

**SUBMISSION PREPARED BY THE HUMAN RIGHTS RESOURCE GROUP FROM
MOLDOVA FOR THE UNIVERSAL PERIODIC REVIEW OF REPUBLIC OF
MOLDOVA BY THE HUMAN RIGHTS COUNCIL**

This compilation has been produced in January-March 2016 by the Human Rights Resource Group¹ for the United Nations Office of the High Commissioner for Human Rights in the process of preparing the second cycle of the Universal Periodic Review of Moldova. The issues identified below reflect this Group's assessment of key priorities for the effective implementation of Moldova's human rights obligations and reflect the expertise of the Group's members and of the NGOs they represent. The authors also took into consideration the voluntary pledges and commitments made by Moldova.

| | |
|---|----|
| 1. Access to justice of persons deprived of legal capacity | 1 |
| 2. Rights of persons with mental disabilities subject to forced hospitalization | 2 |
| 3. Access to justice of national minorities in civil cases | 5 |
| 4. The right to translation and interpretation for crime suspects and arrested people | 6 |
| 5. Freedom of religion and belief | 8 |
| 6. Bias/hate crimes | 11 |
| 7. Legal aid and empowerment of vulnerable groups | 14 |

1. ACCESS TO JUSTICE OF PERSONS DEPRIVED OF LEGAL CAPACITY

In Moldova, a person who has been deprived of his/her legal capacity has little chance and no legal avenues to regain it. According to the procedural law, only guardians, family members, psychiatric institutions, guardianship authorities or the prosecutors have the right to file a petition on behalf of the person deprived, asking to restore his/her legal capacity.² This means that people denied of their legal capacity fully depend on their guardians and there is a risk for abuse due to the lack of an effective complaint mechanism.

According to the official information received from the Ministry of Justice, from 2012 till 2014, 665 persons were deprived of their legal capacity by a court order.³ However, in all this period, only one case of restoring the legal capacity was

¹ The **Human Rights Resource Group** is an informal coalition of 8 human rights activists from Moldova who act both in their individual capacity and/or represent human rights organizations. The Group's aim is to monitor, document, and report human rights violations occurring in the country and undertake advocacy efforts for resolving them. The Group was established in 2010 as a fellowship programme and it is supported by the Soros Foundation Moldova.

² The person deprived of legal capacity is not included in the list of those eligible to request restoration. Civil Procedural Code (2003) Art. 170 para. (1) Letter c), available at: <http://goo.gl/xoIJc>. **All hyperlinks were last accessed on 20 March 2016.**

³ Response on the request for public information, by Ministry of Justice from 25 May 2015, Available at: <https://goo.gl/6Z4qsj>.

registered in 2015,⁴ while at least another four complaints failed to be examined by the district court Centru of Chisinau, on the ground that they were submitted by “an incapable person.”⁵ Even if there is no evidence suggesting that the persons who filed the petitions could prove that they no longer needed guardianship, their right to access justice was infringed given the automatic rejection of the complaints. It is impossible to assess the scale of infringement because the courts refuse to provide information on the number of the complaints rejected because they were submitted by “an incapable person”.⁶

The Minister of Justice in a note from November 2015, suggested to judges to directly apply CRPD in deciding such cases, until national legislation is amended.⁷ The Constitution also provides for direct application of international human rights provisions.⁸ Despite the MoJ intervention and the constitutional provisions, it is impossible to assess, if this approach is actually applied by the courts. NGOs report no success in this regard.

Recommendations:

- ✓ Amend procedural legislation in order to grant access to justice to persons deprived of their legal capacity. Until procedural legislation is amended, the Supreme Court of Justice should issue an advisory opinion recommending judges to directly apply UNCRPD when deciding complaints on restoration of legal capacity.
- ✓ The National Institute for Justice should provide initial and continuing professional training opportunities for judges and judicial personnel on UNCRPD application.

2. RIGHTS OF PERSONS WITH MENTAL DISABILITIES SUBJECT TO FORCED HOSPITALIZATION

In Moldova, there are registered about 100.000 people with mental and behavioural disorders,⁹ some of which are placed in medical or residential institutions.¹⁰ In so called psycho-neurological facilities of the Republic of Moldova are placed more than 2500 persons with mental disabilities¹¹, according to data provided by National Bureau of Statistics¹²; about 1 700 people with mental disorders are placed yearly in these institutions.

⁴ The case no. 2a-3171/14 from 2.06.2015 prosecutor in the interest of Mrs. VORONINA, Available at: <http://goo.gl/OMLEsw>.

⁵ Civil Procedural Code (2003) Art. 170 para. (1) Letter c), available at: <http://goo.gl/xoIJC>.

⁶ Official responses on requests of information sent to district courts by the authors. Available here: <https://goo.gl/B4StVH>.

⁷ Ministry of Justice, circular note no. 03/12246 from 24.11.2015, available at: <https://goo.gl/w1tkmT>.

⁸ Constitution of Republic of Moldova, art. 4 para. (2), available at: http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731.

⁹ SOMATO Association Report// April-May 2011, pg.5, available at: http://www.comunicate.md/upload/4019_Somato-info_Aprilie-Mai_2011.pdf.

¹⁰ The procedure is established by Articles 41 and 41 of the Law no. 1402 from 16.12.1997 on mental health.

¹¹ Report on the Rights of persons with mental disabilities in the Republic of Moldova, 2015, available at: <http://www.un.md/publicdocget/297/>.

¹² Statistics regarding situation of persons with disabilities in the Republic of Moldova, 2012, available at: <http://www.statistica.md/newsview.php?l=ro&id=4253&idc=168>.

During the monitoring of the mental health facilities by Ombudsman for Psychiatry¹³, NGOs¹⁴ and the UN Special Rapporteur¹⁵, multiple human rights abuses were revealed. Most serious abuses are inhuman and degrading treatment, forced labour, sexual abuse and limitations of reproductive rights, violations of access to justice, right to liberty and security, right to respect for privacy and right to family, and right to live in the community.

One of the abuses most often reported by persons with mental disabilities held in mental health facilities is physical and psychological violence.¹⁶ After the 2012 UPR Review, Moldova undertook commitments regarding efficient and impartial investigations of all allegations of torture and cruel, inhuman or degrading treatment¹⁷ and elimination of discriminatory practices against persons with disabilities in the medical settings.¹⁸

The Human Rights Resource Group is concerned that most actions reported by the Government in the middle term review have a formal character or are implemented as pilot interventions with no continuity. Moreover, none of the reported actions refer to the specific problem of the persons with mental disabilities held in psychiatric institutions.

Inefficient investigation of the abuses in mental health facilities

In spite of human rights violations and use of physical and psychical violence in the mental health facilities¹⁹, not even one person was sentenced. Very few

¹³ Report on the Rights of patients in psychiatric hospitals of Republic of Moldova for the period of April – September 2012/ Ombudsman for Psychiatry.

¹⁴ The Institute for Human Rights of Moldova, Report on the monitoring visits in the psycho-neurological institutions in Republic of Moldova, 2013.

¹⁵ Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona/2013/A/HRC/26/28/Add.2.

¹⁶ Report on the Rights of patients in psychiatric hospitals of Republic of Moldova for the period of October 2012 – July 2013/ Ombudsman for Psychiatry, p.1. The most common types of abuses described by the victims are: beatings and blows with the hands, feet and other objects, physical restraints, sexual abuse, verbal insults and threats, isolation and restrictions to ensure nourishment, health care and other services as a means to punish breaches of discipline and many others.

¹⁷ A/HRC/19/18, Recommendation No. 73.45 (United Kingdom). According to Government middle term report to United Nations Human Rights Council, recommendations nr.73.45 regarding efficient and impartial investigations of all allegations of torture and cruel, inhuman or degrading treatment was partially realized due to a large number of seminars and trainings for judges and prosecutors on specific aspects of investigation of these crimes. The Government also reported that the positive effects of efficient fight against torture and cruel, inhuman or degrading treatment is already visible due to a decreasing number of complaints regarding this type of crimes. The Government Middle Term Report on the implementation of UPR Recommendations, pg.12, available at: http://www.justice.gov.md/public/files/drepturile_omului/midterm_report_UPR_revazut.pdf.

¹⁸ A/HRC/19/18, Recommendation No. 73.19 (Thailand). The Moldovan Government mentioned that it adopted a specific law for social inclusion of persons with disabilities which aims to ensure effective protection of fundamental rights and freedoms for persons with disabilities and access to different social areas. The Government also reported the development of some social services for persons with disabilities, such as: services of personal assistant, social placement for adults and the "Respiro" service, which is a temporary care service, available for maximum 30 days per year. The Government Middle Term Report on the implementation of UPR Recommendations, pg.12, available at: http://www.justice.gov.md/public/files/drepturile_omului/midterm_report_UPR_revazut.pdf.

¹⁹ Centre for Legal Assistance of Disabled Persons, *The rights of persons deprived of legal capacity in psycho-neurological institutions in Republic of Moldova*, 2015, report available at: <http://soros.md/files/publications/documents/Drept%20la%20capacitate%20juridica%202015.pdf>. See also Report

investigations were started based on complaints of rape and sexual abuse and they are still pending.²⁰ Victims claim that they are under huge pressure to quit the case and withdraw the complaints.²¹ The prosecution mandated to investigate crimes of torture or inhuman and degrading treatment and other forms of abuses, deals with reported cases under general procedures without taking into account the specificity of victims or that these crimes take place in psychiatric institutions.

Complaint mechanism

People with mental disabilities in psychiatric institutions are not provided with an effective mechanism for denouncing crimes and other abuses that affect their fundamental rights. Moldova's national mental health legislation establishes that complaints concerning violations of rights of persons hospitalized in psychiatric institutions are examined by the Ombudsperson. These complaints are submitted directly to the administration of the medical institution which has to forward these complaints to the Office of the Ombudsman.²² This complaints mechanism is formal, lacking transparency.²³ It discourages people with mental disabilities to complain against an infringement out of fear of potential retaliation.²⁴

According to Article 37 of the Law of mental health, people within mental health facilities can submit complaints only in the relations to abuses committed in the process of medical care services. This means that complaints cannot be filed in relation to violations of fundamental rights which do not refer to medical services.²⁵

Recommendations:

- ✓ Take measures to ensure the prevention, investigation and punishment of perpetrators of human rights violations in cases of persons with mental disabilities. Such measures should consider the particularities of crimes and of the victims and ensure the support that people with disabilities might require during investigations and judicial procedures.
- ✓ Ensure that people with mental disabilities that are under state custody have access to effective and independent complaint mechanisms.

on the Rights of patients in psychiatric hospitals of Republic of Moldova for the period of October 2012 – July 2013/ Ombudsman for Psychiatry.

²⁰ See for example the investigation on rapes and force abortions in Balti psycho-neurological institution, available at: <http://www.zdg.md/editia-print/investigatii/violuri-si-avorturi-in-internatul-psihoneurologic>. Criminal investigations were started in 2013 and are going very slow.

²¹ Report on the Rights of patients in psychiatric hospitals of Republic of Moldova for the period of October 2012 – July 2013/ Ombudsman for Psychiatry, p. 1.1.

²² The Law no. 1402 from 16 December 1997 on mental health, Article 37.

²³ There are no clear procedures for registering complaints, on how to record and manage them. There is no provision on who and how forms and keeps the database of the complaints. In this context, the law does not guarantee that complaints will reach the Office of the Ombudsman.

²⁴ The complaint, which in most cases will cover abuses committed by the employees of the institution will be submitted to the administration of the institution which either ignores or tolerates or even encourages this kind of behaviour.

²⁵ Monitoring work showed that most of the abuses refer to use of physical force or psychological pressure, sexual violence, housing, accessibility, forced labour, violation of the right to liberty and security and others.

3. ACCESS TO JUSTICE OF NATIONAL MINORITIES IN CIVIL CASES

Moldova is a multi-ethnic country. According to the last official census results (2004) Moldovan majority constitutes 69.6 % of the total population.²⁶ In recognition of the fact that at least 30% of Moldova's population has a different mother tongue, the provisions of the Code of Civil Procedure prescribing the possibility to use translation/interpretation before a civil court are clear and accommodate the rights of minorities. Still, the provisions on the conditions in which a petition can be filed in a different language than the state language are less clear.²⁷ Even if courts in the southern part of the country (Comrat), where the majority of population use Gagauz or Russian, accept complaints filed in Russian, this is not a common practice in the rest of the country. Loopholes in the national legislation are still interpreted differently by the participants in the civil trials. In order to address this issue, the Moldovan Government announced its intention to ratify the European Charter for Regional or Minority Languages on several occasions. Nevertheless, concrete actions are still missing from the Government agenda.

According to the information received from the judicial institutions,²⁸ in the period 2012 – 2015, judges issued at least 24 decisions in which courts rejected or refused to receive complaints in civil cases in other languages than the official language.²⁹ On the other hand, in its three years of activity, the national equality body, the Council on the Prevention and Elimination of Discrimination and Ensuring Equality examined five requests on access to justice of national minorities complaining that the civil courts rejected or refused to examine their petitions, because they were written in other language, and were not translated in the state language.³⁰ In all the five cases, the Council found that the court rulings not to review or the decisions to return the complaints filed in Russian, on the ground that they were not submitted in the state language, constitute discrimination in access to justice on the ground of language.³¹ The Council recommended to courts to take immediate measures to ensure access to justice in Russian without actually providing any considerations on the actual mechanisms to be implemented adequately, without triggering the risk of establishing a parallel system of justice or paralyzing the existing mechanisms of interpretation and translations provided to persons seeking this support currently. The Council also recommended to the Superior Council of Magistracy to examine this

²⁶ Along with Moldovan, Ukrainians coexist in the country, representing 11.2 %, Russians with a share of 9.4 %, Gagauz - 3.8 %, Bulgarians 2.0 %, Romanians 1.9 %, Roma 0.3 %, Jewish 0.1 %, Polish 0.1 % and other nationalities, accounting for 1.5% of the total population. National Statistics Bureau, 2004 Moldova Census: [https://ro.wikipedia.org/wiki/Recens%C4%83m%C3%A2ntul_popula%C8%9Biei_din_2004_\(Republica_Moldova\)](https://ro.wikipedia.org/wiki/Recens%C4%83m%C3%A2ntul_popula%C8%9Biei_din_2004_(Republica_Moldova)).

²⁷ The relevant provisions in the the Code of Civil Procedure are Art. 24 on the language of the judicial procedure, Arts. 166, 167, 170 and 171 on the admissibility requirements to be met by a complaint. Also relevant and introducing conflicting norms are Law 545 from 19 December 2003 approving the conception on the national policy of Republic of Moldova, Law 3465 from 1 September 1989 on the languages spoken in the Soviet Socialist Republic of Moldova and Law 382 on the rights of persons belonging to national minorities and the legal status of their organizations.

²⁸ Requests of information sent to 42 judicial institutions, including courts of appeal and district courts.

²⁹ Official responses on requests of information sent to district courts by the authors. Available here: <https://goo.gl/B4StVH>.

³⁰ CPEDEE, decision no. 009/2013 from 02.12.2013; decision no. 045/14 from 27.03.2014; 058/14 from 19.05.2014; decision no. 153/14 from 3.11.2014; decision no. 206/14 from 17.03.2015.

³¹ Grecu, P., Hriptievski, N., Ionescu, I., Iordache R., Macrinici S. (2015) *Compatibility analysis of Moldovan legislation with the European standards on equality and non-discrimination*, Study report. Available in Romanian, Russian and English at: <http://crjm.org/category/publications/drepturile-omului/>.

issue from the perspective of initiating disciplinary proceedings against judges who rejected complaints on the ground that they were not submitted in Romanian. This recommendation cannot be supported however by any legal provision on judicial responsibility and it is very dangerous as judges would be held responsible for applying an unclear legislative framework.

There is a clear need to clarify the conditions in which access to justice in civil cases can be ensured in the mother tongue of the national minorities living in Moldova. One step forward in solving this matter will be if the national authorities will ratify the European Charter of Regional or Minority Languages, and clarify the ambiguity from the current legal procedures by establishing comprehensive legislation.

Recommendations:

- ✓ Amend civil procedure legislation providing the possibility to file civil complaints in other language than the state language, if certain requirements are met by the claimant: (a) s/he does not know the state language and (b) s/he does not have the necessary financial means for translation into the state language.
- ✓ The Supreme Court of Justice should issue an explanatory decision on the language of court complaints.
- ✓ The Ministry of Justice and the National Legal Aid Council should design and adopt the measures to ensure qualitative translation of civil complaints from minority languages into the state language, similar to the mechanism of interpretation guaranteed currently for the duration of the entire proceedings when there is clear evidence that lack of command or insufficient understanding of the state language impedes effective access to justice. Such policy measures have to be supported by allocating adequate human and financial resources for the courts.
- ✓ Moldova should ratify the European Charter for Regional or Minority Languages and adopt legislative and policy measures to ensure the enforcement of the Framework Convention for the Protection of Minority Languages already ratified by Moldova.

4. THE RIGHT TO TRANSLATION AND INTERPRETATION FOR CRIME SUSPECTS AND ARRESTED PEOPLE

The Moldovan Criminal Procedure Code provides that the procedural rights of suspects and accused persons, including the right to interpretation and translation, arise when a person is arrested or detained.³² However, a recently published empirical research conducted in Moldova over a two years period, between 2013 and 2015, found that this guarantee does not mean that people who were arrested or detained by the police, or who were investigated on suspicion of having

³² Art. 64, para (1)-(2), Criminal Procedure Code of the Republic of Moldova: <http://lex.justice.md/md/326970/>.

committed a criminal offence without being arrested or detained, were able to actually exercise the rights provided for by law.³³

Article 9 of the ICCPR and ECHR Articles 5(2) and 6(3)(a) provide that everyone who is arrested or charged with a criminal offence shall be informed promptly, "in a language which he understands of the reasons for the arrest and of the nature and cause of the charge against him." Furthermore, the case-law of the HRC and of the ECtHR suggest that the national authorities are required to take an active approach to determining the need for interpretation or translation.

The empirical research found significant difficulties in the implementation of the legal provisions. Moldova lacks a clear procedure, or criteria, for identifying whether a suspect speaks or understands the relevant language of the criminal proceedings. Even if the need for interpretation or translation is discovered, it is largely dealt with on an ad hoc basis, and often either the investigating officers attempt to interpret or translate by themselves (even though, in Moldova, this is contrary to the law³⁴), or the procedures are conducted without interpretation or translation. This happens because there are no operational procedures for contacting an interpreter or translator and it is left to the investigating officer to try to find one. This limitation is exacerbated by the difficulties the police experience in obtaining payment for the interpreter or translator. It was even found that the investigating officer would sometimes pay for the interpreter out of their own pocket, due to lack of guidelines or proceedings to employ the services of professional interpreters and translators. Although there are some provisions for regulating quality of the interpretation and translation provided, this was found not to function in practice.³⁵

Recommendations:

- ✓ Standard operational procedures should be established to enable the police and other investigation agencies to promptly contact an appropriate interpreter.
- ✓ A procedure should be introduced to ensure that interpreters and translators who provide services to criminal justice agencies satisfy minimum quality criteria. This should be accompanied by a register of accredited interpreters and translators.
- ✓ A specific budget for the costs of interpretation and translation should be established, either by the police or other investigative agency, or by the relevant government ministry. The budget should allow for interpreters and translators to be paid at an appropriate rate.
- ✓ Procedures for obtaining the services of an accredited interpreter should be open to defence lawyers, as well.

³³ Osoianu Tudor , Vidaicu, Mihaela, *Rights of Suspects in Police Detention. A Research Conclusions.*, Cartier Publishing house, 2015 available at :

<http://soros.md/files/publications/documents/Police%20Detention%20IPC.pdf>.

³⁴ Article 85, para (1)-(2) of the Criminal Procedure Code of the Republic of Moldova // <http://lex.justice.md/md/326970/>.

³⁵ The Regulation on the Organization of Activity of Interpreters and Translators engaged by the Superior Council of Magistracy, the Ministry of Justice, Prosecution Authorities, Criminal Investigation Authorities, Courts, Notaries, Lawyers and Bailiffs, approved by the Decision of the Government RM No. 459 of 05.08.2009.

5. FREEDOM OF RELIGION AND BELIEF

Lack of measures ensuring inter-religious communication – religious intolerance

Although the Government accepted the recommendation on fostering inter-religious communication issued by the Human Rights Council in the first cycle of review in 2012 it did not take any measures for its implementation. The lack of inter-religious communication leads to rejection of religious diversity and subsequently to religious intolerance. For instance, in 2011 when the Ministry of Justice issued the decision on the registration of the Islamic League as a religious denomination, several Christian Orthodox leaders and organisations ran public protests.³⁶ The protesters even went in front of the house of the Minister of Justice to protest against the “Islamization of the country”.³⁷

According to the representatives of the religious minorities, religious intolerance is manifested more obvious in the rural areas or places outside the capital city. For example, according to the US Department of State International Religious Freedom report for 2013, in Congaz village the members of the Baptist church have been subject to threats and intimidation.³⁸ “Intimidation and harassment of Baptist Church members in rural areas continued during [2014]. In several locations, Baptists were impeded from holding summer day camps for children, including in the village of Peticeni. Villagers alleged these camps involved forced indoctrination of the children.”³⁹

Recommendations:

- ✓ Establish with the direct financial and technical support from the Government an inter-religious communication and collaboration platform, including by funding religious tolerance campaigns.
- ✓ Effectively address and sanction cases of religious hatred.

Religious freedom and the public education system

In spite of its voluntary pledges as Member of the Human Rights Council when the Government of Republic of Moldova indicated that the issue of the Holocaust would be introduced in school curricula,⁴⁰ from the analysis of the Framework education plan for 2015-2016 it may be concluded that the subject “Education for tolerance-

³⁶ See more at : < <http://unimedia.info/stiri/protest-impotriva-inregistrarii-cultului-islamic-in-moldova-33968.html>>.

³⁷ See more at : <http://www.publika.md/protest-in-fata-casei-lui-alexandru-tanase_446671.html.

³⁸ US Department of State International Religious Freedom Report for 2013, available at: <<http://www.state.gov/documents/organization/222457.pdf>>. In June the local Orthodox priest summoned a crowd and pressured the mayor to revoke a permit for the Baptists to hold a summer camp for children on the central square. As a result, the Baptists were forced to move their ongoing camp. The Orthodox group then sent a letter to the mayor calling on the local administration to restrict the initiatives and activities of the Baptist church.

³⁹ US Department of State International Religious Freedom Report for 2014, available at : <<http://www.state.gov/documents/organization/238622.pdf>>.

⁴⁰ Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Addendum, Mission to the Republic of Moldova: comments by the State on the report of the Special Rapporteur, document A/HRC/19/60/Add.3 of 14 February 2012, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-60-Add3_en.pdf.

Holocaust lessons” was not included in the list of optional subjects for secondary school. At the same time “Religion” is one of the optional subjects for study from 1st to 4th (primary school) and 5th to 9th grades (secondary school)⁴¹ whereas, the “Moral and spiritual education” is mandatory for the primary school. As the majority of textbooks in the schooling system, the handbooks for “Moral and spiritual education” are presented from the perspective of the Christian Orthodox tradition.⁴² Although the Ministry of Education promised that the educational curricula for the subject of study “Religion” to be a common one for Orthodox Christians and Catholic Christians, only the Orthodox version is used in public schools, this failure being in itself discriminatory.⁴³ Despite the fact that the Framework educational plan for 2015 - 2016 establishes that “Moral and spiritual education” is not graded there are no possibilities for children not to participate at the lessons. At least one case of express refusal of school management to allow Jehovah Witnesses to skip the class has been registered in 2015.⁴⁴

According to the Framework education plan, one of the objectives of the public education in Republic of Moldova is the development of the civic activism of pupils.⁴⁵ Still, the document does not encompass human rights education as a compulsory subject for study. Although Amnesty International Moldova facilitated the drafting and publishing of a handbook for Human Rights Education, the subjects remains optional and it depends on the willingness of the school management to promote the subject among pupils.

Recommendations:

- ✓ Development of a human rights-centered civic education curriculum and of an education for tolerance curriculum with mandatory implementation in primary and secondary school.
- ✓ Promotion, through the mandatory human rights study in the educational system of the human diversity including religious diversity.

The predominant role of the Moldovan Orthodox Church and its repercussions on the rights of other minorities

According to the data of the latest census 93.3% of Moldovans claim a Christian Orthodox identity.⁴⁶ The special status of the Orthodox Church stems from the provision of Article 15 para. 5 of the Law on freedom of thought, conscience and religion stating that the “state acknowledges the importance and the special role of the Orthodox religion and respectively of the Moldovan Orthodox Church in the life,

⁴¹ The Framework educational plan for primary, secondary and high school education for 2015-2016, available at: <http://edu.gov.md/sites/default/files/plan-cadru_2015-2016.pdf.

⁴² Human Rights Information Center, ‘Study on the discrimination in schooling system of Republic of Moldova’, available at: http://issuu.com/cido2014/docs/studiul_discrimin_rii_n_sistemul?e=14391295/12397571, p. 35.

⁴³ According to the representatives of the Roman Catholic Episcopate no Catholic priest is teaching religion in public schools.

⁴⁴ Author’s direct communication with Jehovah Witnesses Organisation.

⁴⁵ The Framework educational plan for primary, secondary and high school education for 2015-2016, available at: <http://edu.gov.md/sites/default/files/plan-cadru_2015-2016.pdf.

⁴⁶ The official data from the 2004 census, available at: <http://www.statistica.md/newsview.php?!=ro&idc=168&id=2358>.

m the National Statistics Office available at : <http://www.statistica.md/newsview.php?!=ro&idc=2358&idc=168>.

history and the culture of Moldovan people."⁴⁷ These two arguments combined are used as a justification for allowing the interference of the Orthodox Church in policy matters in pressuring local authorities to discriminate religious minorities in relation to their own exercise of religious freedom and right to assembly.

Especially at local level, the interference of the Orthodox Church priests in decision making processes is worrying. As documented by the US State Department annual reports, the Jehovah's Witnesses reported local public officials were pressured by Orthodox priests to continue to discriminate against them, particularly when trying to obtain permits to build or use their houses of worship.⁴⁸

In the same context, the National Council for Preventing and Eliminating Discrimination and Ensuring Equality issued a decision stating that the Pentecostal Church was discriminated against on religious grounds when the local authorities refused to authorize a public event planned by the Church.⁴⁹ By contrast, there were no cases of limitation of the freedom of assembly of parishioners belonging to Moldovan Orthodox Church. The national equality body obliged by its decision the local authority to repeal its decision by which the public gathering was prohibited and to refrain itself from adopting similar documents in the future. According to the Report on the monitoring of the activity of the national equality body for 2013-2014 the Council's decision was enforced.⁵⁰

Recommendations:

- ✓ Adjusting the Law on freedom of thought, conscience and religion to the constitutional provisions on the freedom of religion and the relationship between the state and the Church to ensure autonomy as well as equal treatment of all religious denominations.⁵¹
- ✓ Adopt policy measures to instruct local authorities to not impede religious minorities in exercising their right to religious freedom.

Limitations of the freedom of conscience of Falun Dafa disciples

The Qigong Association „FALUN GONG MOLDOVA” was registered with the Chisinau Town hall in 2009 after more than two years of struggle for obtaining the registration within the Ministry of Justice.⁵² The association was subsequently registered at the Ministry of Justice as well, in 2011. According to the representatives of the

⁴⁷ Article 15 of the Law on freedom of thought, conscience and religion, nr. 125 of 11 May 2017, available in Romanian at: < <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=324889&lang=1>.

⁴⁸ US Department of State International Religious Freedom Report for 2014, available at : <<http://www.state.gov/documents/organization/238622.pdf>.

⁴⁹ Available in Romanian at : <http://egalitate.md/index.php?pag=news&id=836&rid=453&l=ro>

⁵⁰ Report on the monitoring of the activity of the national equality body for 2013-2014, p. 54, available at: <http://www.monitor.md/attachments/article/246/Raport%20MONITORIZAREA%20CPPEDAE.pdf>

⁵¹The Constitution of Republic of Moldova (1) The freedom of conscience shall be guaranteed and its manifestations should be in a spirit of tolerance and mutual respect. (2) The freedom of religious worships shall be guaranteed and they shall organize themselves and operate according to their own statutes under the rule of law. (3) In the relationships between the religious cults any manifestation of discord shall be forbidden. (4) The religious worships shall be autonomous, independent from the State and shall enjoy the latter's support, including by facilitating the religious assistance in the army, hospitals, penitentiaries, nursing homes and orphanages.

⁵² See the online data base at :

<http://rson.justice.md/organizations?hash=d8a2333651851c3fea45278d648df94b3d9968ae>.

association, the former communist Government unofficially prohibited the registration of the organisation due to the continuous pressure in that respect coming from the Chinese Embassy in Chisinau.⁵³

In 2010, immediately after the registration at local level with the Chisinau municipality, the attempts of liquidation of the organisation have started. The Prosecutor's office submitted to the court a complaint asking the judge to recognise the symbol of the association as being an extremist one. The submission was dismissed by the court as being groundless. Despite the existence of a prior court decision, in 2014 the Moldovan courts of law, declared the Falun symbol as being an extremist one and obliged the Ministry of Justice to include it in the registry of extremist materials. Moreover, having as ground this decision, by two other decisions, the two Falun associations, the one registered within the Chisinau Town Hall and the one registered with the Ministry of Justice have been dissolved. The case went even before the Supreme Court of Justice which upheld the decisions of dissolving the associations.⁵⁴

On 23 November 2015, the Constitutional Court decided that the provision based on which the organization was liquidated was unconstitutional. Subsequently, the case has been reopened before the Supreme Court of Justice. At the date of drafting this report, the case is pending before that court. After the Constitutional Court issued the decision, the president of the Falun organization started to experience harassment at work place based on her convictions.⁵⁵

Recommendations:

- ✓ Strengthen the national legal framework regarding the freedom of association by introducing safeguards against the external influences on the free activity of the NGOs.
- ✓ Enforce existing legal provisions safeguarding against harassment at the workplace on grounds such as convictions and opinion.
- ✓ Expedite the official re-registration of the organization.

6. BIAS /HATE CRIMES⁵⁶

OSCE Hate Crime annual reports show only one effective prosecution within last years (in 2014) and no sentence, despite the fact that such acts are reported by NGOs.⁵⁷

Reports of the Council on Preventing and Eliminating Discrimination and Ensuring Equality (Equality Body) indicate that impunity is currently the norm in Moldova in

⁵³ Information obtained during individual communication with the representatives of the Association.

⁵⁴ The decisions available at : http://jurisprudenta.csj.md/search_col_civil.php?id=16524 and http://jurisprudenta.csj.md/search_col_civil.php?id=16858.

⁵⁵ Information obtained during individual communication with the representatives of the Association.

⁵⁶ In the current report the term 'bias crimes/acts' will include 'hate crimes'. Bias has a broader meaning than hate, and a bias motive only requires some form of prejudice on account of a personal characteristic. According to OSCE's Practical Guide on Hate Crime Laws, p. 17., available at <http://www.osce.org/odihr/36426?download=true>.

⁵⁷ Only one under art. 176. Infringement of equality rights of citizen (Doina Ioana Straisteanu Case)

cases in which bias acts have taken place.⁵⁸ The findings of the Council reveal systematic deficiencies in the investigation and prosecution of bias crimes at all stages of prosecution, from the moment of filing a complaint to the delivery of a final judgment.⁵⁹ This is primarily due to a systemic lack of understanding and of commitment from the side of police/prosecution/courts to prosecute and sentence bias crimes, as well as to insufficient substantive provisions in criminal and administrative law penalizing bias crimes effectively for all vulnerable groups.

There is a lack of understanding and commitment from the side of police and prosecution to effectively act on their obligation to investigate bias motives. There have been reported cases when the police refused or dissuaded the victims to file complaints.⁶⁰ Also, when there was viable evidence of a hatred motive in a cell phone recording of the alleged perpetrator beating up a young Roma man, the police disregarded it and did not include it to the case evidence.⁶¹

The police, prosecutors, and judges invoke the lack of legislative provisions to qualify and punish the bias crimes. A review of the main bias-related provisions in the Criminal Code and of general provisions under the Code of Administrative Offences indicates substantial gaps. Currently, the Criminal Code penalizes bias motives as aggravating circumstances for serious offenses and incitement to 'social hatred' (without defining it) and only on four bias grounds – namely "social, national, ethnic and religious hatred". Criminal law does not include bias crimes as self-standing offenses but only as aggravating circumstances applied to other crimes. The current artificial separation of material circumstances (regular offenses) and bias motives leads frequently to bias acts being investigated as ordinary offenses.

In practice, the prosecution's decision to apply and investigate aggravating circumstances currently is largely optional. Although the obligation of police and prosecutors is to investigate the motives of the crime or offence, in practice they investigate the so-called "objective criteria" or "physical damage" (such as amount of material damage or physical harm). The outmost majority of bias acts are qualified as 'hooliganism' indicating the internal biases within the police and prosecution.

Additionally, there is no clear interpretation of the four protected grounds, and no protection is provided on a number of other bias grounds commonly met in practice, especially sexual orientation and gender identity and expression.

The Code of Administrative Offences does not include bias motives as either free-

⁵⁸ Annex to the Report of the Council on Prevention and Elimination of Discrimination and Ensuring Equality, 2014 [http://egalitate.md/media/files/Raport%20de%20activitate%20%202013\(2\).doc](http://egalitate.md/media/files/Raport%20de%20activitate%20%202013(2).doc).

⁵⁹ Study "Foreigners' Integration in the Republic of Moldova, Hate Crimes and Discrimination", 2014, available at http://iom.md/attachments/110_ForeignIntegrationStudy_ENGL.pdf.

⁶⁰ Case of I.T. registered by GENDERDOC-M, July 2015: After I.T. was beaten by her neighbour who stated that such persons should not exist referring to her as 'it', she went to file a complaint to the sector police office. The police officer on duty listened to her, but refused to file the complaint. Only after she called GENDERDOC-M's lawyer who talked to the police officer the complaint was registered.

Case reported by Islamic League in Moldova leader – Sergiu Sochirca during Round Table on presentation of Memorandum "Assessment of Law and practice on Bias Crime in the Republic of Moldova", 2014: In 2009 a Muslim man, was insulted about his religion and alleged terrorist intentions, and threatened with a gun in plain daylight. The man tried to file a complaint, but the police officer dissuaded him to do so.

⁶¹ Case documented by National Roma Center of Moldova in 2012.

standing norm or aggravating circumstance. Given that a large number of bias crimes are currently prosecuted as misdemeanors, victims have no legal avenue to have the bias element of the crime recognized under this procedure.

Religiously motivated discrimination and hate speech

Hate speech, including when based on religious grounds or delivered by religious leaders, is not fully regulated in the national legislation. Although the Criminal Code in Article 346 provides for instigating to religious hatred, in order to be qualified as a criminal offence the action should be committed with intention.⁶² If the hate speech does not meet the above described intention, it cannot be qualified as such.

For example, in the case of *Genderdoc M vs. Bishop Markel* in late 2012, Genderdoc M (the NGO defending the rights of LGBTIQ community) sued Bishop Markel alleging that during a talk show he instigated to discrimination against LGBTIQ people. During the show, Markel declared that “[the] Law on equality which broadly opened the gates for them, let’s say, creating an Eden for homosexuals. They must be stopped a bit, they should not be allowed to be employed in the educational system, in organisations providing health services and in public alimentation institutions. Can you imagine, a homosexual, 92% of which are HIV positive, or sick of AIDS to be employed at a blood transfusion unit, this is a catastrophe.” Even if the first two law courts stated in their decisions that Markel’s discourse was in fact instigation to discrimination against LGBTIQ people, the Supreme Court of Justice by its decision of September 2015 repealed the first two decisions, hence legalizing the hate speech of the Bishop.⁶³ Genderdoc-M undertook an analysis of the information in media after the Supreme Court decision and concluded that hate speech messages multiplied in the public domain. Hate speech oriented towards LGBTIQ people, delivered by the religious leaders is also a common phenomenon before, and during the elections as evidenced by our research.⁶⁴

The impunity for hate speech against LGBTIQ people delivered by religious groups encouraged acts of public instigation to hate and violence against members of LGBTIQ community. The case of discrimination and harassment by an Orthodox activist G. Valuta against Ms. A. Frolov one of the LGBTIQ rights advocates at the TV Show „Fabrika” (Publika TV) is an example in that respect. The national equality body by its Decision of 19.05.2014 qualified as instigation to discrimination the way LGBTIQ NGO representatives were treated during live TV broadcast.⁶⁵

Recommendations:

⁶² Article 346 of the Criminal code of Republic of Moldova, available at : <http://lex.justice.md/index.php?action=view&view=doc&id=331268>. Art. 346 mentions that the acts should be oriented towards “stirring hatred, differentiation or division national, ethnic, racial or religious hatred, to humiliate the national honor and dignity, as well as limiting, directly or indirectly, rights or benefits, directly or indirectly of the citizens based on their national, ethnic, racial or religious affiliation.”

⁶³ Decision of the Supreme Court of Justice available at http://jurisprudenta.csj.md/search_col_civil.php?id=22002.

⁶⁴ Monitoring work conducted by Human Rights Resource Group with the support of Moldovan Soros Foundation between 2014-2016.

⁶⁵ Decision of the national equality body available at: http://egalitate.md/media/files/files/decizie_cauza_064_14_6276731.pdf. The decision of the equality body was challenged in the court of law by the defendant G. Valuta. The case is pending in the court of first instance.

- ✓ The Criminal Code should be amended to include a free-standing provision prosecuting bias-motivated attacks for all protected grounds, similar to the anti-discrimination law. All types of bodily harm, namely insignificant, light, mild and serious harm resulting from bias acts should trigger aggravated criminal liability. Other acts, such as robbery or theft carried out with hate, bias or similar animus, should also be treated as aggravated. Alternatively, the clause on aggravating circumstances could be amended to include all protected grounds and effectively applied when needed.
- ✓ The Code of Administrative Offences should be amended to include a free-standing provision on prosecuting bias acts which do not qualify as criminal acts, including public incitement to violence, hatred or discrimination, public insults and defamation or threats with a bias motive or animus, and similar behavior, for all protected grounds.
- ✓ Both in the Criminal Code and in the Code of Administrative Offences the grounds protected should be amended to include all of the following grounds as protected also under the anti-discrimination legislation: actual or perceived race, colour, ethnic, national or social origin, sex, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, membership of a group, birth or descent, disability, health, age, sexual orientation, gender identity, or other similar status.
- ✓ The General Prosecutor and the MoJ should adopt guidelines establishing steps for thorough, effective investigations into motives in all cases where a bias suspicion arises. To restore credibility of law enforcement, maximum sanctions should be applied where bias crimes are committed when on duty by civil servants, while the relevant authority should take responsibility for the act, and publicize the progress and results of the investigation.
- ✓ Ensure continuing professional training and adopt guidelines for improving the conduct of police, prosecution and courts in investigating bias crimes, including when based on religious tenets. *Inter alia*, police, prosecution and courts shall remove all obstacles preventing victims of bias crimes from filing a complaint.

7. LEGAL AID AND EMPOWERMENT OF VULNERABLE GROUPS

The Moldovan Government adopted a comprehensive legal framework on ensuring access to legal services for the most vulnerable persons through the Law on state guaranteed legal aid,⁶⁶ the Justice Sector Reform Strategy for 2011 – 2016,⁶⁷ the Government Action Plan for 2011-2014⁶⁸ and the National Human Rights Action Plan for 2011-2014.⁶⁹

⁶⁶ Law on state guaranteed legal aid, nr. 198 of 26 July 2007 (entered into force on 1 July 2008 and provisions regarding civil legal aid on 1 January 2012 available at:

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=325350&lang=1>.

⁶⁷ Justice Sector Reform Strategy for 2011 – 2016, adopted by the Parliament, Law nr. 231 of 25 November 2011 <http://www.justice.gov.md/public/files/SRSJro.pdf>.

⁶⁸ Government Action Plan for 2011-2014, approved by the Government, Decision nr. 179 of 23 March 2011 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=337937>.

⁶⁹ National Human Rights Action Plan for 2011-2014, approved by Parliament, Decision nr. 90 of 12 May 2011 <http://lex.justice.md/md/339395>.

The legal aid in Moldova is divided in primary and qualified legal aid. The primary legal aid services in Moldova are provided by community paralegals and by civil society organizations specialized in providing legal assistance. When qualified legal aid is required the beneficiary is referred to a public defender and/or to the nearest territorial office of the National Legal Aid Council (NLAC), the public authority entitled to plan and manage legal aid in the country.

Starting with 2010 the Government pioneered an extremely needed initiative on setting up a network of community paralegals with the financial support of the Soros Foundation Moldova and the Government of Sweden (SIDA). By 2015, the network has grown up to 32 community paralegals from 23 in 2013. The legal framework on ensuring access to legal services for the most vulnerable persons envisages a gradual extension of the network; consequently, the NLAC annual work plans also foresee an increased number of community paralegals for each year.

Although the community based paralegals initiative was successfully piloted, the Government is not able to further develop a sustainable and extended legal empowerment mechanism.⁷⁰ The state fails to expand the existing network of community based paralegals, underpaying the existing ones⁷¹ and ignoring so far other means to ensure legal education.⁷²

Despite the established institutional mechanisms for planning, disbursement and auditing, the Government fails to ensure the quality of the legal aid services funded by the state.⁷³ Additionally, the remuneration of legal aid is lagging massively behind the fees charged on the private market.⁷⁴ Inevitably the reduced payment is affecting the motivation for providing high quality legal advice.

Slightly more than twenty two percent (22.2%) of the adult population of Moldova reports experience with at least one serious and difficult to resolve civil or administrative justice problem in the last three and a half years.⁷⁵ In spite of this clear need, the state failed to ensure access to legal aid in non-criminal cases in a transparent merit-based way. The lack of an adequate means testing mechanism

⁷⁰Another weakness of the legal aid institutional system is the ability to introduce primary legal aid as a mechanism for reaching out to more people and making legal aid more cost effective. Gramatikov Martin and Hriptievschi Nadejda, *Impact Assessment of the Moldovan Law on State Guaranteed Legal Aid*, p.4, para 2, available at: http://soros.md/files/publications/documents/LAA%20Assessment_en_0.pdf.

⁷¹ The salary of a community based paralegal is 1640 Moldovan lei, which represents around 84 US dollars http://www.cnaigs.md/uploads/asset/file/ro/148/Hotararea_nr.4_din_15.02.2013.pdf.

⁷² Official university curricula of law faculties do not comprise legal clinical education courses. The primary school curricula do not comprise any legal education courses as well. <http://www.edu.gov.md/ro/content/invatamint-general>. See also: <http://drept.usm.md/public/files/plan9157b.pdf>. The current Justice Sector Reform Strategy does not provide for legal awareness and legal education action plans. <http://www.justice.gov.md/public/files/SRSJro.pdf>.

⁷³ Gramatikov Martin and Hriptievschi Nadejda, *Impact Assessment of the Moldovan Law on State Guaranteed Legal Aid*, p.31, para 1, available at: http://soros.md/files/publications/documents/LAA%20Assessment_en_0.pdf.

⁷⁴ Gramatikov Martin and Hriptievschi Nadejda, *Impact Assessment of the Moldovan Law on State Guaranteed Legal Aid*, p.32, para 2, available at: http://soros.md/files/publications/documents/LAA%20Assessment_en_0.pdf.

⁷⁵ Gramatikov, Martin, *Met and Unmet Legal Needs in Moldova*, p.3, para.2. The findings of this study are based on data collected between 4 and 16 August 2011 from 2489 face-to-face interviews with people above the age of 18 residing in Moldova. The randomly selected sample permits generalisation of the results to the overall population of adult Moldovans. The study is available at: http://soros.md/files/publications/documents/Legal%20Needs%20Moldova_en.pdf.

represents an obstacle in ensuring the feasibility of a large scale legal aid system, which also covers non-criminal cases.⁷⁶

Recommendations:

- ✓ Make efforts to improve the quality of provided legal aid to the vulnerable groups with governmental funds by establishing clear criteria of assessment.
- ✓ Develop a legal empowerment mechanism, including legal empowerment tools and provide legal services tailored to the needs of the most vulnerable.
- ✓ Develop and implement legal education and awareness programs for primary schools and law faculties.
- ✓ Better interact with CSOs to reach out to more people representing the vulnerable groups, such as, but not limited to, persons with disabilities, ethnic minorities, including Roma, drug users and commercial sex workers.

Word count: 5393.

⁷⁶ Gramatikov Martin and Hriptievschi Nadejda, *Impact Assessment of the Moldovan Law on State Guaranteed Legal Aid*, p.4, para 2, available at: http://soros.md/files/publications/documents/LAA%20Assessment_en_0.pdf.