demonstration in May 2005, in support of a proposed law prohibiting the discrimination of sexual minorities. Permission was withheld on the basis that a law protecting minorities in Moldova already existed; an application to the Chisinau Mayor's Office was rejected for a similar reason.

Genderdoc-M challenged the decision of the Chisinau Mayor's Office on grounds that it was not made in accordance with legislation and was discriminatory. On

350 See above, note 314.

2 June 2005 the Chisinau Court of Appeal found for the applicant on the basis that the relevant statute, the Law on the Organisation and Conduct of Assemblies (Law No. 560-XIII of 21 July 1995), did not allow for refusal of permission based on the content of the protest. The Chisinau Mayor's Office appealed to the Supreme Court of Justice, citing the number of individuals and associations that had contacted it to express their vehement disagreement with both the protest and any law legalising homosexual partnerships. The Supreme Court of Justice allowed the appeal and referred the case back to the Chisinau Court of Appeal. The Court of Appeal, after hearing argument from the Chisinau Mayor's Office to the effect that staging of a protest in support of homosexuality would "endanger public order and social morality", found against the NGO. When the applicant challenged this decision, the Supreme Court of Justice rejected it on the basis that the applicant had not complied with various procedural requirements in relation to the protest.

Genderdoc-M filed a complaint against Moldova at the ECtHR alleging a violation of Articles 11 and 14 of the ECHR. Article 11 grants to everyone "the right to freedom of peaceful assembly" and prohibits restrictions on the exercise of this right other than such as are "necessary in a democratic society" in the interests of, among other things, public safety or the protection of morals. Moldova conceded that this Article had been violated. The question then became whether Genderdoc-M was discriminated against in the enjoyment of this right, in contravention of Article 14.
The ECtHR found for the applicant, reiterating that difference in treatment is discriminatory if:

> *[I]t has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting States enjoy a certain margin of appreciation in addressing whether and to what extent differences in otherwise similar situations justify different treatment in law; the scope of this margin will vary according to the circumstances, the subject matter and its background.*[351]

351 *Ibid*., Para 50.

The Court stated that, while Article 14 does not expressly protect people from discrimination on grounds of sexual orientation, sexual orientation was an "other status" protected under the Article. It also observed that where an impugned distinction relates to a personal or vulnerable sphere of one's life, "particularly weighty reasons need to be advanced before the Court to justify the measure complained of".[352] Similarly:

> *Where a difference of treatment is based on sex or sexual orientation the margin of appreciation afforded to the State is narrow, and in such situations the principle of proportionality does not merely require the measure chosen to be suitable in general for achievement of the aim sought; it must also be shown that it was necessary in the circumstances.*[353]

The Court concluded that the government of Moldova had failed to show that the distinction was not due to sexual orientation, given that the Chisinau Mayor's Office had stated before the Court of Appeal that the assembly should be banned not for procedural reasons but because of the opposition of many Moldovan citizens to homosexuality. There was no legitimate aim in pursuance of which the distinction was made and so the difference in treatment could not be justified.[354]

Case of Eremia v Republic of Moldova

The *Case of Eremia v Republic of Moldova*[355] considered whether state authorities' failure to adequately protect women from domestic violence can amount to gender-based discrimination. The first, second and third applicants in the case were the wife and two children of a Moldovan police of-

352 *Ibid.*, Para 51.

353 *Ibid.*, Para 51.

354 The Court also found that the right under Article 13 to an effective remedy for violations of ECHR rights was breached, given that it was more than a year and a half before the applicant's request for permission to stage the protest was answered. The breached right in respect of which an effective remedy was withheld was freedom of assembly under Article 11 and not the right to non-discriminatory enjoyment of rights under Article 14.

355 *Case of Eremia v Republic of Moldova*, European Court of Human Rights, Application No. 3564/11, 28 May 2013, Para 85.

ficer, who had for an extended period of time engaged in violence towards the applicants.

On multiple occasions, the first applicant had entreated Moldovan authorities to protect her and her children from her husband's conduct:

- she requested a divorce and asked for the statutory six month "cooling off period" to be waived, however a judge of the Calarasi District Court had refused to expedite the procedure in spite of her husband's violence and the President of the Court ignored a formal complaint about the judge's decision;[356]
- a protection order was taken out on 9 December 2010, however the Calarasi Social Assistance and Family Protection Department failed to enforce the order until 15 March 2011;[357]
- after lodging a police complaint as to the husband's violence and his non-compliance with the protection order, the first applicant was called to a police station and pressured to withdraw her complaint because if her husband lost his job, "this would have a negative impact on their daughter's educational and career prospects.";[358] and
- on 1 April 2011 the husband admitted to the Calarasi Prosecutor's Office that he had physically and psychologically abused the three applicants. However, he then concluded a plea-bargain with the prosecutor, such that he was conditionally released from criminal liability and the investigation was suspended for one year.[359]

The ECtHR first considered whether the right to freedom from torture, inhuman or degrading treatment or punishment contained in Article 3 of the ECHR had been breached. It noted that Article 1 imposes a positive obligation on state parties to ensure that persons within their jurisdiction can access the rights conferred in the Convention. While legislation exists in Moldova to combat and prevent domestic violence, such legislation was not implemented in practice: Moldova knew (or ought to have known) about the violence and failed to take reasonable steps to prevent it. It was thus in breach of Article 3.

356 *Ibid*., Para 12.

357 *Ibid*., Para 21.

358 *Ibid.*, Para 17.

359 *Ibid*., Para 27.

Having established that Moldova had breached the applicants' Article 3 rights, the Court considered whether this breach also amounted to discrimination prohibited under Article 14. The Court referred to its decision in *Opus v Turkey*[360] to the effect that the failure to protect women from domestic violence "breaches their right to equal protection of the law and that this failure does not need to be intentional."[361] It described the actions of the Moldovan authorities as:

> *[M]ore than a simple failure or delay in dealing with violence against the first applicant, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a women.*[362]

The Court also cited a report of the UN Special Rapporteur on violence against women, its causes and consequences, which had concluded that Moldovan authorities do not fully appreciate the seriousness and extent of the problem of domestic violence in Moldova "and its discriminatory effect on women".[363] Taken together, the conduct of Moldovan authorities indicated that the state was unwilling to extend protection to the applicants in part because they were women. The state had breached Article 14 in conjunction with Article 3.

Case of Mudric v Republic of Moldova

At issue in the *Case of Mudric v Republic of Moldova*[364] was also whether the response of Moldovan authorities to a pattern of domestic violence against the applicant amounted to discrimination on grounds of gender.

The applicant, a 72-year-old woman, lived next door to her ex-husband, whom she had divorced 22 years before the commencement of proceedings. Her ex-husband suffered from paranoid schizophrenia and from 1981 had begun to

360 *Opuz v Turkey*, European Court of Human Rights, Application No. 33401/02, 9 June 2009.

361 See above, note 355, Para 85.

362 *Ibid*., Para 89.

363 Human Rights Council, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Ertürk, Addendum*, UN Doc. A/RC/11/6/Add.4, 2009.

364 *Mudric v Republic of Moldova*, European Court of Human Rights, Application No. 74839/10, 16 July 2013.

believe that the applicant was trying to poison him. Documents were adduced during the hearing showing that Moldovan authorities were aware of the ex-husband's mental health problems and the fact that he harboured significant antipathy towards the applicant.

On 19 February 2010 the applicant's ex-husband broke into her house and remained in it permanently thereafter.[365] This led to a criminal investigation by the Ocnita police, however her husband was absolved of responsibility as the crime had been committed "in a state of insanity."[366] The applicant's complaints in respect of violence led to the issuance of three protection orders, the last of which was issued on 16 December 2010, though none were enforced.

The ECtHR found first that Article 3 of the ECHR in combination with Article 1 was breached, in that Moldova failed to satisfy its positive obligations to ensure that individuals within its jurisdiction are protected from ill-treatment.[367] While Moldova had enacted legislation establishing a mechanism through which such ill-treatment could be prevented and punished, these laws were not satisfactorily applied in practice. The Court identified a date at which the authorities could properly have charged the applicant with three Criminal Code offences, namely:

- bodily harm and threat of such harm (Articles 152 and 155);
- break-in (Article 179); and
- failure to abide by a court decision (Article 320).

Instead, prosecutions commenced only six months after the applicant's complaint relating to the break-in, and eight months after the ex-husband's disobeyed a court decision by breaching the protection order.[368] These delays indicated a failure to extend the right to freedom from ill-treatment to the applicant and constituted a breach of Article 3.

As to whether Moldova had engaged in discrimination, in breach of Article 14 of the ECHR, the Court noted that despite complaints of violence, the ap-

365 *Ibid.*, Para 10.

366 *Ibid.*, Para 17.

367 *Ibid.*, Para 55.

368 *Ibid.*, Para 51.

plicant's ex-husband was allowed to live in her house for more than a year. It also cited the failure of authorities to enforce the three protection orders. Combined, this conduct amounted to Moldova "repeatedly condoning such violence and reflected a discriminatory attitude towards [the applicant] as a woman."[369] Moldova was found to be in breach of Article 14 in conjunction with Article 3.

Case of TM and CM v Republic of Moldova

At issue in the *Case of TM and CM v Republic of Moldova*[370] was again Moldova's response to a prolonged period of domestic violence against the first and second applicant, a mother and daughter respectively.

After an assault on 21 March 2011, the first applicant complained to police about violence at the hands of her ex-husband and applied for a protection order. Despite legislation stipulating that such an application must be dealt with in 24 hours, it took a court 10 days to process it. The protection order was issued on 11 April 2011. The applicant also asked the prosecutor's office to initiate a criminal investigation against her ex-husband, however this complaint was rejected. Several medical reports were made after incidences of violence, recording injuries to both the first and second applicants.

The ECtHR found first that the ex-husband's conduct against the two applicants reached the threshold of severity required for classification as ill-treatment as per Article 3. The Court then considered whether the authorities had discharged their positive obligation (imposed in Article 1) to both establish a legislative framework aimed at preventing and punishing ill-treatment, and to implement those laws in practice. Citing the same statutory provisions as in *Eremia* and *Mudric*, the Court concluded that Moldova had sufficient legislation in place to combat domestic violence.[371] The Court then considered whether the government knew or ought to have known about the violence, and if so whether it took reasonable steps to prevent it. It cited the medical

369 *Ibid.*, Para 62.

370 *T. M. and C. M. v The Republic Of Moldova*, European Court of Human Rights, Application No. 26608/11, 28 January 2014.

371 *Ibid.*, Para 44.

reports, the protection order and the various fines imposed: the failure to address the violence properly constituted a breach of Article 3.[372]

The Court then considered whether the right to freedom from ill-treatment had been withheld from the applicants on grounds of gender, in breach of Article 14. The Court noted the prosecutor's failure to start a criminal investigation because it did not regard the first applicant's injuries as sufficiently severe,[373] and the failure of the authorities to enforce a protection order. The Court explained that in cases of domestic violence, the failure of authorities to take a proactive approach may illustrate a discriminatory attitude towards women:

> *Considering the particular vulnerabilities of victims of domestic violence, who often fail to report incidents, it was for the authorities to verify whether the situation warranted a more robust reaction of the State and to at least inform the first applicant of the existing protective measures.*[374]

As in *Eremia* and *Mudric*, this inaction amounted to condoning violence and reflected a discriminatory attitude towards the applicants as women, in breach of Article 14.

3.5 Summary

There are currently no states in the world whose legal and policy framework adequately uphold the right to equality in line with international best practice. That said, while there is room to improve Moldova's legal framework to ensure full protection for the right to equality, the framework is one of the more comprehensive frameworks currently in existence. At the international level, Moldova has ratified the major UN anti-discrimination treaties including CEDAW, CERD and CRPD (although state party reports are often delivered late) and regionally it is party to the ECHR among other instruments. Pursuant to Article 4 of the Constitution, these conventions are to be applied in place of domestic legislation to the extent of inconsistency. There is a mixed success in applying

372 *Ibid.*, Para 49.

373 *Ibid.*, Para 12.

374 *Ibid.*, Para 60.

this principle. While the CPEDEE has displayed a readiness to prioritise international law in this way, courts have been more reticent.

At the domestic level, the right to equality is protected through the Constitution, the Law on Ensuring Equality and a series of statutes dealing with particular characteristics or areas of activity. Article 16 of the Constitution enshrines the right to equality, the right is expressed to apply only to Moldovan citizens and the provision only references the equality of a fixed list of protected groups, meaning that constitutional protection falls short of what is required. However, the Law on Ensuring Equality prohibits discrimination on a wide range of grounds and, vitally, establishes a regulator charged among other things with examining and conciliating complaints of discrimination and is central to the conclusion that Moldova's legal framework on equality is more advanced than many states.

Despite this framework, there are serious impediments to access to justice for victims of discrimination in Moldova. The CPEDEE lacks the power to impose penalties and sanctions on those that it considers to have engaged in discrimination. Rather, it is confined to remedies such as making recommendations as to the restoration of rights, attempting to conciliate complaints and making referrals to prosecutorial bodies. And there have been relatively few occasions on which courts have heard and dealt with equality cases in a matter compliant with international standards.

Certain types of litigation remain inaccessible to aggrieved persons. For now, although the subject of ongoing litigation, there is no right of direct petition to the Constitutional Court, with individuals and NGOs having to rely on referrals from courts of law and other government bodies in order to impugn unconstitutional legislation. Nor can the CPEDEE bring cases directly to the Constitutional Court regarding legislation it considers unconstitutional (although the Ombudsman is able to do so). Further, while legal aid is generally available to victims of discrimination and such litigants are exempt from court fees, the government does not provide lawyers with expertise in discrimination law.

In summary, a significant increase in improving implementation of the present legal framework must be a priority if the framework is to provide the protection required and the means necessary to tackle the patterns of discrimination identified in Part 2 of the report.

4 RECOMMENDATIONS

In light of the foregoing analysis, a series of recommendations are offered to the government of Moldova. These recommendations are offered in order to enable Moldova to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality both by strengthening the protection from discrimination through improving the legal and policy framework in respect to equality and through other means.

All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality. Recommendations are also based on conclusions reached at the ends of Parts 1, 2 and 3 of this report.

Recommendation 1: Strengthening of International Commitments Related to Equality

Moldova should ratify the following United Nations and European human rights instruments, which are relevant to the rights of equality and non-discrimination:

United Nations Human Rights Instruments

- the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008);
- the Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006);
- the Third Optional Protocol to the Convention on the Rights of the Child (communicative procedure) (2011);
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);
- the International Convention for the Protection of All Persons from Enforced Disappearances (2006);
- the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956); and
- the Domestic Workers Convention of the International Labour Organisation (No. 189) (2011).

European Human Rights Instruments

- Protocol No. 12 to the European Convention of Human Rights (2000);
- the European Charter for Regional or Minority Languages (1992);
- the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995);
- the Convention on Preventing and Combating Violence against Women and Domestic Violence (2011).

Recommendation 2: Constitutional and Legislative Reform

Moldova should undertake a review of certain provisions of the Constitution,[1] as well as all legislation and policy, in order to (i) assess their compatibility with the rights to equality and non-discrimination as defined under the international instruments to which it is party and (ii) amend and, where necessary, repeal existing laws, regulations and policies that conflict with the right to equality. A number of the provisions which should be addressed are:

Constitution

- Article 16, paragraph 2, which guarantees the right of equality to citizens of Moldova only, and which contains an exhaustive list of prohibited grounds to the exclusion of such grounds as age, disability, HIV status and sexual orientation;
- Article 27, paragraph 2, which guarantees the right to freedom of movement to Moldovan citizens only;
- Article 32, which guarantees the right to freedom of opinion and expression to Moldovan citizens only;
- Article 33, paragraph 2, which guarantees the right to intellectual property protection to Moldovan citizens only;
- Article 39, which guarantees the right to participate in the administration of state affairs and public functions to Moldovan citizens only;
- Article 41, which guarantees the right to associate in political parties and other socio-political organisations to Moldovan citizens only;

1 Constitution of the Republic of Moldova, 29 July 1994.

- Article 43, paragraph 2, which, in stipulating that "protecting measures" are to be implemented regarding working conditions for women and young people, sanctions the paternalistic treatment of such persons (the Article should simply endorse positive action);
- Article 47, which guarantees the right to social welfare to Moldovan citizens only;
- Article 50, paragraph 3, which employs the term "handicapped" to describe persons with disabilities;
- Article 51, which employs the term "handicapped" to describe persons with disabilities and which guarantees to such persons "normal" conditions instead of equal conditions; and
- Article 52, which guarantees the right to petition public authorities to Moldovan citizens only.

Law on Ensuring Equality (Law No. 121 of 25 May 2012)

- Article 1, paragraph 2, which provides that the scope of the Law does not extend to discrimination in the areas of family (including marriage), adoption relations and religious institutions in respect of religious beliefs;
- Article 2, which does not include anticipatory measures in its definition of "reasonable accommodation"; and
- Article 9, paragraph 4, which preserves the right of religious educational institutions to refuse to admit a person to study in certain circumstances, without stipulating that the refusal must be legitimate and justified.

Law on Ensuring Equal Opportunities between Women and Men (Law No. 5 9 February 2006)

- Article 2, to the extent that it defines the harm necessary for conduct to count as discriminatory as a "limitation or impediment of recognition, exercise, and implementation" instead of the broader definition of discriminatory harm as "less favourable treatment";
- Article 2, to the extent that it requires a facially neutral provision or practice to have an "unequal" effect in order to constitute indirect discrimination, instead of simply requiring that the provision or practice put a person at a "particular disadvantage";

- Article 2, to the extent that it does not include discrimination by association and victimisation amongst the types of discriminatory conduct prohibited under the Law (this may be addressed through promulgation of the Law on Amendments and Addenda to Certain Legislative Acts (Law No. 180 of 15 May 2014)); and
- Article 5, paragraph 6, which frames positive action (or "affirmative measures") as an exception to indirect discrimination instead of a necessary component of non-discrimination.

Law on Social Inclusion of Persons with Disabilities (Law No. 60 of 30 March 2012)

- The Law should be amended so as to guarantee to persons with disabilities the right to independent life and integration into the community.

Civil Code (Code No. 1007 of 6 June 2002)

- Article 24, which allows courts to deprive persons with "intellectual disabilities" of legal capacity without reference to other facts.

Civil Procedure Code (Law No. 225 of 30 May 2003)

- Article 305, which provides that judicial orders that a person be forcefully referred to psychiatric care are not subject to appeal; and
- Article 306, which provides that the hearing of an application for a declaration of legal incapacity does not require the person whose capacity is being contested to be present, instead requiring only the presence of a representative from the Guardianship and Trusteeship Body.

Criminal Code (Law No. 985 of 18 April 2002)

- Article 176, paragraph 1(d), which suggests that multiple discrimination is necessarily more severe than single status-based discrimination;
- Article 77, sub-paragraph (d), which contains a closed list of prohibited grounds which does not include grounds such as sex, gender identity and sexual orientation; and

- Article 346, which criminalises certain forms of conduct, which may violate the right to freedom of expression, for example, acts aimed at "the humiliation of national honour and dignity".

Labour Code (Law No. 154 of 28 March 2003)

- Article 8, paragraph 2, which provides that distinctions in the context of employment due to the "specific requirements" of a job are not discriminatory, without requiring that such distinctions are genuine occupational requirements or can be justified against strictly defined criteria;
- Article 248, which prohibits women from undertaking certain work including "hard labour and hurtful and underground works" as well manual labour involving weights "exceeding the maximum standards established";
- Article 250, to the extent that it equates pregnancy and childrearing with a reduction in capacity or productivity; and
- Articles 8, 32, 62, 76, 77, 85, 96, 97, 100, 103, 105, 110, 111, 116, 120, 121, 128, 183, 249, 318, which use the terms "invalid" or "handicapped" to describe persons with disabilities.

Family Code (Law No. 1316 of 26 October 2000)

- Article 2, which defines marriage as only being between a man and a woman; and
- Article 15, which expressly prohibits same-sex marriage.

Law on Mental Health (Law No. 1402 of 16 December 1997)

- Article 11, paragraph 1, which establishes that consent to treatment is not required when applying coercive medical measures in accordance with the Criminal Code and in the case of admission to hospital under Article 28; and
- Article 28, which provides that a person may be hospitalised without consent and in the absence of a court judgment where the person's condition is severe and there is a direct social threat or serious risk to the individual's health, potentially allowing for the arbitrary deprivation of liberty or inhuman treatment.

Recommendation 3:
Implementation and Enforcement of the Law on Ensuring Equality

The Moldovan government should ensure the full and effective implementation of the Law on Ensuring Equality, in particular by:

- Ensuring that there are suitable mechanisms to secure remedies and sanctions in cases of discrimination;
- Conducting a full review of the powers of the CPEDEE and considering whether additional powers, such as an ability to impose sanctions and an ability to bring cases before the Constitutional Court may be workable and effective;
- Training legal-aid lawyers who are specialists in discrimination and equality law, who may help victims of discrimination to enforce their rights under the Law on Ensuring Equality.
- Providing training for (senior) public decision makers, including law enforcement and the judicial personnel to obtain a better understanding of discriminatory concepts and practice.

Recommendation 4:
Implementation and Enforcement of Other laws Aimed at Prohibiting Discrimination

The Moldovan government should introduce reforms to ensure the full and effective implementation of other legislative provisions aimed at prohibiting equality. For this purpose:

- The Moldovan government should undertake a comprehensive review of all legislation which prohibits discrimination including (i) the Law on Ensuring Equality, (ii) the Law on Ensuring Equal Opportunities between Women and Men, (iii) the Law on Social Inclusion of Persons with Disabilities and (iv) stand-alone non-discrimination provisions in other pieces of legislation. The review should seek to harmonise the provisions so that the relationship between the different protections offered is clear and complementary, and should consider the repeal or amendment of provisions which have been, in practice, superseded by the Law on Ensuring Equality.
- The Moldovan government should amend the Law on Ensuring Equal Opportunities between Women and Men to introduce remedies for

breach of the duties created by the Law, particularly in respect of those duties that go beyond the non-discrimination obligations in the Law on Ensuring Equality, such as the duty on employers under Article 10(1) of the Law on Ensuring Equal Opportunities between Women and Men to cooperate with employees and trade union representatives to establish internal regulations to prevent discrimination at work.

- The Moldovan government should amend the Law on Social Inclusion of Persons with Disabilities so as to establish a mechanism through which the obligation under Article 34(4) on employers with at least 20 staff to create or reserve jobs for disabled people amounting to 5% of their total number of employees can be monitored and enforced.
- The Moldovan government should amend the Law on Social Inclusion of Persons with Disabilities such that the prohibition of discrimination in Article 8 applies to non-state entities generally, instead of only applying to such entities in certain contexts such as employment.

Recommendation 5: The Implementation of National Policies

- The Ministry of Justice should ensure that future national policies contain strong, measurable actions and targets in respect of non-discrimination and that such policies are monitored and reviewed regularly to ensure that they are being implemented, including through the collection of disaggregated data.
- The Ministry of Justice should develop a new National Human Rights Action Plan following the lapsing of the 2011 Plan[2] and the Ministry's stated commitment to finalising a new plan by the fourth quarter of 2015.
- The Ministry of Labour, Social Protection and Family should finalise and implement the 2016–2020 National Gender Equality Programme.
- The CPEDEE should publish instructions for the collection of disaggregated data as to discrimination in various fields.
- The government should introduce a new national policy regarding persons with disabilities, given the lapsing of the 2010–2013 Strategy on Social Inclusion of People with Disabilities[3] in 2013.

2 Decision approving the 2011–2014 National Human Rights Action Plan (Government Decision No. 90 of 12 May 2011), available at: http://lex.justice.md/md/339395.

3 Law Approving the 2010–2013 Strategy on Social Inclusion of People with Disabilities 2010–2013 (Law No. 169 of 9 July 2010).

- The Bureau for Interethnic Relations should introduce a national policy regarding Roma persons following the lapse of the 2011–2015 Action Plan for the Support of Roma People from the Republic of Moldova,[4] to build on developments introduced under the former policy including the introduction of community mediators.

Recommendation 6:
Actions to Address Discrimination Against Specific Groups

Moldova should take specific actions to address the discrimination and disadvantage faced by different groups in Moldova, including all of those highlighted in Part 2 of this report. Such steps should be taken in addition to improving protection from discrimination in law by acting on recommendations 2, 3 and 4. These steps should include, but not be limited to, the following:

Gender

- Parliament should amend all legislative provisions set out in Recommendation 2 above which discriminate on the basis of gender;
- Parliament should consider the adoption of legislation providing for specific positive action measures in respect of those areas in which women remain underrepresented;
- Competent public authorities should, in accordance with Article 5, paragraph 2 of the Law on Ensuring Equal Opportunities between Women and Men, refrain from promoting policies or allowing the performance of actions which are inconsistent with the notion of equal opportunity between men and women.
- Heads of central and local public administration authorities should, in accordance with Article 6(3) of the Law on Ensuring Equal Opportunities between Women and Men, ensure equal access to public office, without discrimination as to sex.
- In accordance with the Concluding Observations of the Committee on the Elimination of Discrimination against Women as to Moldova's

4 Decision approving the 2011–2015 Action Plan for the Support of Roma People from the Republic of Moldova (Government Decision No. 494 of 8 August 2011), available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=339319.

fourth and fifth periodic reports,[5] the government should develop a comprehensive strategy across all sectors, targeted at both sexes, to overcome patriarchal and gender-based stereotypical attitudes concerning the roles and responsibilities of women.

- The government should establish a mechanism through which Article 11 of the Law on Ensuring Equal Opportunities between Women and Men can be enforced. Pursuant to this Article, various actions of employers are deemed to be discriminatory, including the placing of job advertisements with criteria implying that priority will be given to a particular sex.
- The government should take immediate steps to address the gender pay gap, especially in light of Article 11(e) of the Law on Ensuring Equal Opportunities between Women and Men, which states that it is discriminatory for an employer to, on the basis of sex, apply different conditions of remuneration for work of equal value.
- The Ministry of Labour, Social Protection and Family should take immediate actions to address the problem of domestic violence against women, including through appropriate training for police officers, social workers, prosecutors and judges.
- The government should ensure that civil servants and all other public officials, including the police and judges, receive specific training on gender equality, with ongoing refresher courses available.
- The government should implement the Law on Preventing and Combatting Domestic Violence (Law No. 45 of 1 March 2007) as a matter of urgency. Article 201 of the Criminal Code, which makes it an offence to engage in domestic violence, should be used to prosecute the perpetrators of domestic violence.
- The government should introduce measures aimed at improving police responses to domestic violence, in light of the spate of ECtHR judgments in which government responses to prolonged patterns of domestic violence were found to be inadequate and discriminatory.[6]
- The government should ensure that there is at least one domestic violence placement centre in each district, which offers rehabilita-

5 Committee on the Elimination of Discrimination against Women, *Concluding Observations: Moldova*, UN Doc. CEDAW/C/MDA/CO/4-5, 29 October 2013, Para 18(b).

6 *Eremia v Republic of Moldova*, European Court of Human Rights, Application No. 3564/11, 28 May 2013; *Mudric v Republic of Moldova*, European Court of Human Rights, Application No. 74839/10, 16 July 2013; *T. M. and C. M. v The Republic of Moldova*, European Court of Human Rights, Application No. 26608/11, 28 January 2014.

tion services for the victims of domestic violence. Further, the government should ensure that such centres provide shelter to victims regardless of their normal place of residence.
- Local laws should be enacted in the Transnistrian region regarding domestic violence and gender discrimination, given that the lack of *de facto* control over this region means that national domestic violence laws are unenforceable.

Disability

- The government should review all relevant national legislation with a view to completing the transition from a medical model of disability to the social model envisaged by the Law on the Social Inclusion of Persons with Disabilities and the CRPD, with a focus on eliminating barriers faced by persons with disabilities.
- The government should enforce legal provisions requiring reasonable accommodation to be provided to persons with disabilities, such as Article 8 of the Law on Social Inclusion of Persons with Disabilities, particularly in relation to access to infrastructure and information.
- The extent to which the 2010–2013 Strategy on Social Inclusion of People with Disabilities was implemented should be evaluated.
- Planning and construction laws should be brought into line with the Law on Social Inclusion of Persons with Disabilities such that all new buildings are accessible to persons with disabilities.
- The government should reform all educational institutions including higher education institutions and boarding schools, to ensure that students with disabilities are able to participate on an equal basis with others.
- The government should introduce procedures to ensure the effective participation of women with disabilities in elected office, particularly in light of potential amendments to the Law on Government (Law No. 64 of 31 May 1990) imposing a minimum proportion of female candidates on election lists.
- The government should reform the legislative framework through which persons with disabilities are deprived of legal capacity, so as to bring it into conformity with international law, including Article 24 of the Civil Code and Article 305 of the Civil Procedure Code.
- The CPEDEE should draft guidelines for lawyers containing standards as to the defence or representation of persons with disabilities.

- In accordance with the Concluding Observations of the Committee on the Elimination of Discrimination against Women as to Moldova's fourth and fifth periodic reports,[7] the government should effectively investigate all cases of sexual assault against women with disabilities in residential institutions, facilitate access by such women to reproductive health care and ensure that all medical interventions are based on informed consent.

Sexual Orientation and Gender Identity

- The government should review legislation and ensure that references to sexual orientation and gender identity are in line with international standards.
- The Parliament and the Government should reject all attempts to introduce legislation which discriminates on grounds of sexual orientation or gender identity, or which abrogates existing legislation which protects against discrimination on the grounds of sexual orientation or gender equality.
- Regardless of whether an amendment is made to Article 1(1) of the Law on Ensuring Equality to expressly include sexual orientation as a prohibited ground, the judiciary should find unequivocally that sexual orientation comes within the phrase "or other similar criteria."

Health Status

- The Ministry of Health should take steps to counter discrimination against persons living with HIV or Tuberculosis in healthcare facilities, both public and private.
- The Ministry of Health should ensure that people living with HIV/AIDS or Tuberculosis have equal access to employment and education services.
- The Bureau of Migration should refrain from any mandatory HIV testing of asylum seekers.
- The Bureau of Migration should ensure that the health status of asylum seekers does not affect whether they are able to access Accommodation Centres.

7 See above, note 5, Para 38(d).

- The government should enforce Article 22 of the Law on Prevention of HIV/AIDS Infection (Law No. 23-XVI of 2007) prohibiting discrimination based on HIV status at all stages of employment.
- The government should enforce privacy and confidentiality safeguards for persons living with HIV/AIDS under the Law on Prevention of HIV/AIDS Infection (Law No. 23-XVI of 2007), to prevent the disclosure of a person's HIV status to third parties.
- The government should monitor the extent to which employers make decisions based on the HIV status of candidates, and must prevent employers from demanding medical certificates from applicants in contravention of Article 15 of the Law on Prevention of HIV/AIDS Infection.
- The government should ensure that persons living with Tuberculosis are not forcibly detained and treated pursuant to the Regulation on Coercive Temporary Hospitalisation in Anti-Tuberculosis Specialised Healthcare Institutions of Persons with Contagious Tuberculosis who Refuse Treatment.

Race and Ethnicity

- The Bureau for Interethnic Relations should introduce training for all law enforcement agencies on preventing ill-treatment of ethnic minorities and foreign nationals.
- The Bureau for Interethnic Relations and the General Prosecutor's Office should ensure that any law enforcement agent found to have ill-treated a person on the basis of their ethnicity, nationality or skin colour, or to have failed to protect persons with such characteristics from hate crime, should face appropriate disciplinary proceedings.
- The government should allocate adequate funding to national policies and action plans aimed at eliminating all forms of discrimination against Roma, especially women and girls.
- Given the lack of statistical data in the Bureau for Interethnic Relations report on the implementation of the 2011–2015 Action Plan for the Support of Roma People from the Republic of Moldova, the Bureau should conduct further statistical analysis of progress made in respect of equality and non-discrimination of Roma.
- The government should introduce appropriate policies in order to ensure equal and non-discriminatory access for Roma to public services provided by public and private entities.

- The General Prosecutor's Office should adopt internal regulations ensuring that hate crimes against ethnic minorities are properly investigated.
- The General Police Inspectorate should introduce training for all law enforcement agencies to ensure that all hate crimes against ethnic minorities and foreign nationals are properly investigated.

Language

- The Supreme Court of Justice should promulgate an advisory opinion or guidelines as to the use of language in court proceedings, taking into account Article 13 of the Constitution, which provides that the state is required to protect the right to the "preservation, development and use" of both Russian and other languages.
- The Ministry of Justice should ensure that courts accommodate applicants who do not speak Romanian, in light of the CPEDEE's findings of continued discrimination in access to justice on grounds of language.[8]

Religion

- The government and Parliament should ensure the application in practice of Article 31 of the Constitution providing for a separation of religion and state.
- The Ministry of Education should ensure that teaching staff are instructed on the importance of freedom of religion as preserved in the Law on Freedom of Conscience, Thought and Religion (Law No. 125 of 2007) and Article 31 of the Constitution.
- The government should monitor the extent to which Article 15 of the Law on Freedom of Conscience, Thought and Religion is used as a basis for privileging adherents to the Moldovan Orthodox Church in terms of access to public services and public sector positions.

8 See, for example, Council on the Prevention and Elimination of Discrimination and Ensuring Equality, *Activity Report*, 2014, p. 19, available at: http://egalitate.md/media/files/Moldovan-Equality-Body-Activity-Report-2014.docx; and Council on the Prevention and Elimination of Discrimination and Ensuring Equality, *General Report on the Situation in the Field of Prevention and Combating Discrimination in Moldova*: 2015, 2016, p. 10, available at: http://egalitate.md/media/files/Raport%20general%202015.pdf.

- Agreements between the Ministry of Defence and the Moldovan Orthodox Church, under which adherents to the Church are able to access special privileges in the army, should be dismantled.
- The Ministry of Justice should ensure that religions other than the Moldovan Orthodox Church, including Muslim groups such as the Spiritual Gathering of Muslims of Moldova, are able to register as religious denominations under Law on Freedom of Conscience, Thought and Religion.
- If and when Transnistria returns to the *de facto* control of Moldovan authorities, the Ministry of Justice should take immediate steps to ensure that persons in the region that do not belong to the Russian Orthodox Church are not discriminated against on grounds of religion (including under Article 3 of the Law on Freedom of Conscience and Religious Organisations (1995)).

Age

- Parliament should enact legislation stipulating that the reaching of retirement age is not a legitimate basis for terminating a person's employment.[9]
- The government should ensure that there is no bar on persons above a certain age from being considered from particular positions unless the bar is an objectively justified means of achieving a legitimate aim.

Recommendation 7: Data Collection

During the research for this report, it has been established that there is a lack of information, including statistics, in relation to key indicators of equality in Moldova. State authorities should collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality. Wherever statistics are collected in relation to key indicators of equality, they should be disaggregated in order to demonstrate

9 In Constitutional Court, Decision No. 6 of 22 March 2011, the Constitutional Court found that termination on this basis did not amount to age-related discrimination.

the different experiences of disadvantaged groups within Moldovan society. Hate crime statistics must be collected and publicised, including statistics on gender-based violence. Moldova should further ensure that such information is not used in a manner that violates human rights.

Recommendation 8:
Education on Equality

Moldova should take action to raise public awareness about equality, and to ensure that all education establishments, including private, provide suitable education on equality as a fundamental right. Such action is particularly necessary in order to modify social and cultural patterns of conduct and to eliminate prejudices which are based on the idea of the superiority or inferiority of one group within society in relation to another.

Recommendation 9:
Prohibition of Regressive Interpretation

In adopting and implementing laws and policies to promote equality, Moldova should not allow any regression from the level of protection against discrimination that has already been achieved.

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The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

Promo-LEX is a non-governmental organisation that aims to advance democracy in Moldova, by promoting and defending human rights, monitoring democratic processes and strengthening civil society.

In recent years Moldova has undertaken significant legal and policy reform on equality and non-discrimination. These reforms offer promise. However, this report finds that the Moldovan rallying cry – "we want deeds not words" – is particularly pertinent in addressing equality and non-discrimination.

This report identifies countless gaps between the "words" of Moldova's legislation and the "deeds" of both state and private actors. The state has not acted to repeal discriminatory legal provisions affecting groups such as lesbian, gay, bisexual and transgender persons and persons with disabilities. Ethnic profiling by the police and the systemic institutionalisation of persons with mental disabilities are stark illustrations of the failure to eliminate discriminatory practices by state actors. The authorities have not effectively enforced laws which prohibit discriminatory violence. Despite legal prohibitions, employers and service providers continue to discriminate – often overtly – on grounds ranging from race to gender and health status to age. The Council on the Prevention and Elimination of Discrimination and Ensuring Equality – which has considered hundreds of discrimination cases in the few years since its establishment – cannot impose sanctions and the courts, to date, seem reticient to follow the Council's lead.

The report concludes that while the framework necessary to address discrimination and inequality in Moldova is in place, the state must now focus on implementation and enforcement, and so ensure that its deeds match its words.

This report has been prepared with the financial assistance of the European Union. The contents of this report are the sole responsibility of the Equal Rights Trust and can in no way be taken to reflect the views of the European Union.