



GENDERDOC-M

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Republic of Moldova
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0. GENDERDOC-M Information Centre was established on 8 May 1998 and is a nongovernmental organization that advocates and lobbies for LGBT (lesbian, gay, bisexual and transgender people) rights in Moldova. GENDERDOC-M Information Centre is a member organization of the Coalition on Anti-Discrimination and Inclusion, National Youth Council of Moldova, ILGA Europe, IGLYO and EL*C (Eurocentralasian Lesbian* Community).

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Introduction:

1. LGBT people remains one of the most marginalized and discriminated group within Moldovan society.
2. At the end of 2019, the GENDERDOC-M Information Centre ordered a study at the marketing and social research company, Magenta Consulting, to measure Chişinău citizens' perception of the LGBT community. According to this study, 34% of respondents declared very negative attitude to LGBT people, 21% - some negative, 37% - neutral. To the question: „What are the first things that come to your mind when you hear the term „LGBT people?“ 69% answered „antipathy, disgust, abnormality, disease“. To the request: „Which of the following rights do you think should LGBT people have?“ the responses were: 63% - „To exist on the country's territory“; 69% - „To do whatever they want, at home, however, as long as nobody sees them“; „To hold hands in public places“ – 18%; „To kiss in public places“ – 4%; „To organise public events“ – 18%. At the same time, 71% of the respondents consider that there exists discrimination against LGBT people in Moldova.
3. In 2017 the Soros Foundation Moldova presented a study, “[Church and State in the Republic of Moldova](#)”. The research also analysed the intolerance of residents of the Republic of Moldova. To measure the level of (in)tolerance in society, researchers applied the classic tool – the social distance scale. The generalised intolerance is manifested by the rejection of all social groups that are “different” from the majority. A good indicator of generalised intolerance is the average number of groups that were rejected by respondents in a particular situation. For Moldova, this indicator is 6.5 on a scale from 1 to 10. It is a considered high value and is associated with a high level of intolerance. The data show four groups that are almost unanimously rejected: drug users, homosexuals, alcoholics, and people living with HIV/AIDS.
4. A [study](#) conducted by the Council for Preventing and Eliminating Discrimination and Ensuring Equality, published in 2019, shows a decrease of social distance from LGBT people from 5.2 in 2015 (accepting as a country's visitor) to 4.4 in 2018 (accepting as a state citizen). Given the mentioned points, the LGBT community remains the least accepted out of all minorities.

Hate speech, incitement to hatred and discrimination, access to information

5. According to the [HATE SPEECH AND INCITEMENT TO DISCRIMINATION in the public space and media in the Republic of Moldova in the election campaign for the presidential elections of 1/15 November 2020](#) report prepared by the PromoLex association, the dynamic of hate speech and inciting to discrimination has grown in its intensity during the pre-electoral and electoral periods, and then reduces after the electoral campaign concludes. LGBT+ people remain among those most affected by hate speech, especially in the election campaigns. The discourse against the LGBT+ group is largely caused by prejudice and hatred towards homosexual people, being catalysed by the rhetoric of electoral contestants and politicians, who use these prejudices to denigrate opponents or obtain political dividends, of the representatives of religious denominations or even some journalists and some media pages.
6. In 2020, the Council of Europe Commissioner for Human Rights (CoE) Dunja Mijatović in the [country report](#) drew attention to the importance of preventing hate speech in the election campaign for the presidential elections of 1/15 November 2020. The Commissioner was concerned about the hate incidents, especially those from politicians, which are intensifying during election campaigns and targeting especially women, LGBT+ people and other social groups.
7. The Constitutional Court of the Republic of Moldova noted that "hate speech against political opponents, especially on online platforms, is reprehensible, as it may exceed the freedom of expression on the Internet". The Constitutional Court issued an [Appeal to the Parliament](#), calling for the regulation of "prompt control and sanctioning mechanisms in this regard, in order to prevent and combat hate speech between electoral contestants, including in the online environment and social networks".
8. LGBT+ people remain among those most affected by hate speech, especially in the election campaigns. The discourse against the LGBT+ group is largely caused by prejudice and hatred towards homosexual people, being catalysed by the rhetoric of electoral contestants and politicians, who use these prejudices to denigrate opponents or obtain political dividends, of the

- representatives of religious denominations or even some journalists and some media pages.
9. On May 13, 2021, the representatives of the Party of Socialists of the Republic of Moldova (PSRM) organized [a press conference](#) with proposal of several legislative initiatives contrary to human rights. Vasile Bolia, Vladimir Odnostalco and Ala Darovanaia stated that the PSRM proposes modification of article 48 (Family) of the Constitution of the Republic of Moldova, adding the following text:
 - “The state prohibits marriage of same sex partners. The following provision that parents of a child represent a father (male parent) and a mother (female parent)”.In addition, the following proposals were made during 16 minutes of the press conference:
 - criminal liability for propaganda of “homosexuality”
 - refusal of ratification of the Istanbul Convention
 10. It is not the first attempt, since, on 24 March 2017, eight MPs from the Party of Socialists registered a draft law [no. 861 on amending and completing of the Law on Protection of Children against the Negative Impact of Information](#). This bill was not voted on by the parliamentary majority.

RECOMMENDATIONS:

11. Adoption of the draft law no. 263 of the Parliament of the Republic of Moldova for the amendment and completion of some normative acts (Electoral Code no. 1381/1997 - Art. 1, 8, 15, etc.; Contravention Code of the Republic of Moldova no. 2018/2008 - Art. 52, 400, 4235 etc.) in accordance with the opinion of the Venice Commission and the recommendations of civil society.
12. Develop a comprehensive strategy for preventing and combating hate speech. The strategy should include the establishment of a hate speech monitoring mechanism, cooperation between law enforcement bodies and other relevant bodies (e.g. CEC, CPEDEE), in order to facilitate the criminal prosecution of hate speech and improvement of hate speech sanctioning mechanisms.
13. Develop and implement regular awareness raising campaigns on preventing and combating hate speech, in collaboration with law enforcement bodies, CPEDEE, Ombudsperson, Audiovisual Council, Press Council, Central Electoral Commission and the civil society.
14. Prevent manipulation of public opinion with the use of homophobia, biphobia and transphobia during the pre-election period.
15. Guarantee the non-adoption of laws restricting the rights and freedoms of LGBT people, and guarantee the free access to information on the equality of rights of LGBT people

Hate crime

16. There is no effective remedy for hate crimes and incidents against LGBT+ people in the Republic of Moldova. Most cases are perceived as hooliganism, robbery or causing harm without regard to the reason for prejudice-based hatred.
17. In 2020, no progress was made in the process of the development of draft law no. 301 of 01.07.2016 for the amendment and completion of some legislative acts regarding the regulation of crimes motivated by prejudice, the version merged with project no. 277 of 20.06.2016 (hereinafter referred to as the draft law no. 301), revised by the Ministry of Justice in the previous monitoring period.
18. We recall that the draft law no. 301 means a series of legislative amendments to the Criminal Code and the Contravention Code, which relate primarily to the definition of grounds for prejudice, the review of basic offenses and aggravating circumstances related to acts of hatred and prejudice.
19. The draft law no. 301 was adopted in first reading by the Parliament in 2016, and subsequently submitted to the Ministry of Justice for review. In 2019, the Ministry of Justice sent the revised draft law no. 301 to the Parliament's Committee on Human Rights and Interethnic Relations and the Parliament's Committee on Legal Affairs, Appointments and Immunities, with a proposal for its adoption in final reading.
20. Following the public consultations organised on October 22, 2019 by the Committee on Legal Affairs, Appointments and Immunities and the Committee on Human Rights and Interethnic

Relations of the Parliament of the Republic of Moldova, the draft law was to be finalised by the members of the Committee on Legal Affairs, Appointments and Immunities, taking into account the recommendations made by civil society.

21. However, in February 2020, it was found that the recommendations and amendments proposed to finalise draft law no. 301 were not included. Thus, on March 5, 2020, the Committee on Legal Affairs, Appointments and Immunities organised a new round of public consultations, in which civil society and CPPEDAE amendments were reiterated.
 - a. They were targeted at:
22. the exclusion of paragraph (2) from Art. 346 of the Criminal Code, from the updated version of the draft, given the fact that it limits the scope of the basic rule and creates ambiguities of interpretation, so that the maintenance of paragraph (2) in Art. 346 of the Criminal Code will not allow the achievement of the objectives pursued and the efficient regulation of the facts motivated by prejudice;
23. completing the Contravention Code, in the category of contraventions that infringe on the political, labour and other constitutional rights of the natural person, with a new rule, which should regulate separately the deeds that can be qualified as hate speech and which do not represent a crime.
 - a. However, until the end of the monitoring period, the Parliament did not adopt the draft law no. 301, so that the national legislation in the field remains non-compliant with the international standards regarding the sanctioning of hate speech.

RECOMMENDATIONS:

24. Emergency approval of draft law no. 301 "On combating hate crimes";
25. Ensuring protection against hate crimes against all marginalized groups, including the LGBTQI+;
26. Effective investigation of all complaints that include data on hate crime;
27. Elaboration of regulatory acts / instructions regarding the registration, reporting, evidence and investigation of hate crimes;
28. Adequate training in combating hate crimes in order to inform police, prosecutors, judges and lawyers;
29. Inclusion of the subject of combating hate crimes in the curriculum of initial and continuous training of police, prosecutors, judges and lawyers;
30. Development and implementation of an adequate system for collecting disaggregated statistical data on protected criteria regarding: the number of notifications, the number of investigated cases, the number of cases tried, the number of convictions / acquittals, the number of people serving their sentences for hate crimes.

Legal Gender Recognition

31. The situation of trans people in the Republic of Moldova remains complicated.
32. According to the latest version of the International Classification of Diseases and Related Health Problems (ICD-11), published by the World Health Organisation, "gender identity disorders" have been reclassified as "gender inconsistency". Gender non-compliance is now included in the chapter on sexual health, instead of "mental disorder", as in the previous classification.
33. However, the Republic of Moldova has not yet taken any steps to change the system in accordance with this decision. Trans people are still required to provide a certificate with a diagnosis of "transsexualism" in order to request a change of gender and name in identity documents. Until now, the change of documents is possible only by the decision of the courts, a process that lasts around 6-12 months.
34. The Commission for Gender Identity Disorder Identification, within the State Clinical Hospital of Psychiatry, which issues the diagnosis, does not have a website and one cannot find anywhere online the contacts or at least the official name of the commission. Therefore, the usual way for trans people to start the process of legal gender recognition and transition is to contact GENDERDOC-M for more information. The trans people who went through these investigations said that they were asked a lot of awkward, intimate questions, for example about the way they have sexual intercourse. Moreover, some of the beneficiaries had to be hospitalised for more

thorough examinations. Hospitalisation in a psychiatric hospital is disturbing in itself, but this also involves a temporary exit from social life. It is assumed that the person must give up studies and/or work for a significant period. Respectively, many people give up the transition procedure at this stage.

35. The psychiatric examination of trans people will logically disappear at the beginning of 2022 when WHO member states will move to the mandatory use of ICD-11. Until then, doctors are obliged to follow the procedure, as explained by Vadim Aftene, the new chairperson of the Commission for Gender Identity Disorder Identification. Vadim Aftene also said that he is currently working on a guide for transgender people which will clearly explain the procedure and the steps a transgender person has to go through to obtain a diagnosis and begin the process of medical transition.
36. Vadim Aftene says that the conclusion of this psychiatric commission, even if it is exceeded, gives you the advantage of receiving hormonal treatment and certain surgeries based on the state medical insurance. In Moldova you can indeed legally benefit from free medical services in the process of medical transition, however, de facto, it is not always easy to access these services. In the Republic of Moldova, one can undergo voice change surgery, orchiectomy, mastectomy. However, the medical insurance only covers the orchiectomy (surgical operation by which one or both testicles are removed). It is an operation that is recommended if the patient undergoes hormonal replacement therapy to reduce the stress level imposed on the hormonal system.
37. At the moment, the biggest problem for a transgender individual willing to go through transition is to find an endocrinologist without prejudices, a specialist who would agree to help a trans person go through this intricate procedure. That said, GENDERDOC-M offers contacts of trans-friendly doctors from different fields from their database.

RECOMMENDATION:

38. To introduce necessary changes in existing Moldovan legislation and its implementation to ensure protection of the right to identity of transgender people. Law on Document Changing requires revision and definition of a precise system, as well as definition of the “sex change” term according to European standards. State employees, particularly customs inspections and frontier services, must be informed and instructed about such situations.

Efficiency of the national anti-discrimination mechanism

39. The national anti-discrimination mechanism is established based on law no. 121/2012 "On ensuring equality". Ways of resolving disputes in cases of discrimination include: quasi-judicial means - Council for the Prevention and Elimination of Discrimination and Ensuring Equality (hereinafter `Council`/`CPEDAE`); the judicial route - the courts. [National](#) and [international evaluation reports](#) suggest that national courts do not take sufficient account of international treaties that are binding on the Republic of Moldova and fail to apply international human rights instruments. The evaluations carried out by independent experts attest to the Council's performance as very impressive contributions to the promotion of equality in Moldova. However, barriers of a legislative nature and barriers to the availability of administrative resources significantly reduce efficiency and institutional capacity.
40. The quasi-judicial option established by law 121/2012, does not offer effective and sufficient remedies for victims of discrimination. The Council lacks the right to establish compensation following the finding of the act of discrimination, and the subsequent compensation for the damage caused by its decision is extremely flawed and often practically unfeasible. Following the finding of the Council, the victim of discrimination may seek compensation for non-pecuniary damage and reparation for pecuniary damage, only by a request for an additional summons and only after the Council's decision has become irrevocable. The decision of the Council can be challenged in court, going through the 3 levels - the administrative court, the Court of Appeal, the Supreme Court of Justice.

RECOMMENDATIONS:

41. Ensuring the execution of the recommendations of the council established in the decisions finding discrimination;
42. Align the limitation period for cases of discrimination of 1 year, to the general limitation period of 3 years established for violations of law where discriminatory motive is not invoked;
43. Ensuring the efficiency of compensating the damage caused to the victims of discrimination;
44. Reviewing the system of contravention sanctions for acts of discrimination and ensuring the deterrent effect of perpetrators;
45. Provide the Council with adequate powers to examine acts of discrimination committed, including by actors in the act of justice;
46. Establish an effective mechanism to investigate and deter discrimination allowed by officials with special protection status (inviolability / immunity);
47. Ensuring the Council has the right to refer the matter to the Constitutional Court in order to exercise constitutional review in cases of discrimination.