



GENDERDOC-M

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**Republic of Moldova**

**Reporting for the UN Universal Periodic Review**

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This report is prepared by the GENDERDOC-M Information Centre, whose expertise is related to the LGBT human rights in the Republic of Moldova. GENDERDOC-M Information Centre (GDM) was registered on 8 May 1998 at the Ministry of Justice of the Republic of Moldova. It is a non-governmental organization that advocates for and lobbies LGBT (lesbian, gay, bisexual and transgender people) rights in Moldova. GENDERDOC-M Information Centre is a member organization of the Non-Discrimination Coalition, National Youth Council of Moldova, ILGA-Europe (European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association) and IGLYO (International Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Youth and Student Organisation).

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## **Hate speech against LGBT people**

Despite the fact that Moldovan legislation on freedom of expression and prohibition of discrimination sanctions bias-motivated discourse and incitement to discrimination, hate speech and incitement to discrimination against LGBT people by notorious Moldovan public figures and opinion makers persists, nevertheless, and GENDERDOC-M Information Centre has encountered a number of obstacles in bringing perpetrators of anti-LGBT hate speech, including politicians and representatives of the Moldovan Orthodox Church, to accountability due to the lack of problem understanding by the judiciary. For example, in 2015 the Party of Socialists of Moldova continuously expressed homophobia and transphobia in its political activity targeting LGBT rights activists, threatening to repeal anti-discrimination legislation and to adopt laws that would prohibit the so-called ‘propaganda of homosexuality’.

### **Recommendations to the Government of Moldova:**

1. Adopt a proactive approach to prevention of hate speech among state officials and bringing state officials, representatives of religious cults and politicians to accountability for hate speech against LGBT people.
2. Carry out public awareness raising and information campaigns addressing hate speech, including homophobic and transphobic hate speech, and the consequences such discourse may lead to.

## **Hate crimes against LGBT people**

Homophobic and transphobic crimes are recognized as such neither by the police and prosecutors nor by the judiciary. Current Moldovan Criminal Code does not qualify sexual orientation, gender identity and/or gender expression as aggravating circumstances in a crime committed against LGBT people based on prejudice. Moreover, when anti-LGBT hate crimes are reported to the police and/or prosecutor’s office, these law-enforcement authorities refuse to investigate them accordingly, justifying their inaction with the lack of body of crime despite sufficient evidence. Thus, Moldovan state lacks and refuses to provide effective legal remedies to survivors of homophobic and transphobic hate crimes and prosecute perpetrators of such offences. For example, in 2015 GENDERDOC-M Information Centre registered 6 bias-motivated crimes and 14 bias-motivated incidents committed against Moldovan citizens based on their sexual orientation and gender identity. Only one of those bias-motivated crimes was recognized as such.

At the same time, it should be noted that in 2015 the Ministry of Justice of Moldova has elaborated a draft law on introducing amendments to the Criminal Code and the Code of Administrative Offences with regard to bias-motivated crimes, defining such offences and extending the list of protected criteria inclusive of sexual orientation and gender identity<sup>1</sup>. GENDERDOC-M Information Centre welcomes the positive

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[http://justice.gov.md/public/files/transparenta\\_in\\_procesul\\_decizional/coordonare/2015/noiembrie2015/Proiect\\_de\\_lege\\_hate\\_crime\\_actuala.pdf](http://justice.gov.md/public/files/transparenta_in_procesul_decizional/coordonare/2015/noiembrie2015/Proiect_de_lege_hate_crime_actuala.pdf)



endeavors of Ministry of Justice to amend the Criminal Code and the Code of Administrative Offences in the light of providing greater protection to its citizens, including LGBT people.

#### **Recommendations to the Government of Moldova:**

1. In the shortest term possible adopt the draft law on amending and completing the Criminal Code and the Code of Administrative Offences with regard to bias-motivated crimes and incidents that are inclusive of such protected grounds as sexual orientation, gender identity and gender expression.
2. Introduce and carry out systematic and continuous training for police investigators and prosecutors on effective investigation of and data collection on bias-motivated crimes and incidents, which are inclusive of such protected grounds as sexual orientation, gender identity and gender expression.

#### **Access to justice and fair trial for LGBT people**

Despite the fact that GENDERDOC-M Information Centre has enjoyed a relative success in accessing justice to defend rights of LGBT people and activists, thus seeking effective remedy for victims of human rights violations, the organization has encountered continuous resistance from the prosecutor's office to investigate bias-motivated crimes and bias-motivated speech based on sexual orientation and gender identity. For example, following several refusals from the prosecutor's office to initiate investigation and/or carry it out effectively in cases regarding violation of LGBT people's rights, in 2015 GENDERDOC-M submitted 5 claims against Moldova for the ineffective investigation of allegation of bias-motivated crimes to the European Court of Human Rights.

In another example, in September 2015, the Supreme Court of Justice refused to find an Orthodox Bishop liable for defamation and incitement to discrimination against gay citizens in a clear and evident case of violation of current legislation. Following the release of Supreme Court's judgment, GENDERDOC-M submitted another claim against the Republic of Moldova for violating GENDERDOC-M's right to fair trial based on sexual orientation and gender identity.

For three years already, the police and prosecutor's office refuse to prosecute activity of the organized extremist homophobic gangs with an evident right-wing agenda, who literally hunt down gay and bisexual men via on-line dating websites, attack GENDERDOC-M office, disrupt LGBT activities and threaten LGBT activists and other human rights defenders with violence. Despite numerous attempts to report their illegal actions and overall extremist activity to the police and prosecutor's office, members of these gangs continue assaulting and literally torturing gay and bisexual men, as well as attacking annual Pride March and trespassing territory of GENDERDOC-M office. They act as if they are aware of their impunity, which confirms GENDERDOC-M's suspicions that their actions may be backed by some high-ranking officials in the police, prosecutor's office or in the state Information and Security Service.



### **Recommendations to the Government of Moldova:**

1. Ensure effective investigation of bias-motivated crimes, bias-motivated incidents and hate speech against LGBT people and activists by police and prosecutor's office.
2. Carry out systematic and continuous training for police investigators and prosecutors on effective investigation of bias-motivated crimes, bias-motivated incidents and speech, including those based on sexual orientation, gender identity and gender expression.

### **Law on Ensuring Equality**

Following the number of recommendations received by the Republic of Moldova in the 1<sup>st</sup> UPR cycle, the Law on Ensuring Equality was adopted in May 2012 and an autonomous state body responsible for its implementation was established. Despite the fact that recommendations received in the 1<sup>st</sup> UPR cycle clearly stated that Moldova must adopt a comprehensive anti-discrimination legal framework, the law adopted in 2012 has a lot of shortcomings.

For example, from Article 1 of the law four protected criteria were excluded, namely: **social origin, material situation, sexual orientation and health status**. The discrimination ground of *sexual orientation* was introduced only in Article 7, regulating employment, giving the false impression that the law provides protection based on the criterion of sexual orientation only at the workplace. Unfortunately, despite the fact that several organizations criticized the new amendments and called on the Government to modify the draft law, it was submitted to the Parliament without those changes. The Parliament contributed to the worsening of the draft law by amending its Article 12, the norm which regulates competences of the Council for Preventing and Eliminating Discrimination and Ensuring Equality (CPEDEE). Thus, the attribution of applying sanctions was removed from CPEDEE competences, making it an inspecting body. The title of the draft law was modified to "draft law on ensuring equality".

According to Article 1(2), provisions of the Law on Ensuring Equality do not extend and cannot be interpreted as causing the damage: *"a) to the family based on marriage by the mutual consent between the man and the woman; b) to the relations of adoption; c) to religious cults and their components in the part connected with religious beliefs"*. All these legally established exceptions to the provisions of the Law on Ensuring Equality are discriminatory as such and represent a legal ground for limiting rights and access to equality for various groups of people such as LGBT, ethnic minorities, religious minorities and others.

### **Recommendations to the Government of Moldova:**

1. Amend Article 1 of the Law on Ensuring Equality by including such criteria as social origin, material situation, health status, sexual orientation, gender identity, and gender expression in the main list of criteria protected from discrimination.



2. Exclude from Article 1(2) the following discriminatory limitations: “a) to the family based on marriage by the mutual consent between the man and the woman; b) to the relations of adoption; c) to religious cults and their components in the part connected with religious beliefs”.

3. Amend Article 12 of the Law on Ensuring Equality by providing the Council for Preventing and Eliminating Discrimination and Ensuring Equality with the attribution of applying direct sanctions to the perpetrators of discrimination.

### **Legal gender recognition**

Currently, Moldova lacks any legal gender recognition mechanism that would regulate or facilitate the procedure of changing identification documents (including birth certificates) for transgender individuals issued by the state. The lack of documents corresponding to one’s *de facto* physical appearance and identity constitutes a real obstacle on the way to employment, border crossing, voting, opening a bank account, and in other spheres where presentation of documents is required.

The Law on Civil Status Documents contains a single provision (Article 66 “Request of modification, correction or completion of a civil status document”<sup>2</sup>) which implicitly refers to transgender individuals and their right to have their preferred gender (male or female only) legally recognised. The Paragraph (2) of Article 66 stipulates 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) applicant submits an official document confirming his or her sex change*”. At the same time, this provision, as vague as it is, does not explain what the ‘sex change’ constitutes and what state authority is in charge of issuing such certificates. The main state authority in charge of applying this law in practice is the State Registry Office which subordinates to the Ministry of Justice.

Since the Ministry of Health of Moldova bases its activity on the internationally recognised World Health Organization standards, and namely on the 10<sup>th</sup> revision of the International Classification of Diseases, it treats transgender identities as a pathology and thus has established the Gender Dysphoria Commission whose principal activity is to psychiatrically examine transgender individuals, who seek legal gender recognition, and issue them state-authorized medical certificates confirming ‘transsexualism’ diagnosis with the recommendation to have their civil status documents changed from one gender to another (male to female and vice versa). The Gender Dysphoria Commission was established as an interministerial working group between Ministry of Health and Ministry of Justice to elaborate a mutually recognised legal gender recognition mechanism; however, shortly, Ministry of Justice opted out from participating in it.

Moreover, in 2012, when two transsexual women requested the State Registry Office to change their names and gender marker in birth certificates based on the certificate issued by the Gender Dysphoria

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<sup>2</sup> Law on Civil Status Documents from 26 April 2001  
<http://lex.justice.md/index.php?action=view&view=doc&id=312727>



Commission, their application was refused due to the State Registry's Office unwillingness to 'arbitrarily' interpret the vague legal provision of Article 66. Then, the two transsexual women filed a lawsuit contesting State Registry Office's refusal which they later won in the Chişinău Court of Appeal. It was one of the most progressive court judgments based on the individual's right to self-determination and identity recognition obliging the State Registry Office to issue new civil documents to the both plaintiffs without compulsory gender reassignment medical or surgery interventions. This case was heavily mediatised, which prompted Ministry of Justice to put pressure on the judges, who issued that decision and who shortly arbitrarily revised their own judgment dismissing plaintiffs' claim under the false pretext missing documents that the plaintiffs had forgotten to annex to their claim.

Despite the fact that in November 2012 the Supreme Court of Justice issued non-binding recommendations to lower court instances to fully satisfy claims submitted by transgender people who seek legal gender recognition, other Moldovan authorities, such as the Ministry of Justice, continue demonstrating the lack of understating of the human rights based approach to transgender issues and lack of political will to propose adoption of legal gender recognition mechanism that would be transparent, accessible and quick for transgender individuals.

**Recommendations to the Government of Moldova:**

1. Elaborate and adopt transparent, quick and accessible legal gender recognition mechanism which would only require applicant's self-determination and consent, excluding the requirement of applicant's psychiatric examination.
2. Elaborate and carry out training programmes on transgender specific health issues for medical professionals together with relevant civil society organizations.