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Alternative Interim Report for UN Committee on the Elimination of Discrimination against Women

Republic of Moldova

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“Promo-LEX” Association is a civil society organization with special consultative status at the UN (ECOSOC), whose purpose is to advance democracy in the Republic of Moldova by promoting and defending human rights and monitoring democratic processes. Promo-LEX works on the entire territory of Moldova, in particular in the Transnistrian region.

The Association’s goals include promoting legislative reforms by actively supporting, and by defending human rights, including, when needed, in courts. At the same time, the Association closely follows the democratic process in Moldova and manages national and international missions to monitor electoral processes.

Human Rights Program focused on the following priority areas: Combating Torture and Inhuman or Degrading Treatment; Promoting Liberty and Security of Person; Access to justice and effective remedy for inhabitants of the Transnistrian region; Combating Violence and discrimination against women.

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1. Executive Summary

On 18 October 2013, the CEDAW Committee asked the Republic of Moldova to provide, within 2 years, in writing, the information on the measures taken to implement the recommendations indicated in paragraphs 20 (a, b, c and d) and 28 (b) of Concluding observations on the combined fourth and fifth periodic reports of the Republic of Moldova¹.

The alternative report analyses the actions/inactions of the Government as regards to implementation of the Committee's recommendations, from 18 October 2013 to 1 October 2015. Promo-LEX Association found a number of key problems related to the implementation of legal provisions on preventing and combating domestic violence, which will be analysed separately, depending on their nature and importance.

These problems mainly refer to the refusal to issue restraining orders in cases of psychological violence, uneven practices of criminal prosecution for acts of domestic violence, uneven application of the law and the perpetrators' impunity to the violation of restraining orders. The other aspects covered by this Report refer to the insufficiency of rehabilitation centers for domestic violence victims and lack of legal framework on the enforcement of emergency restricting order.

The following methods were used to produce this report: research, monitoring, analysis of implemented processes, analysis of projects implemented by the Government and other associations. In preparing of this submission, we used materials from the human rights defense and protection work done by Promo-LEX, and other sources of information in the text to which respective references were made.

2. Introduction

In Moldova, domestic violence is a serious human rights problem that has a strong gender character. Based on the information provided by the General Police Inspectorate, about 90% of the domestic violence victims are women. Domestic violence is also a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

Regardless of the fact that Moldova has a Law on domestic violence², authorities still fail to adequately implement relevant law provisions and to provide real protection to victims of domestic violence – mainly women. The Criminal Code of the Republic of Moldova incriminate domestic violence acts in the Article 201¹, introduced by Law No 167 of 9 October 2010, which provide the forms of violence for which criminal liability might be applied and its seriousness depending on the circumstances. The implementation of the legislation on combating and preventing domestic

¹Concluding observations on the combined fourth and fifth periodic reports of the Republic of Moldova - http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/MDA/CO/4-5&Lang=En

²Law No 45 of 01.03.2007 on Preventing and Combating Domestic Violence, published on 18.03.2008 in Official Gazette No 55-56, Article No 178, Date of enactment: 18.09.2008.

violence, especially in the execution of protection orders and criminal liability of perpetrators, is uneven, poor and often ignored by the police, prosecutors and social assistance. Thus, the state becomes an accomplice to the ill-treatment of victims of domestic violence and gender-based discrimination. Note that during 2013-2014, the European Court of Human Rights examined several complaints against Moldova on various allegations of domestic violence and delivered four judgments, which found the authorities' failure to secure the rights of victims of domestic violence³. All these cases found the violation of the right to be free from torture and inhuman or degrading treatment, and in three cases the Court found the violation of Article 14 taken together with Article 3 of the Convention, ascertaining gender discrimination by national authorities, which limited the victims' right to a life without violence.

During 2013-2015, Promo-LEX Association carried out several studies and researches and published reports, discussing various aspects of domestic violence. These include:

1. Assessment of implementation of Law No 45 on Preventing and Combating Domestic Violence among Roma People from the Republic of Moldova, June 2014,
2. Report on Human Rights in Moldova / Retrospective of 2012-2013,
3. Report on Human Rights in Moldova / Retrospective of 2014,
4. Assessment Report on Method of Issuance and Execution of Restraining Orders on Domestic Violence Cases during 2012-2014, March 2015,
5. Analytical Note on the Uneven Practices of Criminal Prosecution of Perpetrators for the Violation of Restraining Orders⁴.

All these analyses highlight in details the problems related to prevention and combating of domestic violence, including the problems identified by the Committee, which are presented briefly in this Report.

3. Problems Related to Restraining Orders in Cases of Psychological Violence

The national legislation regulates five forms of domestic violence, including the psychological violence⁵. According to Article 117 of the Civil Procedure Code, the factual elements established by the experts' conclusions shall be admitted as evidence in civil cases. At the same time, as per *Law No 1086/2000 on Judicial Expertise*, the technical-scientific and forensic findings do not regulate psychological judicial expertise, and psychologists are not accredited as judicial experts⁶.

³ECtHR judgement on the case of Eremia v. Moldova, delivered on 28 May 2013, ECtHR judgement on the case of B. v. Moldova, delivered on 16 July 2013, ECtHR judgement on the case of Mudric and others v. Moldova, delivered on 16 July 2013 and ECtHR judgement on the case of T. M. and C. M. v. Moldova, delivered on 28 January 2014.

⁴ <http://promolex.md/index.php?module=publications>

⁵ Article 2 of Law No 45 of 01.03.2007 on Preventing and Combating Domestic Violence.

⁶ Feasibility study on the forensic infrastructure in the Republic of Moldova, UNDP 2009/pg.71 - http://www.undp.md/publications/Forensics_Feasibility_External%20Audit_Report_EN.pdf

Accordingly, in order to prove that he/she is a victim of psychological violence, the person must present evidence that it is difficult to acquire a priori, if not impossible. The psychiatric institutions issue *de facto* reports on psychiatric and psychological examination, which focus on the psychiatric rather than psychological aspects. In practice, psychologists who provide services to domestic violence victims may issue only psychological reports, which, according to the law, are not mandatory for law enforcement bodies. They can be used only as indirect evidence.

As a result, although the national legislations classifies psychological violence as a form of domestic violence, the State provides neither practical and affordable solutions to victims, nor possibilities for an efficient investigation of complaints by law enforcement bodies.

4. Uneven Application of the Legislation in Cases of Restraining Order Violation

The national legal framework stipulates a fine for perpetrators who violated the restraining order for the first time⁷ and criminal liability for perpetrators who violated the restraining order for the second time,⁸ but enforcement of these sanctions is problematic.

In this respect, the competence of determining violation of protective measures and conducting administrative offence proceedings belongs to bailiffs⁹. At the same time, the policeman and social worker should ensure execution and oversight over the domestic violence restraining orders, except for measures obliging the perpetrator to support dependent minor children and/or compensate the damages caused by violence, which shall be enforced by the bailiff.

In practice, in cases of protective measures violation, the bailiff, though obliged to initiate an administrative proceeding, refuses to develop the administrative offence protocol at the request of the policeman, because the procedure does not stipulate execution of the restraining order.

Another aspect that deals with the sanctioning of perpetrators for violation of restraining order is the procedure of case examination in courts of law. When official examiners send the protocols in the court of law for review, this process takes quite long time. Thus, if the perpetrator violated repeatedly or continuously the protective measures, he/she cannot be brought to criminal liability in the absence of a final judgement on administrative sanctioning. This is due to the lack of any deadlines for the examination of such cases.

5. Uneven Practices of Criminal Prosecution for Acts of Domestic Violence

In 2015, Promo-LEX Association carried out an analysis on the implementation of the Criminal Code and Code of Administrative Offences in terms of sanctioning domestic violence perpetrators. For this purpose, Promo-LEX analysed judgements, sentences and decisions delivered by national

⁷Article 318 of Code of Administrative Offences of the Republic of Moldova

⁸Article 320 of the Criminal Code of the Republic of Moldova

⁹Article 421, Code of Administrative Offences

courts of law on cases of domestic violence during the period between August 2014 and July 2015 (501 judgements).

It was determined that courts of law apply in a different way the provisions of criminal and administrative offence legislations in respect to domestic violence cases, which are resulting in slight or negligible bodily injury, and to psychological violence. Although Article 201¹ (1) of the Criminal Code is applied correctly in some cases and the perpetrators are held liable, there are still such practices when authorities apply administrative sanctions either from the very beginning when ascertaining the offence, or subsequently, by terminating the criminal proceedings and bringing to administrative liability. In general, Articles 69 and 78 of the Code of Administrative Offences are applied in cases of domestic violence acts resulting in minor injuries, physical/psychical pain or psychical violence acts. Note that Article 69 of the Code of Administrative Offences regulates the injuria, for example words or actions humiliating the honor and dignity of the person. At the same time, Article 78 of the Code of Administrative Offences regulates the deliberate slight bodily injury, maltreatment, beating and other violent actions that cause physical pain. In this context, the perpetrators are not held liable for domestic violence acts and while determining the sanctions, no specific features of this phenomenon are considered, respectively the punishment for these actions is low and the social impact is missing.

According to information submitted by General Prosecutor's Office to Promo-LEX Association, about 700 administrative offences and 2374 criminal proceedings were initiated in 2014, on the basis of notifications of domestic violence. Thus, about one third of the initiated cases are qualified as administrative offences, even if this number decreased compared to the previous years, the indexes are still alarming and reveal a wrong practice with regards to sanctioning of domestic perpetrators.

The authorities failed to implement any measures that would facilitate the documentation of such cases and standardisation of the practice of bringing perpetrators to criminal liability, including for slight bodily violence or other forms of violence, although several non-government organizations, including Promo-LEX Association, have asked repeatedly for concrete actions¹⁰.

In its answers of 26 August 2014 and 17 September 2015, the Supreme Court of Justice confirmed the need to standardize the judiciary practices in this area and informed Promo-LEX Association about the debates on the Draft Explicative Decision on the examination of the criminal cases of domestic violence in courts of law, which will be held in November 2015.

6. Insufficiency of Placement Centers and Services for Domestic Violence Victims

Currently, the Republic of Moldova does not have enough rehabilitation centers for domestic violence victims. Some districts do not have any placement centers; hence victims cannot receive emergency help.

¹⁰ Ibidem

Only 16 centers are operating now, which can provide certain rehabilitation services to victims of domestic violence, only two of which provide shelter regardless of the territorial administrative area where the victim has her/his residence/domicile. These two centers are located in Chisinau Municipality and, in order to be sheltered, victims need to have some additional money to travel to the placement centers. The others are maternal centers, located in different settlements across the country; they can provide placement only for domestic violence victims who have the residence or domicile in the same territorial administrative area as the center. The victims originating from other localities can be sheltered in the respective placement centers only with the approval of the Social Assistance and Family Protection Department, following a complicated procedure, and only if there are available beds. The number of beds available in centers is very small, if compared to the number of victims in need of a placement. In such cases the victims are, practically, deprived of the opportunity to be placed somewhere, having to return in the same house with the perpetrator or to sleep over at their relatives, friends or in the street.

The research carried out by Promo-LEX Association identified several practical problems and legislative gaps that hinder the provision of assistance and protection to domestic violence victims. Thus, insufficient funding for placement centers remains an important problem. The funding of such centers is provided by local public authorities that distribute funds on the basis of the available annual budget and depending on the set priorities. Accordingly, the budgeted resources are not sufficient for an optimal functioning of placement centers, that is why the rehabilitation and protection services are very limited.

Another gap is the lack of a well structured mechanism on the provision of funds for placement centers by local public authorities. In this respect, we mention that there is no clear procedure for the provision of funds, and it differs from district to district. Thus, in some cases, placement centers have to submit a written application describing in details all the expenses and amounts needed for funding period. In other cases, local public authorities provide funds without any application. At the same time, as reported by placement centers, when funds are provided on the basis of an application, most often, the allocated budget does not match the amounts requested. Similarly, some placement centers have confirmed the shortage of funds and the need to identify additional sources of funding.

The victims of domestic violence from Transnistrian region do not yet have access to an effective protection ensured by the constitutional authorities. Although *de jure* persons from Transnistria can ask for protection and have a restraining order issued by the national institutions of the Republic of Moldova, such measures cannot be provided *de facto* because of the lack of control over the Transnistrian region by the constitutional authorities. As long as the breakaway administration does not provide any mechanism to protect domestic violence victims, and the constitutional authorities do not have any control over the respective region, the victims of domestic violence are subjected to a permanent risk of suffering from violence - for which the perpetrators will not be held liable according to the international standards.

At the same time, we note that domestic violence victims from the Transnistrian region have the *de jure* possibility to contact the placement centers under the control of constitutional authorities in order to ask for assistance and protection. The victims can seek for help in centers located near Causeni or Drochia, or in centers from Chisinau Municipality. But this is not an easy but rather a costly process, requiring frequent and expensive travels, which finally prevents victims from asking for such services.

7. Amendment of Legislation on Domestic Violence and of the Existing Guidelines on the Investigation of Rapes and other Acts of Sexual Violence

To improve the mechanism of preventing and combating domestic violence and to implement the recommendations, the Committee and the Ministry of Labor, Social Protection and Family set up an inter-sectoral working group that developed a draft law on amendments and addenda to 12 laws in the area of preventing and combating domestic violence. The amendments cover several segments, including the rights of domestic violence victims to request compensation from the perpetrator according to Convention on Preventing and Combating of Violence against Women and Domestic Violence (CAHVIO). The amendments also aim at regulating more clearly the mechanism of requiring protection and the possibility to issue the restricting order. However, the said draft law received negative comments both from the civil society and authorities, and was sent back to State Chancellery for review and endorsement. The prospects for its adoption in an optimal version are unclear.

During 2014, the Office of the UN High Commissioner for Human Rights from the Republic of Moldova, jointly with General Prosecutor's Office initiated the review of the 2008 Guideline on the Investigation of Sexual Offences. For this purpose, an international expert - Patsili Toledo was contracted. She developed draft guidelines for prosecutors and prosecuting officers on the investigation of such offences according to the international human rights standards. Note that the analysis carried out by the Office of the UN High Commissioner for Human Rights experts on aligning the national criminal law (sexual offences) to the provisions of the Rome Statute of the International Criminal Court will serve as grounds to amend the legal provisions on the procedure of collecting evidence and court examination of sexual offences. However, the 2008 Guideline of General Prosecutor's Office has been applied so far, while the reviewed draft was not yet defined and approved by authorities.

8. Problems Related to the Provision of State-Guaranteed Legal Aid to Domestic Violence Victims

The Law on State-Guaranteed Legal Aid stipulates in Article 19 the right to qualified legal aid. State-guaranteed legal aid is provided during criminal process, in emergency cases, in cases of apprehension, in cases provided by Article 69¹¹ of Code of Criminal Procedure and in cases

¹¹Article 69 of the Code of Criminal Procedure - Mandatory Participation of the Defender

provided by Article 77¹² of the Civil Procedure Code. When domestic violence victims seek protection, which implies a civil procedure, they do not benefit from qualified legal aid stipulated in Law 198/2007¹³, because they do not meet the criteria set out in Article 19.

In case of violence and an emergency situation, victims can only seek the assistance of specialized non-government organizations or a private lawyer. In most cases the domestic violence victims are in an extremely vulnerable situation, have no money and are limited in time, respectively it is almost impossible for them to identify a non-government organization (which is often located in Chisinau or in some districts capitals) or to contract a lawyer. The effects of such situations may be various, but in most cases the victim gives up asking for protective measures or ask for it at a very late stage.

This legislative gap represents a disadvantage particularly for domestic violence victims coming from vulnerable groups. Thus, for example the Roma, elderly or people with disabilities - victims of domestic violence will be particularly affected by the lack of free qualified legal aid, having moderate possibilities to use services provided by lawyers or travel to a non-government organizations to ask for help.

9. Conclusions

During October 2013 – October 2015, the national authorities took the obligation to implement the Committee's recommendations stipulated in paragraphs 20 (a, b, c and d) and 28 (b) of the Concluding observations on the combined fourth and fifth periodic reports of the Republic of Moldova. However, we found that most of the recommendations were not implemented, neither fully, nor partially.

- a) Psychologists do not have the status of legal experts and their conclusions set out in psychological assessment reports are not regarded as judicial expert reviews, being accepted with reluctance by authorities. Thus, the victims of psychological violence cannot yet benefit from protective measures.
- b) The bodies in charge of documenting and ascertaining the violation of protective measures apply unevenly the legislation and perpetrators are not sanctioned due to purely procedural reasons.
- c) Authorities continue applying administrative norms rather than Article 201¹ of the Criminal Code in cases of domestic violence.
- d) The number of placement centers for domestic violence victims is still insufficient, and the existing ones are underfunded due to the lack of a clear mechanism for funds allocation. As a result, the victims of domestic violence do no benefit from sufficient and qualitative assistance.

¹²Article 77 of the Civil Procedure Code - Appointment of the Lawyer

¹³Law No 198 of 26.07.2007 on State-Guaranteed Legal Aid

- e) The national authorities were not persevering enough to adopt the required legal amendments and addenda for prevention and combating of domestic violence, failing also to regulate the issuance of emergency restricting order.
- f) The sexual offences are investigated on the basis of outdated instructions, which do not comply with the international standards in this area.
- g) Authorities have failed so far to secure state-guaranteed legal aid for domestic violence victims during the procedure of obtaining a restraining order.