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Parallel report submitted to the 56th session of the Committee on the Elimination of Discrimination against Women in relation to the combined fourth and fifth periodic reports submitted by:

The Republic of Moldova

September 2013

Statement of Interest

1. The Equal Rights Trust (ERT) submits this parallel report to the United Nations Committee on the Elimination of Discrimination Against Women (the Committee) commenting on the combined fourth and fifth periodic reports by the Republic of Moldova (Moldova).

2. ERT is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. Established as an advocacy organisation, resource centre and think tank, it focuses on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice.

3. ERT has been actively involved in the promotion of improved protection from discrimination in Moldova since 2010. In the project *Strengthening Legal Protection from and Raising Awareness of Discriminatory Ill-Treatment in Republic of Moldova including Transnistria*, ERT worked in partnership with Promo-LEX based in Moldova. In the course of this project, ERT undertook research on patterns of discrimination and inequality in Moldova and on the legal and policy framework in place to prevent discrimination and promote equality.

4. This submission focuses on the extent to which Moldova has met its obligations to respect, protect and fulfil the right of women to non-discrimination. In particular, the submission is concerned with Moldova's performance under Articles 2(a) and (b) of the Convention to Eliminate All Forms of Discrimination against Women (the Convention). In assessing Moldova's adherence to its obligations under Articles 2(a) and (b), the submission relies on the interpretation of these provisions which has been provided by the Committee in its General Recommendation No. 28.[1]

5. The submission also relies upon the Declaration of Principles on Equality (the Declaration),[2] a document of international best practice on equality. The Declaration was drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts, and has been described as "the current international understanding of Principles on Equality".[3] It has also been endorsed by the Parliamentary Assembly of the Council of Europe.[4]

6. The submission is divided into two parts. The first part examines deficiencies and gaps within the existing legislative framework in Moldova such that it falls short of the standard required under Article 2 of the Convention in certain key areas. The second part responds to questions posed by the Committee in its List of Issues, providing information on violence against women (including domestic violence and sexual harassment) which ERT gathered during the course of its project with Promo-LEX, namely which were raised in the list of issues and questions.

Constitutional and Legislative Framework (Article 2)

7. Under Article 2(a) of the Convention, States Parties undertake to "condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women" and to "embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle". Further, under Article 2(b), States Parties undertake to "adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women".

8. The Committee, in its General Recommendation No. 28 on the Core Obligations of State Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (General Recommendation No. 28), has elaborated on the nature of states' obligation arising under Article 2, stating that:

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[1] Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 28 on the core obligations of States parties under article 2*, CEDAW/C/GC/28, 2010.

[2] *Declaration of Principles on Equality*, The Equal Rights Trust, London, 2008.

[3] *Naz Foundation v. Government of NCT of Delhi and Others* WP(C) No.7455/2001, Para. 93.

[4] Parliamentary Assembly of the Council of Europe, *Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11380.

> *Article 2 is crucial to the full implementation of the Convention since it identifies the nature of the general legal obligations of States parties. The obligations enshrined in article 2 are inextricably linked with all other substantive provisions of the Convention, as States parties have the obligation to ensure that all the rights enshrined in the Convention are fully respected at the national level.*[5]

9. The Committee has further confirmed that the obligation on state parties under Article 2 has three elements. States are required to *respect* the right to non-discrimination by refraining from "making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights";[6] to *protect* the right by "protect[ing] women from discrimination by private actors and tak[ing] steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes";[7] and to *fulfil* the right by adopting a "wide variety of steps to ensure that women and men enjoy equal rights *de jure* and *de facto*, including, where appropriate, the adoption of temporary special measures".[8]

10. Protection from discrimination in Moldova is provided by both the Constitution and other legislation, including, in particular, the Law on Ensuring Equal Opportunities between Women and Men (Law No. 5-XVI of 9 February 2006) (the Equal Opportunities Law) and the Law on Ensuring Equality (Law No. 121 of 25 May 2012) (the Law on Ensuring Equality).The sole non-discrimination provision in the Constitution is Article 16(2), which states that:

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

11. The primary means by which women in Moldova (and the *only* means by which women who are not citizens of Moldova) are able to enforce their right to non-discrimination is through the Equal Opportunities Law and the Law on Ensuring Equality. While these two pieces of legislation provide a degree of protection from discrimination and promote equality between women and men, each has a number of omissions, meaning that they fall short of the standard of protection required by the Convention in a number of respects.

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[5] See above, note 1, Para. 6.

[6] Ibid., Para. 9.

[7] Ibid., Para. 9.

[8] Ibid., Para. 9.

Grounds of Discrimination

12. Taken together, the Equal Opportunities Law and the Law on Ensuring Equality provide protection from discrimination on a number of grounds. The Equal Opportunities Law explicitly prohibits discrimination on grounds of sex, including pregnancy, maternity and paternity.[9] The Law on Ensuring Equality explicitly prohibits discrimination on grounds of race, colour, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, and political affiliation.[10]

13. ERT is concerned that these two lists of grounds nevertheless omit a number of grounds which have been recognised under international law. ERT is concerned that the omission of these grounds from the list may limit the extent to which women can enjoy protection from all forms of discrimination, as required by the Convention. As the Committee has stated in its General Recommendation No. 28:

> *The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.*[11]

14. ERT notes with concern that a number of grounds for which effective protection from discrimination may be of particular importance to women, including ***sexual orientation, gender identity, civil, family or carer status, health status*** and ***economic status***, are omitted from the list of protected characteristics provided in the Equal Opportunities Law and the Law on Ensuring Equality. ERT is also concerned that a number of further grounds which intersect with sex, resulting in a "compounded negative impact on women", including ***descent, birth, national or social origin, and genetic or other predisposition toward illness*** are also omitted from both Laws. Each of these omitted grounds in included in the list of explicitly protected grounds provided in Principle 5 of the Declaration of Principles on Equality, and each has been recognised either by other international human rights instruments, or by Treaty Bodies responsible for their interpretation and implementation.[12]

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[9] Law on Ensuring Equal Opportunities between Women and Men, Law No. 5-XVI of 9 February 2006, Article 2.

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

[11] See above, note 1, Para 18.

[12] The Human Rights Committee has stated that the prohibition of discrimination in Article 26 of the International Covenant on Civil and Political Rights includes discrimination based on **sexual orientation**. (See, for example, *Young v. Australia,* (Communication No. 941/2000), U.N. Doc. CCPR/C/78/D/941/2000, 2003.) Similarly, the Committee on Economic, Social and Cultural Rights has stated that sexual orientation is a prohibited ground falling within "other status" in Article 2(2) of the International Covenant on Economic, Social and Cultural Rights. (Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para. 32.) The Committee on Economic, Social and Cultural Rights has also stated that **gender identity** is a prohibited ground falling within "other status" in Article 2(2) of the International

15. In light of the Committee's legitimate concern to ensure that women enjoy protection from all forms of discrimination, not solely on the basis of their sex or gender, the absence of these grounds from the list of explicitly protected grounds in the two Laws is a cause for concern.

16. ERT notes that Article 7 of the Law on Ensuring Equality prohibits discrimination on grounds of sexual orientation but only in the field of employment, and not in any other area of life. While any prohibition of discrimination is welcome, ERT is concerned that the Law on Ensuring Equality restricts the scope of protection from discrimination on grounds of sexual orientation in this way. ERT takes a holistic approach to the right to equality in which all grounds of discrimination are treated equally with no hierarchy of protection. Principle 6 of the Declaration of Principles on Equality provides that:

> *Legislation must provide for equal protection from discrimination regardless of the ground or combination of grounds concerned.*[13]

17. In this regard, the Declaration reflects current expert opinion that any hierarchy of protection for different grounds of discrimination is inconsistent with the right to equality. It is also reflective of international law: no international human rights treaty establishes a system of different levels of protection from discrimination on different grounds, whether explicitly recognised in the text or subsequently read into the "other status" provision. For example, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, far from establishing a hierarchy require instead that states respect and ensure the Covenant rights "without distinction of any kind". While the Human Rights Committee and the Economic, Social and

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Covenant on Economic, Social and Cultural Rights. (Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para. 32.) The Human Rights Committee has stated that **marital status** is a protected ground under "other status" provided in Articles 2(1) and 26 of the International Covenant on Civil and Political Rights (*Danning v. the Netherlands* (Communication No. 180/1984), U.N. Doc. CCPR/C/OP/2 at 205 (1990); and *Sprenger v. the Netherlands* (Communication No. 395/1990), U.N. Doc. CCPR/C/44/D/395/1990 (1992)). The Committee on Economic, Social and Cultural Rights has stated that **health status** is a prohibited ground falling within "other status" in Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights, UN Doc. E/C.12/GC/20, 2009, Para 33). The Committee on Economic, Social and Cultural Rights has stated that the ground of **economic situation** falls under "other status" in Article 2(2) in the International Covenant on Economic, Social and Cultural Rights. (Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para. 35.) Descent is a prohibited ground under international law, specifically under Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination. (G.A. Res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195.) **Birth** and **national or social origin** are prohibited grounds under Articles 2(1) and 26 of the International Covenant on Civil and Political Rights (G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171) and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights. (G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3.). Discrimination on grounds of **genetic heritage** is prohibited under Article 11 of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (CETS No.: 164, adopted 4 April 1997).

[13] See above, note 1, Principle 6, p. 8.

Cultural Rights Committees in their General Comments and Concluding Observations have provided extensive and detailed interpretations of the right to non-discrimination, they have never indicated or condoned the existence of a hierarchy of grounds in respect of the level of protection. Indeed, this approach is consistent with the well-established principles of universality and indivisibility of human rights in general, which is conferred by the Covenants and is reasserted powerfully in the 1993 Vienna Declaration and Programme of Action. In the view of ERT, any hierarchy of protections based on different grounds has no place in a law designed to provide protection from discrimination and promote equality, and is clearly inconsistent with international law and best practice.

18. The decision to limit explicit protection from sexual orientation discrimination – and the lack of any protection from gender identity discrimination – is even more troubling given the prevalence of discrimination on these grounds in Moldova. There is extensive evidence of problems of discrimination and discriminatory violence directed at women (and men) from sexual and gender minorities in Moldova, which points to the need for effective protection from discrimination in all spheres of life. Promo-LEX, for example, has documented severe patterns of discriminatory ill-treatment directed at lesbian women, in its report, *Discriminatory Ill-treatment in Moldova*, produced in partnership with ERT.[14] On 17 May 2013, the International Lesbian, Gay, Bisexual, Trans and Intersex Association – Europe, published its second *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe: 2013*; the review examines the level of legal equality for LGBTI persons in all countries in Europe.[15] Moldova received a score of just 10%, ranking 46th out of 49 countries in Europe. In this context, providing legal protection for lesbian and bisexual women in employment alone, and providing no protection for transgender women, is a cause of great concern.

19. Aside from the list of grounds receiving explicit protection, ERT welcomes the use of an "open-ended list" of grounds in Article 1(1) of the Law on Ensuring Equality through use of the phrase "or any other similar criteria" after the list of explicitly protected grounds provided in Article 1(1). An open-ended list such as this has the clear advantage that those exposed to discrimination on grounds which are not explicitly listed in Article 1(1) can claim protection. Given that each of the omitted grounds listed in paragraph 16 above enjoys protection from discrimination under international human rights law, the open-ended list of protected grounds in Article 2 must be read as including protection from discrimination on these grounds, if it is to be consistent with international law.

20. Nevertheless, ERT regrets the failure to include the listed grounds explicitly in Article 1(1) of the Law on Ensuring Equality. ERT is concerned that without explicit recognition, victims of discrimination on those grounds may be required to undertake legal proceedings so as to establish that these grounds are recognised under Article 1(1), rather than being able to rely on the Law immediately. ERT is also concerned that the Moldovan courts may fail to recognise some or all of these grounds when interpreting Article 1(1). As such, ERT believes that the explicit inclusion of

[14] Promo-LEX, "Promo-LEX Association released the Report „Discriminatory ill-treatment in Moldova"", 19 March 2012, available at: http://www.promolex.md/index.php?module=press&cat=0&item=923&Lang=en.

[15] International Lesbian, Gay, Bisexual, Trans and Intersex Association – Europe, "*Not "la vie en rose": the most comprehensive overview of the LGBTI people rights and lives in Europe 2013*", 17 May 2013.

these grounds in Article 1(1) of the Law on Ensuring Equality is essential to avoid potential restrictive judicial interpretation.

21. In addition, ERT is concerned that the Law on Ensuring Equality does not set down criteria by which further grounds are to be recognised as amongst those enjoying protection from discrimination. This further compounds the lack of certainty as to which further groups are likely to be recognised and protected by the courts among rights-holders, duty-bearers and those responsible for the Law's implementation and enforcement. The absence of qualifying criteria creates the risk of litigation being brought seeking protection on grounds not needing or deserving protection and, conversely, of groups or individuals being unclear of the law's scope and whether they will enjoy protection. The drafters of the Declaration have proposed a test to establish the admission of new grounds as the best approach to determine whether a new ground should be incorporated:

> *Discrimination based on any other ground must be prohibited where such discrimination (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.*[16]

22. This approach has the advantage of flexibility for further groups to be recognised and protected in the future and minimises the risk of unnecessary litigation, unfettered judicial discretion and of confusion among the general public as to which grounds should qualify.

Discrimination on the Basis of Perception

23. Neither the Equal Opportunities Law nor the Law on Ensuring Equality prohibits discrimination on the basis of perception.[17] Indeed, Article 1(1) of the Law on Ensuring Equality also appears to deny the possibility for the courts to incorporate protection from discrimination on the basis of perception, through the use of the term "irrespective of race, colour, nationality (...)". This phrasing limits the scope of application through protecting only those persons who possess a particular characteristic or trait (e.g. a particular race, colour or nationality). This may result in a large category of women who suffer from acts of discrimination due to the inaccurate perception that they have a particular trait or characteristic receiving no protection at all.

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[16] The approach of the Declaration of Principles on Equality instead reflects that of the principle anti-discrimination legislation in South Africa, the Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4 of 2000) which provides both a list of explicitly prohibited grounds and a condition that further grounds are to be prohibited if one of the three criteria listed above is met. This legislation itself drew inspiration from the decision of the South African Constitutional Court in *Hoffman v. South African Airways* (CCT17/00) [2000] ZACC 17; 2001 (1) SA 1; 2000 (11) BCLR 1235; [2000] 12 BLLR 1365 (CC) (28 September 2000), where it was held that the constitutional prohibition on discrimination in Section 9 extended to discrimination on grounds of HIV status, despite the fact that HIV status was not one of the explicitly listed prohibited grounds. See, in particular, Paras. 28 and 29.

[17] See above, note 10, Article 1(2).

24. The Declaration of Principles on Equality includes both discrimination on the basis of perception and discrimination by association in its definition of discrimination.[18] While the Convention does not explicitly prohibit either of these forms of discrimination, the Committee has stated in General Recommendation No. 28, in relation to Article 2 that:

> *The term "discrimination in all its forms" clearly obligates the State party to be vigilant in condemning all forms of discrimination, including forms that are not explicitly mentioned in the Convention or that may be emerging.*[19]

25. Both discrimination on the basis of perception and discrimination by association have been recognised as forms of discrimination by other treaty bodies. For example, the Committee on Economic, Social and Cultural Rights has said in its General Comment No. 20, in relation to Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (which prohibits discrimination in the enjoyment of Covenant rights) that:

> *Membership [of a protected group] also includes association with a group characterized by one of the prohibited grounds (e.g. the parent of a child with a disability) or perception by others that an individual is part of such a group (e.g. a person has a similar skin colour or is a supporter of the rights of a particular group or a past member of a group)*.[20]

26. ERT recalls the Committee's belief that the Convention: "is part of a comprehensive international human rights legal framework directed at ensuring the enjoyment by all of all human rights and at eliminating all forms of discrimination against women on the basis of sex and gender."[21] This view reflects the principle that the treaties which make up the international human rights framework are complementary and, wherever possible, should be interpreted consistently so as to provide the highest level of protection. As both discrimination on the basis of perception and discrimination by association have been recognised as forms of discrimination under other treaties, ERT believes that they should thus be recognised as forms of discrimination prohibited under the Convention. Consequently, the fact that the two Laws do not explicitly cover both of these forms of discrimination represents a failure of the state party to ensure that it effectively prohibits all forms of discrimination.

Multiple Discrimination

The impact of the lack of protection from discrimination on a broader list of grounds, and of the omission of both discrimination by association (in both laws) and discrimination on the basis of

[18] See above, note 2, Principle 5, p. 6.

[19] See above, note 1, Para 15.

[20] Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 16.

[21] See above, note 1, Para 3.

perception (in the Equal Opportunities Law) is further exacerbated by the lack of explicit prohibition of multiple, including intersectional, discrimination in either the Equal Opportunities Law or the Law on Ensuring Equality. While Article 4(d) of the Law on Ensuring Equality provides that "discrimination against people on the basis of two or more criteria" constitutes a "serious form of discrimination", ERT is concerned that this form of discrimination is neither clearly defined, nor explicitly and clearly prohibited by the Law.

27. In its General Recommendation No. 28, the Committee has explicitly stated that "[i]ntersectionality is a basic concept for understanding the scope of the general obligations of states parties contained in article 2" and that "States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned".[22] The absence of protection from multiple discrimination in the two Laws is a cause for concern.

Exceptions

28. ERT is concerned that the Law on Ensuring Equality provides a number of exceptions which permit discrimination against women in ways which are inconsistent with the Convention.

29. ERT is aware that neither the Convention nor General Recommendation No. 28 make explicit reference to any exceptions to the rights to equality and non-discrimination. Exceptions which unduly limit the scope of protection provided by law must, by definition, be inconsistent with the obligations to condemn and prohibit all forms of discrimination against women under Article 2. In line with the current international consensus, the Declaration of Principles of Equality sets out rules to assess the validity of limitations or exceptions to the protection from different forms of discrimination. Under Principle 5 of the Declaration, *direct discrimination* "may be permitted only very exceptionally, when it can be justified against strictly defined criteria", while *indirect discrimination* may be permitted only where it can be "objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary".

30. The Law on Ensuring Equality contains a number of exceptions to the prohibition on discrimination which are a cause for concern. In particular, Article 1(2) provides that the protections provided in the Law "shall not extend to and shall not be construed to affect":

    (a) the family, based on the freely consented marriage between a man and a woman;

    (b) adoption relationships; and

    (c) religious organisations and their constituent parts in relation to religious beliefs.

31. The first and second of these exclude the Law's application in a broad area of family and adoption law. Neither the Convention nor General Recommendation No. 28 provides for any exceptions from the prohibition on discrimination in the areas of family law or adoption law. Indeed, Article 16(1) of the Convention specifically requires States Parties to:

[22] See above, note 1, Para. 18.

(...) take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations (...)

32. The Declaration of Principles on Equality states that the right to equality, and therefore the right to non-discrimination which is subsumed within the right to equality, "applies in all areas of activity regulated by law".[23] A provision which states, as Article 1(2) does, that the protection from discrimination does not apply in areas of family law is contrary to this principle reagarding material scope. Moreover, such limitations are inconsistent with Moldova's obligations under Article 16 of the Convention. ERT notes that exceptions which mean that "non-discrimination does not apply with respect to personal laws, in particular in the areas of marriage, divorce, adoption, burial and succession" have been explicitly criticised by the Committee.[24]

33. Moreover, ERT believes that part of the motivation behind the inclusion of these exceptions – and in particular the inclusion of the phrase "marriage between a man and a woman" is to preclude LGBT persons from seeking to use the Law to require legal recognition of same-sex relationships and the adoption of children by same-sex couples. Such restrictions will therefore have a significant impact upon lesbian, bisexual and transgender women.

34. The third of the exceptions in the Law relates to the actions of religious organisations which are based on their religious beliefs. ERT is unconvinced that exceptions to the prohibition on discrimination against women which are based on "religious beliefs" can ever be justified. Indeed, neither the Convention nor General Recommendation No. 28 provides for any exceptions for religious organisations. Bearing in mind the history of discrimination which women have suffered based on "religious beliefs", ERT believes that any exceptions to the right to non-discrimination based on such aims should be scrutinised closely and that any exception should be narrow in scope, specific in application and explicitly stated in legislation, rather than left to judicial interpretation. .

35. In conclusion, ERT is concerned that the scope and definition of the right to non-discrimination provided by the Equal Opportunities Law and the Law on Ensuring Equality is inconsistent with the requirements placed on states by Article 2 of the Convention, as elaborated by the Committee in its General Recommendation No. 28. ERT therefore calls on the Committee to urge the government of Moldova to amend these two laws, in particular by ensuring that they both:

    a. Explicitly prohibit discrimination on at least the grounds of sexual orientation, gender identity, civil, family or carer status, health status, economic status, descent, birth, national or social origin, and genetic or other predisposition toward illness, in addition to those grounds already listed in each Law;

    b. Provide a test for the incorporation of new grounds of discrimination in line with that recommended in the Declaration of Principles on Equality;

[23] See above, note 1, Principle 8, p. 8.

[24] See for example, Committee on the Elimination of Discrimination against Women, *Concluding Observations: Kenya*, UN Doc. ICEDAW/C/KEN/CO/6, 10 August 2007, Para. 11.

c. Explicitly prohibit discrimination on the basis of perception;

d. Explicitly prohibit multiple discrimination; and

e. Provide only for strictly limited exceptions to the right to non-discrimination, in accordance with the Declaration of Principles on Equality.

Violence against Women (Article 1 and General Recommendation 19)

36. Paragraphs 7 to 11 of the Committee's List of Issues raise questions about Moldova's response to the levels of violence against women in Moldova, including domestic violence, sexual violence, and sexual harassment. Paragraphs 12 to 14 raise questions about Moldova's response to trafficking in women.

37. In 2012, as part of ERT's project *Strengthening Legal Protection from and Raising Awareness of Discriminatory Ill-Treatment in Republic of Moldova including Transnistria*, ERT and Promo-Lex published a report on discriminatory ill-treatment in Moldova.[25] Chapter 1.1 of the report provides a detailed picture of discriminatory ill-treatment based on gender in Moldova, focusing on four particular types: domestic violence, sexual violence, sexual harassment and trafficking in women. ERT attaches, as **Annex I** to this report, the relevant excerpts from the report, for the Committee's attention.

38. In the report, reference is made to a number of cases filed with the European Court of Human Rights alleging gender discriminatory ill-treatment. Since the publication of the report, a number of those cases have been heard and judgments published. In two cases (*Mudric v. Moldova* and *Eremia and Others v. Moldova*), the Court found a violation of Article 3 (the right to freedom from torture and inhuman or degrading treatment or punishment) and of Article 14 (the right to non-discrimination), in conjunction with Article 3. ERT attaches as **Annex II** to this shadow report the relevant passages from the judgments in these cases.

39. The information in Annexes I and II makes clear that violence against women in Moldova remains a significant concern and seriously inhibits the ability of women in Moldova to enjoy rights and freedoms on a basis of equality with men.

40. ERT calls on the Committee to recommend that Moldova takes measures to improve protection from violence against women, including by:

a. Providing specific training to all agencies involved in the criminal justice system, including the police, prosecutors, and the judiciary on violence against women in order to ensure that the relevant law is rigorously enforced and that discriminatory attitudes are eliminated; and

b. Developing and implementing a comprehensive strategy to combat and eliminate violence against women, in line with the Committee's requirements in General Recommendation 19.

[25] See above, note 14.

Annex I: Excerpt From "Discriminatory Ill-Treatment in Moldova"

1.1. Discriminatory Ill-Treatment Based on Gender

In Moldova, gender-based violence is a serious human rights problem that affects numerous women throughout their lives. Gender-based 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.[26] The main issues in this regard refer to: domestic violence; sexual violence; sexual harassment; trafficking and exploitation of the prostitution; and compulsory abortion.[27] This subchapter focuses on the most problematic issues relating to gender-based violence in Moldova.

1.1.1 Domestic violence

Domestic violence in Moldova is a complex phenomenon generated by psychological problems and aggravated by educational, economic and social factors. Domestic violence in Moldova has a strong gender character also reflected in the popular mentality that domestic violence is not a public issue, but rather a private matter. 90% of victims of domestic violence are women.[28]

According to the latest data available, one in four women in Moldova is a victim of domestic violence, whether physical, sexual, psychological or economic. The 2005 Moldova Demographic and Health Survey showed that 24% of married women are subjected to physical violence, 23% to psychological violence, and 4% to sexual violence.[29] Women are predominantly subjected to domestic violence by their husbands (66%), by former husbands (10%), children (6%), parents (3%), parents-in-law (2%), partners (1%), brothers (1%) and other family members (2%).[30]

Frequent and open manifestations of violence lead to marginalization of women and children. The lack of money, the lack of support from relatives and from the authorities, and the lack of a shelter determine these women to accept the role of a victim. The leading causes that make victims accept further abuses against them include: the lack of dwelling; the fear of not being able to cope financially without a partner; the desire to have a husband; pity for the aggressor; the acknowledgment that the children need a father

[26] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against Women*, U.N. Doc. A/47/38 at 1 (1993), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003).

[27] Ibid., Paras. 11, 13, 17, 22 and 23.

[28] In 2010, Moldova's Deputy Prosecutor-General E. Rusu confirmed that, according to a survey conducted by the prosecution service, 90% of the victims of domestic violence are women. See Prosecutor General of Moldova, *Comunicat de presă: Prevenirea şi combaterea violenţei în familie pe agenda discuţiilor*, available at http://www.procuratura.md/md/com/1211/1/3941/ (in Romanian).

[29] United Nations Population Fund, *Intrebari Frecvente Despre Violenta in Familie*, available at: http://www.unfpa.md/images/stories/pdf/intrebari%20frecvente%20despre%20violenta%20in%20familie.doc.

[30] Centre „La Strada", *Telefonul de Încredere pentru femei 08008 8008: Raport de activitate*, 2010, p. 6 available at: http://www.lastrada.md/publicatii/ebook/Raport_linia_fierbinte_2010_final_2.pdf (in Romanian).

or that the children are against a divorce; shame; pressure from family or relatives to keep the family united; advanced age; and the hope that the aggressor will change.

There are also women who are ready to break the circle of violence, but they often have no money to initiate the divorce proceedings. Or worse, victims are threatened with death or damage to property if they leave the abuser.[31]

In many cases women divorce their aggressive husbands. 60% of divorced women have recognised that they have suffered from violence at home, as compared to 28% of married women.[32]

Moldova has a law on domestic violence which came into effect on 18 September 2008: Law No. 45-XVI on Preventing and Combating Domestic Violence (Law No. 45-XVI).[33] Law No. 45-XVI aims to strengthen, protect and support the family, to ensure respect for fundamental principles of law in the family, and to ensure equal opportunities between women and men in their human right to a life without violence.

Article 2 of Law No. 45-XVI defines family violence as: "any action or deliberate inaction, except for self-defence or defence of others, manifested verbally or physically, by physical, sexual, psychological, spiritual or economic abuse, or by infliction of material or moral damage, committed by a family member on another family member/members, including against children and against the common or personal property".

When it came into force, however, the Law No. 45-XVI proved itself to be somewhat inapt, as there was no mechanism for implementing its requirements. The Criminal Code of the Republic of Moldova (Criminal Code) still lacked provisions on domestic violence. Thus, acts of domestic violence were sometimes prosecuted under the general criminal law provisions regarding the infliction of bodily harm or assault, or under administrative law.

On 3 September 2010, a new Law No. 167 entered into force which amended certain other pieces of legislation (including the Criminal Code, the Code of Criminal Procedure and Law No. 45-XVI).[34] Law No. 167 aimed to solve the problems of non-implementation of Law No. 45-XVI. Law No. 167 inserted a new provision on domestic violence in the Criminal Code, Article 201,[35] according to which domestic violence is established as a criminal offence and described as*:* "intentional action or inaction that is manifested physically or verbally, committed by a family member on another family member, causing physical pain, slight bodily injury, distress, material or moral damage. […] For family violence causing consequences for

[31] Ibid., p. 9.

[32] UNDP Moldova, *Fiecare a treia femeie din Republica Moldova a fost cel puţin o dată victimă a violenţei în familie*, available at: http://www.hr.un.md/news/210/ (in Romanian).

[33] Law on Preventing and Combating Family Violence, Law No. 45-XVI of 1 March 2007.

[34] Law Amending and Supplementing Certain Legislative Acts, Law No. 167 of 9 July 2010.

[35] The Criminal Code of the Republic of Moldova, Law No. 985-XV of 18 April 2002, as amended.

the victims' bodily integrity and health, the aggressor may be subjected to 15 years imprisonment especially if the victim died, attempted suicide or suffered serious bodily harm as a result of the violence."

As a result, a Protection Order for victims of domestic violence can now be issued both in the criminal and civil proceedings. Under the civil procedure set out in Article 15 of Law No. 45-XVI, the court is required to issue a Protection Order within 24 hours of receiving the claim. Under the criminal procedure, the investigating body is obliged to submit a request to the judge to examine the application for a Protection Order within 24 hours.

Under both procedures, the court may oblige the aggressor: (1) to leave the house, regardless as to whether it is a common property or not; (2) to stay away from the victim's whereabouts and maintain a distance that would ensure the victim's security; (3) not to contact the victim; (4) not to visit the victim at a workplace or place of residence; and (5) to abstain from keeping and carrying firearms.

Law No. 45-XVI includes definitions and refers to different types of violence such as: physical, sexual, psychological, spiritual and economic. However, domestic violence is often associated only with physical violence; such forms as psychological or economic violence are lesser-known concepts and are perceived by the population as a part of a family routine.

The Police Law (Law No. 416-XII of 18 December 1990, republished in Moldova's Official Monitor, 2002, Number 17–19, Article 56) was also amended through Law No. 167. As a result, Article 12 which sets out the responsibilities of the police was supplemented with section 51, says that the police have a duty "to ensure the protection of victims of domestic violence and supervise the execution of Protection Orders in conformity with the law". Further, Article 13 was supplemented with section 41, which provides that "in case the victim of domestic violence is in a state of incapability, [the police] shall request the court for a Protection Order based on the victim's petition or notification on the case".

Though Law No. 45-XVI provides sufficient protection mechanisms, their application in practice remains a cause for serious concern. The key issues relating to the enactment of protection mechanisms are set out below.

Key issues

a) Failure to execute Protection Orders: One of the most frequently encountered problems in the domestic violence area is the failure to execute Protection Orders by both the aggressor and the authorities, who by law are responsible for its implementation in practice. In most cases the local social worker and the police are unaware of the existence of a Protection Order, let alone have the knowledge of enforcement of the order. Another situation is when the police know about domestic violence and about the Protection Order but limit their involvement to informing the aggressor about its existence, even when the Protection Order text imposes an obligation on the aggressor to leave the house. The most frequent explanation is the lack of space or alternative accommodation to which the aggressor could move.

b) Ineffective supervision of the execution of Protection Orders: In many cases, both the police and social workers are responsible for the supervision on the execution of the Protection Order fail to monitor the cases accordingly (periodic visits, phone calls, etc) and only react when called by the victim.

There are also cases when neither reacts to the victims' appeal regarding the violation of the protection order by the aggressor, thus living the victim without any protection. In such cases the victims have to flee their homes and seek shelter.

According to the data provided by the Ministry of Internal Affairs (MIA), during the period of 2009 to 2011 there were no cases registered where the police would fail to execute the Protection Orders and no police officers were sanctioned for failing to execute or to supervise the enforcement of the Protection Orders.[36] According to the same source, in 2011 only two cases were registered, where two or more Protection Orders were issued within the same case. No such cases were registered between 2009 and 2010.

c) Delayed initiation of the criminal prosecution by the prosecution: Although since 3 September 2010, domestic violence has been a crime under the Criminal Code, in some cases the petitions submitted to the prosecution on behalf of the victims remained unsolved. While many petitions have been filed, the ongoing subjection of the victims to domestic violence continued.

d) Refusal to issue Protection Orders: There are cases when the court has refused to issue the Protection Order on the grounds that the aggressor did not recognise the acts of violence, and also presented witnesses who submitted statements in their favour. In these situations, the statements of the victim are often disregarded. Victims often face a hostile attitude from the court, particularly from judges. It often results in having the credibility of the reported offence further disregarded, and the risk faced by the victims not minimised. The presence of the aggressor during the court session for issuance of the Protection Order proves to be stressful for the victims. Thus, due to pressure and fear, the latter withdraw their complaints or request administrative sanctions instead of criminal punishment for aggressors.[37]

e) Delay in issuing Protection Orders: The essence of the Protection Order is to provide immediate protection for victims of domestic violence, and this is the reason for the 24 hour time-limits imposed under both the civil and criminal procedures. In many cases, delays mean that a Protection Order is not granted until, for example, two weeks after the application is made, which is often too late to prevent the victim from being subjected to further violence. There are no mechanisms to urgently issue the protection orders contrary to the fact that the Law stipulates that the protection orders should be issued within 24 hours. There is also no mechanism to appeal the delay of execution of the protection order.

f) The lack of uniform legal practice: Until now there is no uniform legal practice with regard to protection of the victims of domestic violence. There were also registered cases when a judge issues a Protection Order and later annuls it, although such suspension is not stipulated by the law.

g) Sanctioning the victims of domestic violence: There were registered cases when the police would sanction not the aggressors but the victims of domestic violence. In the majority of such cases victims are punished administratively, but there are also cases where criminal suits are initiated against

[36] Official data provided to Promo-LEX by the MIA as a response to an interpellation. Document No 6/3205 of 14 December 2011.

[37] Such cases were registered by Centre „La Strada" during 2011.

them. In such cases the law-enforcement bodies disregard the evidences of violence against victims and even the fact that the victim was the one who called the police and requested protection.[38]

Examples

The following examples are provided as illustrations of the findings listed above:

Case 1 – Ms. Lidia Mudric, (72 years old) was systematically beaten in 2010 by her former husband whom she divorced 20 years ago, after he illegally entered her house, beat her and remained to live there without her permission. Ms Lidia Mudric was forced to flee to neighbours and leave every evening her residence. Numerous complaints have been made to the police, to the Prosecutor's office, to the Social Assistance Department and the MIA. The first two Protection Orders issued by the court (on 22 June and on 17 July 2010), in which the aggressor has been requested to leave the woman's house, have not been executed. The police have justified inaction by claiming the abuser suffered from mental illness and therefore could not be brought to criminal responsibility. They refused to evict the abuser from the applicant's house, reasoning the aggressor had nowhere to live. The district police was also ignoring the calls of Mrs. Lidia Mudric about acts of violence inflicted by her former husband. On 16 December, 2010 the third Protection Order was issued by the court. The Protection Order was enforced. On 21 December 2010 the case was also submitted to the European Court of Human Rights (ECtHR).[39]

Case 2 - Ms. Eremia Lilia was systematically beaten by her former husband (A). After she filed for divorce in July 2010, he became more aggressive, continued to strike and to insult her, often in the presence of minor daughters. Numerous complaints were made to the police, prosecutors and MIA about her husband. But the police officers did not offer Mrs. Eremia or her minor daughters the protection against domestic violence. Here it is important to point that A. is a policeman in the same village.

On 9 December 2010 a Protection Order against A. was issued by the District Court. A. was ordered to leave their house for ninety days and was prohibited from coming within 500 m of the applicants and from contacting them. However, Protection Order was repeatedly breached by A. and the police did not react to any of Ms. Eremia written and verbal complaints.

On 10 January 2011 Ms. Eremia was invited to give statements at police station concerning their complaints against A. According to her, she was then persuaded to withdraw her complaint, because a criminal record and loss of employment by A. would reflect negatively on her daughters' educational and career prospects.

On 13 January 2011 A. went to the family home, violating the Protection Order of 9 December 2010. He again hit and insulted the first applicant, simulating strangling her, and warned her that he would kill her and her aunt if she continued complaining. On 14 January 2011 a medical expert found injuries on her neck which could have been caused in the manner the first applicant had described. On 16 January an application was lodged before the ECtHR. On 17 January 2011 the Court made an appeal to Moldovan Ministry of Justice about this case. On the same day a criminal investigation was initiated against A. and

[38] Such cases were registered by Promo-LEX, "Refugiul Casa Marioarei" and Centre „La Strada" during 2011.

[39] *Mudric v. Moldova* (Application No. 74839/10, filed on 21 December 2010).

Ms. Eremia was recognized as a victim in this case. However, due to continuous violation of the Protection Order by A. on 14 March 2011 another Protection Order was issued under the criminal procedure. On 1 April 2011 A. has admitted his guilt and the prosecution was conditionally suspended for one year. This decision was contested by the Ms Eremia lawyer but it was kept in force by district Prosecution. (Case in progress).[40]

Case 3 – T.M. and C.M. are a mother and daughter that live in Chisinau city. They live with the former husband / father in the same one room apartment. The former husband is very aggressive and abuses T.M. and C.M. During 2011 T.M. notified the police three times for medium and light injures. Every time the policemen issued protocols on administrative violations.

In early April 2011 T.M. obtained a Protection Order that prohibited the aggressor to contact his daughter and he had to leave the apartment. The Protection Order was issued 10 days after the request was filed and the applicant received the Protection Order another 10 days after it was issued. T.M. filed a request to execute the Protection Order by the police, and the latter delayed the execution by another 10 days. During the last attempt to evict the aggressor from the apartment the aggressor presented a Court decision that annulled the execution of the Protection Order. It is important to mention the fact that the decision was issued by the same Judge that issued the Protection Order in first place. On 30 April 2011 cases was lodged before the ECtHR.[41]

In these cases applicants claim State complicity in their ill-treatment and gender-based discrimination in benefiting from the protection of the law.[42]

Case 4 – due to the domestic violence, R.L. divorced her husband V.R. in 2003, however continued to live in the same flat with her former husband. R.L. continued to be subjected to violence.

On 22 June 2010, the Ciocana district Court, Chisinau, issued a Protection Order for R.L. (for 30 days). However, the violence continued and the aggressor ignored the Protection Order. Police also failed to execute the Protection Order (Police Station No 4, Ciocana district). Thus, on 22 September 2010, a complaint was submitted to the Prosecution of Ciocana district aiming to initiate a criminal investigation on the issue of domestic violence, according to Article 2011 of the Criminal Code.

On 29 November 2010, R.L. had a fight with her former husband who came home drunk and was insulting her. R.L. called the police. The policeman who came on appeal, A.C., totally ignored the victim's complaints and even threatened her. According to R.L., A.C. was very angry with her because he was previously sanctioned by his superiors for not executing the Protection Order of 22 June 2010 (his salary was lowered).

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[40] *Eremia and Others v. Moldova* (Application No. 3564/11, filed on 16 January 2011).

[41] *T.M. and N.M. v. Moldova* (Application No. 26608/11, filed on 30 April, 2011).

[42] Promo-LEX media statements on these cases available at:
http://www.promolex.md/index.php?module=news&item=522&Lang=en and
http://www.promolex.md/index.php?module=news&item=787.

On 7 December 2010, the police charged R.L. with "moderate disorderly conduct" under Article 354 of the Contravention Code[43] and imposed a 200 lei fine on her. The penalty was the result of the threats uttered by the police officer and due to the biased conduct of the police in general. Furthermore, the act was improperly classified and the administrative protocol was completed in breach of a number of provisions of the Contravention Code. Consequently, on 9 December 2010, the administrative protocol was challenged in Ciocana district Court. On 12 January 2011, the Ciocana district Court admitted the appeal and quashed the administrative proceedings against R.L.

On 10 December 2010, another request for a Protection Order was lodged with the Ciocana District Court on behalf of R.L. and her daughter. The court session was not held within 24 hours as stipulated by the Law. Thus, on 13 December 2010 a complaint was submitted to the President of the Ciocana Court. However, the Ciocana Court rejected the request for a Protection Order by a ruling dated with 2 February 2011. An appeal against this decision was made but the court session was only planned for 19 April 2011. On the Court session held on 19 April 2011, the request for Protection Order was rejected again.

Meanwhile, on advice of the police, V.R. started writing complaints to the police against R.L., making up various pretexts. This benefited both the perpetrator and police officer A.C., who was earlier penalized for the failure to carry out his duty (we recall that he threatened the victim with retaliation). As a result, administrative proceedings were started against R.L., who was placed under supervision as "a family troublemaker". On 3 February 2011, Ciocana Commissar C.G. issued a decision declaring R.L. culpable of an administrative offense under Art. 69 of the Contravention Code, namely insult, and imposed a fine of 1,200 MDL on her. In that decision, R.L. was penalized for committing the act of insult on 24 December 2011, however from 21 December to 26 December 2010 R.L. was not even at home, which demonstrates once again that the administrative charges were mere fabrications. The decision was challenged in the Ciocana district Court on 4 February 2011. The appeal was accepted and the decision was annulled on 2 March 2011.

Thus, R.L. continued to experience hostile attitudes from police officers, who not only failed to take steps to bring the aggressor to justice, but, on the contrary, hit back at the victim by initiating various administrative proceedings against her because of her numerous complaints.

Due to the fact that the issue of domestic violence remained unsolved the case was submitted to CEDAW.[44]

h) Issue of domestic violence in the Transnistrian region of Moldova: Law No. 45-XVI does not apply in the Transnistrian region of Moldova, whose *de facto* administration rejects Moldovan jurisdiction. Moreover, there is no specific "law" on preventing and combating domestic violence in the region. Thus, the cases referring to domestic violence are treated as murder, severe or less severe bodily injury or damage to health, threatening murder, other. Such crimes are punished under the "Criminal Code" and the "Code of Administrative Offences". Thus, domestic violence in the region is treated as a private matter rather than a social problem.

[43] Contravention Code of the Republic of Moldova, available at http://norlam.md/public/files/docs/Contravention%20Code%20RM.pdf.

[44] In this Application R.L. complained under Articles 1, 2 and 5 of the Convention, and Articles 2 and 3 of the Optional Protocol to the Convention. The case was lodged with the Committee by Promo-LEX.

During 2009 to 2011, sociological studies and surveys were conducted by a local organization[45] on the issue of domestic violence in the region. According to the data of these studies, every one in four women interviewed is a victim of domestic violence. The studies also show that 35.7% of all women interviewed were subject to physical violence inflicted by a man.

The data of the studies also show that, mainly, women are subject to psychological, physical and sexual violence. In the majority of cases domestic violence goes unpunished. 79.9% of women subject to domestic violence haven't appealed to medical assistance; 75.4% of women haven't reported abuses to the police; 81.5% of women haven't told their families and friends about their problems.

1.1.2 Sexual Violence

According to the latest available statistics provided by the MIA, during 2011, in Moldova , 421 cases of sex crimes were reported, categorised as follows: (1) 260 cases of rape (a 6,5% increase from 2009); and (2) 161 cases of sexual violence (a 24% increase from 2009).[46] This data does not necessarily show an increase in the number of actual incidents of sex crimes, but it clearly shows an increase in the number of such incidents which were reported. According to the same source, of the total number of 421 cases of sex crimes reported in Moldova during 2011, only 203 (48 %) were sent for court examination. Of the total number of cases, 102 resulted in a cessation of criminal proceedings and 101 remained unresolved or still remain in the process of examination.

Crimes of sexual violence are stipulated as criminal offences under the Criminal Code.[47] According to Article 171 (Chapter No IV: Crimes related to sexual life) of the Criminal Code:

- "Rape, i.e. sexual intercourse committed by the physical or mental coercion of the person, or by taking advantage of the victim's incapacity to defend himself/herself or to express his/her will, shall be punished by imprisonment for 3 to 5 years."

Law No. 167 included an amendment to Article 171 of the Criminal Code, according to which rape was recognised as an act that can also take place in the family.[48] As a result, marital rape became recognised as a criminal offence in Moldova.

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[45] NR2 New Russia News Agency, *Насилие над женщинами в приднестровских семьях, как правило, остается безнаказанным – участники круглого стола*, 12 January 2012, available at: http://nr2.ru/pmr/367162.html (in Russian).

[46] Ministry of Internal Affairs, *Informatia - Operative Privind Starea Infractionalitatii pe Teritoriul Republicii Moldova in Perioada a 12 Luni a Anului 2010*, available at: http://www.mai.md/content/6945 (in Romanian); and *Informatia - Operative Privind Starea Infractionalitatii pe Teritoriul Republicii Moldova in Perioada a 12 Luni a Anului 2011*, available at: http://www.mai.md/content/11047 (in Romanian).

[47] See above, note 33, Article 171.

[48] See above, note 33, Article 171(2)(b).

Article 172 of the Criminal Code defines "Violent Actions of a Sexual Character", the most severe cases of which can be punished by lifetime imprisonment, as follows:

- "Homosexuality or satisfying sexual needs in perverted forms committed through the physical or mental coercion of the person or by taking advantage of the person's incapacity to defend himself/herself or to express his/her will shall be punished by imprisonment for 3 to 5 years."

Law No. 167 also includes a new provision according to which violent actions of sexual character can also take place in the family.[49]

Law No. 45-XVI defines "sexual violence" as:

- "any violence of a sexual nature or any illegal sexual conduct within the family or other interpersonal relationships, such as marital rape, prohibiting any methods of contraception, sexual harassment; any unwanted and imposed sexual behaviour; forced prostitution; any illegal sexual conduct in relation with a minor family member, including caresses, kisses and other unwanted touching of a sexual nature; other actions with similar effects".[50]

Key issues

A problematic approach to the prosecution of sexual violence in Moldova is further demonstrated by the example provided below.

a) One of the most problematic issues relating to the problem of sexual violence in Moldova is the way in which rape and violent actions of a sexual nature are investigated. The prosecution focuses on the behaviour of the victim, not the aggressor, and the investigation therefore seems to focus on collecting evidence to undermine and contradict the victim's story. "The Methodological Guidelines on the Investigation of Sexual Crimes", issued on 15 August 2008 by the Prosecutor-General's Department of Criminal Investigation, included a set of practical recommendations for Prosecutors in the prosecution of sexual offences. According to these guidelines, the prosecution must demonstrate the victim's physical resistance to the act. Under such a system, the guidelines would seem to encourage a form of constrained, yet still forced, sexual act. The assumption, therefore, is that the victim has consented to the sexual act unless there is evidence of physical resistance. Further, the guidelines include the suggestion that in some cases, such as those incidents where sexual intercourse involves a teenager, some sort of physical force may be necessary given the "shyness" of the teenager. The implication here, therefore, is that even where evidence of physical resistance or undue force is present, this will not in all cases be sufficient to prove the crime of either rape or a violent action of a sexual nature.

These guidelines demonstrate the problematic approach to the prosecution of sexual violence in Moldova which is further demonstrated by the example provided below.

[49] See above, note 33, Article 172(2)(b).

[50] See above, note 31, Article 2.

Examples

Case 1 – M.N., an 18 year old woman, a former student, in year II of a vocational school. M.N. comes from a family in which she frequently experienced abuse of a physical, psychological and financial nature. M.N. left home to study, wanting to escape this abusive family environment. Because her family were poor, her father only gave her 20 lei per week for food and essentials. M.N. tried to manage on this money, but, unsurprisingly, she was not able to survive. M.N. found work at a pizzeria in the city as a waitress. At the first exam session in winter, M.N. failed in three papers, which raised the possibility of her being expelled from her school. Going to the school director to discuss her situation, the latter made allusions of a sexual nature to her. Placed in a situation where she had little choice, she had sexual relations with the director. From that moment, he began to harass her. One evening, coming back from the pizzeria, she was stopped in front of her student dormitory by some male colleagues from the dormitory, who were in a state of intoxication. The latter took her into a room by force and forced her to have sexual relations with them (5 people). M.N. resisted and was heard by the dormitory tutor, who called the police to the scene. A police officer from the district interviewed her alone, without any other witness present (we should note that at the time of the incident the girl was a minor, being 17 years of age). When the police officer asked her if she was a virgin, she told him that she had had her first sexual experience with the school director, who had compelled her to have sexual relations with him. At this point the police officer began to suggest to her that she alone was guilty in what had happened, that she had been the one who had provoked such behaviour from the boys, and that no one would believe that the director of her school would have been capable of abusing her. The police officer advised her not to contact any legal bodies, since she would not win, and no one in her family would support her. On the second day, the girl was called to the director, who told her that she was expelled from the dormitory, on account of her indecent behaviour, and that she should leave within 24 hours. M.N. had nowhere to go. She went to the dormitory, got hold of some sleeping pills, and ingested them. The girl was found by her roommate, who told the dormitory tutor – the latter called the nurse. The girl was saved. M.N. left the school and went to live with her grandmother, in a neighbouring village, because her immediate family rejected her.[51]

Case 2 - I.G. was born on 10 December 1989. At the time of the alleged events, she was 14 years and 8 months old. On the evening of 21 August 2004, I.G. accompanied V.R. to a disco bar. V.R. was 23 years old at the time. I.G. and V.R. had known each other for many years and had met before on different occasions. I.G. recalls consuming approximately 100ml of vodka with V.R. On their way back home, V.R. raped I.G. in his car and allegedly threatened her with death should she tell anyone that he had had sex with her. Later that day, I.G. told her mother that she had been raped by V.R. On the same day, I.G.'s mother confronted V.R. at his house and he admitted having sex with her daughter. I.G.'s mother therefore reported the rape on her behalf at the police station of Singerei district on 25 August 2004. On 26 August 2004, the Prosecutor's Office of Singerei district opened a criminal investigation of the alleged crime of rape committed "knowingly" on a minor (pursuant to Article 171(2)(b) of the Criminal Code). After three years of examination of the case by the domestic courts, V.R. was cleared of the charges on the basis that the medical examination of I.G. had found no evidence of bruises, injuries, blood or sperm.

I.G. sought psychological help after the conclusion of proceedings in the domestic courts. Given the absence of government-provided specialised services for victims of sexual assault, in the period of July to August 2007, she was seen by a psychiatrist from RCTV "Memoria" which works in the field of sexual

[51] Case provided by "ProGeneva" Association.

violence. An excerpt from I.G.'s medical file, issued on 18 August 2007, confirms that she was suffering from a post-traumatic disorder caused by a combination of: (1) sexual assault; (2) failure of the courts to render an effective conviction; and (3) public humiliation to which I.G. was subjected during the domestic proceedings in her case. In 2007, the case was submitted to the ECtHR. I.G. claims that her right not to be subjected to inhuman and degrading treatment under Article 3 (Prohibition of torture) and the right to respect for her private life under Article 8 (Right to respect for family and private life) had been violated by the State's failure to observe its positive obligations to effectively investigate and prosecute crimes of sexual violence. In particular, I.G. argues that the domestic court's failure to assess effectively the issue of consent of a minor fell short of the State's positive obligation to enact criminal law provisions effectively in punishing the crimes of sexual assault of minors.

I.G. also argues that she had no effective domestic remedy at her disposal to seek reparation and redress for the violation of her rights. She submits that there has been a violation of Article 13 (Right to an effective remedy) taken in conjunction with Articles 3 and 8 of the ECHR.

I.G. further submits that the insistence on having corroborative evidence of resistance violated her right to non-discrimination under Article 14 (Prohibition of discrimination) taken together with Article 8 of the ECHR. I.G. considers that the corroboration requirement represents discrimination against women because it is based on erroneous assumptions about the reliability of women's ability to report rape and because it does not reflect the reality of rape as a crime, therefore resulting in ineffective prosecution of the crime. The case was communicated to the Government of Moldova in September 2009. Currently the case is pending for judgement.[52]

Both cases clearly illustrate the above-mentioned problems with investigations of claims of rape in Moldova.

b) Another issue refers to the fact that cases of marital rape and violent actions of sexual character committed within the family go unreported or are ignored by law-enforcement agencies. The 2005 Moldova Demographic and Health Survey showed that 4% of married women are subjected to sexual violence.[53]

According to the official data provided by the MIA, during 2009 to 2011 no cases of marital rape or violent actions of sexual character were registered.[54]

However, Centre "La Strada" had registered several such cases through their Trust Line for Women. According to Centre "La Strada" experts, women refuse to report cases of marital rape to police because they do not trust that police will be able to resolve their problem. This situation is also due to the requirement to provide corroborative evidence of resistance, including a medical certificate to support the allegations of rape or sexual violence. At the same time, many women do not report marital rape because

[52] *I.G. v. Moldova*, (Application No. 53519/07, filed on 6 October 2007).

[53] See above, note 27.

[54] See above, note 34.

they are unaware and unfamiliar with law provisions in this regard. Marital rape was established as a criminal offence only in 2010.

1.1.3 Sexual Harassment

In its General Recommendation 19, CEDAW Committee refers to sexual harassment in the workplace as a form of gender-specific violence,[55] stating that such conduct "can be humiliating and may constitute a health and safety problem".[56] Harassment becomes a form of discrimination "when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment."[57] Given that sexual harassment can violate the dignity of a person, or create a degrading environment for an individual to work in, such discriminatory behaviour may meet the threshold of "cruel, inhuman or degrading treatment".

"Sexual harassment" is defined under Law No. 5-XVI on Ensuring Equal Opportunities for Men and Women (Law No. 5-XVI) on 9 February 2006[58] as a form of gender-based discrimination, and Article 10(3)(d) requires that employers must "undertake measures to prevent sexual harassment of women and men at their place of work, as well as to prevent persecution for submitting complaints against discrimination to the competent body". However, there is no provision for enforcement of such obligations or for victims of sexual harassment to seek redress. There is, therefore, no civil procedure in Moldova whereby victims of sexual harassment can challenge such discriminatory ill-treatment.

In 2010, Law No. 167 introduced "Sexual harassment" as a sexual crime under Article 173 (Chapter No IV: Crimes related to sexual life) of the Criminal Code.[59] "Sexual harassment" is defined as "the manifestation of physical, verbal or nonverbal behaviour that violates the dignity or creates an unpleasant, hostile, degrading and humiliating atmosphere with the purpose of coercing another person to engage in sexual intercourse or other unwanted sexual actions committed by threat, coercion or blackmail". Sexual harassment can be punishable by: (1) a fine of 300 to 500 conventional units; (2) unpaid community work from 140 to 240 hours; or (3) by imprisonment for up to three years.

However, the inclusion of sexual harassment in the Criminal Code proves to be unworkable. The particular nature of the acts which amount to sexual harassment makes it difficult for the victim to meet the burden of proof required for the criminal prosecution of such acts. Sexual harassment is often committed in the absence of witnesses and without any written documentation. Therefore, by addressing the problem of sexual harassment through the criminal law, which will often result in a direct conflict between the

[55] See above, note 24, Para. 17.

[56] Ibid., Para. 18.

[57] The Equal Rights Trust, *Declaration on Principles of Equality*, 2008, available at: http://www.equalrightstrust.org/endorse/index.htm.

[58] Law on Ensuring Equal Opportunities between Women and Men, Law No. 5-XVI of 9 February 2006.

[59] See above, note 33, Article 173.

respective evidence of the victim and the aggressor, it is difficult to secure a conviction and therefore obtain justice for the victim.

Further, this can also lead to the re-victimisation of the victim and the withdrawal of the complaint. Once a complaint is withdrawn by the victim, there follows a cessation of the criminal procedure and no redress is provided to the victim.

According to the official data provided by the MIA, during 2009 to 2010 no cases of sexual harassment were officially registered in Moldova and in 2011 only 6 such cases were registered.[60] However, at this point there are no cases challenged in Moldovan Courts on the allegations of sexual harassment.

Example

***Case 1* -** Case P. and others.

In May 2010, the administration of a high school from Chisinau was informed about the actions of one of the school teachers. The teacher - B.N. sexually harassed four minor students from the high school (by touching them in intimate places and initiating a discussion of a sexual character). Incidents have occurred repeatedly during 2009 to 2010. Being afraid no one would believe them, the girls didn't report the case immediately. Later, the parents of the girls learned about this situation due to their sudden change of behaviour. The parents appealed to school administration and requested that their daughters be protected from B.N. and to be transferred to another class.

School administration initiated an investigation on this cases and applied disciplinary sanctions against B.N. as provided in Art 86 Dismissal of the Labour Code.[61] B.N. appealed this decision in Riscani District Court. On August 26 2010 his appeal was accepted by the Riscani District Court. School administration appealed on this decision and the appeal was rejected by the Court of Appeal on February 1, 2011.

On 19 October 2011 the Supreme Court of Justice quashed both the decision of the Riscani district Court and the decision of the Court of Appeal, and maintained the decision of the school administration on B.N. dismissal.

At the same time the parents of the girls filed a complaint to Riscani district Prosecution. Due to the fact that the incident took place before 3 September 2010, when the Law No. 167 introduced "Sexual harassment" as a sexual crime under Article 173, the prosecution could not qualify the case as sexual harassment. Thus, on 7 October 2010, was issued a decision not to prosecute B.N. because the act did not meet the elements of the offense. However, the lawyers in the cases suggested the case to be qualified as perverted actions committed against a person certainly known to be under the age of 16 as provided in Article 175 Perverted Actions of the Criminal Code.[62]

[60] See above, note 44.

[61] Article 86(1)(m) and (n) of the Labour Code of the Republic of Moldova of 28 March 2003.

[62] See above, note 33, Article 175.

On 31 March 2011 the parents of the victims were informed that a criminal case was initiated against B.N. The girls were recognized as victims in the case. The case is in progress.[63]

1.1.4 Trafficking in human beings

In Moldova, trafficking in human beings constitutes a criminal offence under the Article 165 "Trafficking in Human Beings" and Article 206 "Trafficking in children" of the Criminal Code.[64] Other crimes associated with trafficking are: Article 168 "Forced labour", Article 207 Illegally Taking Children Out of the Country, Article 220 Pimping and Article 3621 Organization of Illegal Migration.[65]

Despite the efforts of the Government, trafficking in human beings continues to represent a serious issue of concern for Moldova.[66] Moreover, in Moldova, trafficking mainly affects women and girls. According to the official information provided by the MIA, in 2009 victims of trafficking under Article 165 of the Criminal Code were 220 persons, 187 of them were women; in 2010, out of the total number of 154 victims of trafficking 105 were women; and in 2011, out of the total number of 107 victims of trafficking 76 were women.[67] For the purpose of this report and according to local non-governmental organizations, the most problematic issues refer to the following:

a) In Moldova, about 70% to 80% of victims of trafficking have experienced domestic violence prior to trafficking and, as already mentioned in this report, victims of domestic violence are mainly women – 90%.[68] The failure of the State to protect the victims of domestic violence, as well as the failure to combat this phenomenon at large, leads to an increased vulnerability of women to other human rights violations, including trafficking. Women, in their attempt to escape domestic violence and its consequences, may easily become victims of trafficking. Thus, it is possible to conclude that in Moldova, trafficking has a strong gender character and discriminates women. Moreover, one human rights violation leads to another.

b) The prosecution of perpetrators is also a serious issue: In many cases the perpetrators escape punishment or are given mild sentences. According to the official data available, during 2011 MIA registered 104 cases of trafficking comparing to 177 cases that were registered in 2009 (that is a 41% decrease from 2009). The number of the cases sent for court examination also decreased. In 2009, 57% of

[63] Promo-LEX case.

[64] See above, note 33.

[65] Ibid.

[66] UN High Commissioner for Human Rights Navi Pillay, Mission to the Republic of Moldova, *Media Statement*, 2011, available at: http://www.un.md/news_room/pr/2011/04_11/index.shtml.

[67] Official data provided to Promo-LEX by the MIA as a response to written request. Document No 8/3 PREST 415 of 5 December 2011.

[68] See above, note 26.

the cases of trafficking were sent for court examination comparing to 2011, where only 43% of the cases were sent for court examination.[69]

Moreover, in 2009, the Courts issued sentences on 34 cases, comparing to only 3 sentences issued during 11 months of 2011.[70]

According to the data provided by the Prosecution General, during 2007 - 2011 criminal investigation was initiated in 1008 cases referring to trafficking in human beings and trafficking in children (articles 165 and 206 of the Criminal Code). However, only 186 perpetrators were sentenced to prison.[71]

Also, as mentioned by the Working Group on the UPR on 12 October 2011 to review the human rights situation in Moldova, there is also the problem of use of bribery by perpetrators to escape tough sentences.[72]

The above mentioned facts lead to the impunity of perpetrators.

c) According to the Article 165 of the Criminal Code, Trafficking in Human Beings is defined as:

- **"**The recruitment, transportation, transfer, concealment or receipt of a person, with or without his/her consent, for the purpose of commercial or non-commercial sexual exploitation, for forced labour or services, for begging, for slavery or similar conditions, for use in armed conflicts or criminal activities, for the removal of human organs or tissues (...)"

However, in Moldova, trafficking continues to be associated mainly with sexual exploitation of women. At the same time, the problem of trafficking for forced labour constitutes a big challenge.[73]

This fact represents a serious problem since cases of trafficking for forced labour go overlooked and are not classified and prosecuted as such. Subsequently, the state fails to adequately respond to this problem.

Thus, based on the above indicated facts, it is possible to conclude that the failure of the state to prevent, criminalize, effectively investigate and sanction trafficking in human beings amounts in gender-based ill-treatment since the majority of victims are women.

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[69] See above, note 44.

[70] Official data provided to Promo-LEX by the Prosecution General as a response to a written request. Document No 15-6d/11-1014 of 12 December 2011.

[71] Ibid.

[72] International Service for Human Rights, *UPR of Moldova: discrimination faced by ethnic, religious, and sexual minorities*, 20 October 2011, available at: http://www.ishr.ch/council/376-council/1183-upr-of-moldova-discrimination-faced-by-ethnic-religious-and-sexual-minorities.

[73] Centre „La Strada", *Research "Trafficking in Persons for Forced Labor Exploitation in the Republic of Moldova: Problems and Solutions"*, 2011, available at: http://www.lastrada.md/publicatii/ebook/Report_THB_LE_eng_final.pdf.

Annex II: Excerpts From *Mudric v. Moldova* and *Eremia and Others v. Moldova*

Mudric v. Moldova (Application No. 74839/10)

(...)

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1939 and lives in Lipcani.

A. Private violence against the applicant and her complaints to the authorities

7. After divorcing her husband more than twenty-two years prior to the relevant events, the applicant was living in her own house next to that belonging to her former husband, A.M. On 31 December 2009 A.M. broke into her house and beat her up. He did the same on 19 February 2010, since which date he has remained in the applicant's house permanently, while the applicant has occasionally sought refuge with her neighbours.

8. The applicant obtained a medical report confirming that she had been beaten up on 19 February 2010. The applicant and her lawyer have made numerous complaints to the local police, the prosecutor's office and other authorities, asking for protection for the applicant and for A.M. to be punished. The first such complaint was made on 18 March 2010 and was addressed to the local police. She also complained to other authorities that the local police had been aware of the situation but had done nothing to protect her.

9. On 27 March 2010 the applicant was again beaten up by A.M. On 30 March 2010 the local police informed her that the events complained of had been confirmed, but that A.M. could not be punished as he was mentally ill.

10. On 9 June 2010 the Ocniţa police instituted criminal proceedings against A.M. for breaking into the applicant's house. According to the Government, on 24 June 2010 he was subjected to the preventive measure of an undertaking not to leave town.

B. The initial court protection orders in the applicant's name

11. On 22 June 2010 a court adopted a protection order, deciding A.M.'s eviction and ordering him to stay away from the applicant and her house. However, that order was not enforced. On 17 July 2010 the applicant was again injured by A.M. in the yard of her house, as confirmed by the police and a medical report. She lodged a new complaint and on 23 July 2010 another court order was issued, similar to that of 22 June 2010. This order was not enforced either.

12. On 16 August 2010 criminal proceedings were instituted against A.M. for failure to abide by the protection order of 22 June 2010. This set of proceedings was subsequently joined to the one instituted on 9 June 2010.

13. On 26 August 2010, during the criminal proceedings, A.M. underwent a psychiatric examination. The medical commission established that he was suffering from chronic paranoid schizophrenia and recommended in-patient psychiatric treatment.

14. On 7 October 2010 a prosecutor submitted the case against A.M. to the court in order to determine whether A.M. should undergo mandatory psychiatric treatment. In his decision the prosecutor noted, inter alia, that A.M.'s medical history revealed that in 1965 he had suffered a blow to his head; from 1981 he had started to believe that his wife wanted to poison him and he had begun beating her; from June to September 1987 he had been treated as an in-patient in a psychiatric hospital and had been diagnosed with paranoid schizophrenia; he had been under psychiatric supervision since 1988 and had undergone psychiatric treatment five more times with the same diagnosis, the last treatment period having ending on 25 December 2004; and he had been monitored by the authorities as mentally ill and dangerous to society. The parties did not inform the Court of the outcome of the prosecutor's request.

15. In a letter dated 6 December 2010 the Ministry of Labour, Social Protection and Family stated that on 23 November 2010, Police Officers V.V. and R.P. from the local police station and a social assistant had visited the applicant's house and talked with her and A.M. The latter had refused to leave the house or to sign a document stating that he had been warned not to commit acts of violence against the applicant.

C. The protection order of 16 December 2010

16. On 5 December 2010 the applicant was again beaten up by A.M. On 16 December 2010 she obtained a third court order, similar to the two already issued. The court noted, inter alia, that on 5 December 2010 A.M. had again beaten the applicant up and that the police had gone to her house the following day and had imposed an administrative sanction on him for intentional destruction of property. On 24 December 2010 the applicant's neighbour, E.C., gave a witness statement to the Ocniţa police officers. She described the many conflicts that A.M. had had with the applicant and the neighbours, the many visits by the police to the applicant's house to warn A.M. not to commit acts of violence towards the applicant, and the fact that the head of the local police had often been in contact with her about the situation in the applicant's house.

17. On 4 January 2011 the Ocniţa District Court found A.M. guilty of breaking into the applicant's house. Having regard to the findings of the medical commission, the court absolved A.M. of criminal responsibility because he had committed the crime in a state of insanity. It also decided that A.M. should undergo mandatory psychiatric treatment.

18. On 14 January 2011 the applicant's lawyer asked for a copy of the decision of 4 January 2011, stating that she had not been informed of the hearing. Moreover, her client had been unaware of it until the morning of 4 January 2011, when she had been invited to attend court by the local police. Therefore, the applicant's procedural rights had been breached. On the same day the lawyer asked the local police and the social assistance service about the measures taken to enforce that court decision.

19. On 21 January 2011 the Ocniţa Police informed the applicant that they did not have the power to evict anyone and that it was the bailiff's job to do so.

20. On 24 January 2011 Ocniţa police officers escorted A.M. to a specialised psychiatric hospital for medical treatment.

21. On 31 January 2011 the Ocniţa prosecutor's office decided not to start a criminal investigation against Ocniţa Police Officers V.V. and R.P. in respect of an allegation by the applicant that they had been complicit in the private violence committed by A.M.

(...)

30. In her report concerning the visit to Moldova from 4 to 11 July 2008 (document A/HRC/11/6/Add.4, 8 May 2009), the United Nations Special Rapporteur on violence against women, its causes and consequences noted, inter alia:

> *"... patriarchal and discriminatory attitudes are increasing women's vulnerability to violence and abuse. In this context, domestic violence in particular is widespread, largely condoned by society and does not receive appropriate recognition among officials, society and women themselves, thus resulting in insufficient protective infrastructure for victims of violence. ...*
>
> *... 19. Moldovan women suffer from all forms of violence. However, domestic violence and trafficking are major areas of concern. The two are intimately connected and are linked to women's overall subordinate position in society. ...*
>
> *20. While reliable data and a systematic registering of cases on the nature and extent of the phenomenon is lacking, domestic violence is said to be widespread. According to a Ministry of Labour, Social Protection and Family report: "[...] At present, the frequency of domestic violence, whose victims are women and children, is acquiring alarming proportions. Unfortunately, it is very difficult for the State to control domestic violence since in most of the cases it is reported only when there are severe consequences of the violence, the other cases being considered just family conflicts.*
>
> *21. Despite this acknowledgement, unless it results in serious injury, domestic violence is not perceived as a problem warranting legal intervention. As a result, it is experienced in silence and receives little recognition among officials, society and women themselves.*
>
> *22. According to a survey conducted in 2005, 41 per cent of women interviewed reported encountering some form of violence within the family at least once during their lifetime. The survey revealed that psychological violence, followed by physical violence, is the most widely reported form of abuse in the family. Almost a third of the women interviewed indicated having been subjected to multiple forms of violence. The study notes that domestic violence runs across lines of class and education; however, women with a higher level of education or economic status may tend not to disclose incidents of violence. Sexual violence remains the least reported form of violence. This may be due to lack of recognition of sexual abuse within the family as a wrongdoing or the fear among victims that they will be held responsible and become outcasts.*

23. The perpetrators of violence against women are often family members, overwhelmingly husbands or former husbands (73.4 per cent), followed by fathers or stepfathers (13.7 per cent) and mothers or stepmothers (7 per cent). Staff at the shelter in Chisinau indicated that husbands of many of the women who seek help at the shelter are either police officers or from the military, which makes it far more difficult for these women to escape the violent environment and seek divorce. ...

29. There are also a number of widely held misconceptions about violence against women which treat the problem as isolated cases concerning a particular group. These misconceptions are: (a) violence against women is a phenomenon that takes place in poor and broken homes; (b) victims of violence are inherently vulnerable women needing special protection; (c) violent men are deviants who use alcohol and drugs or have personality disorders; (d) domestic violence involves all members of the household, including men. It has been my experience that such misunderstandings often result in misguided and partial solutions, such as rehabilitation programmes for abusers, restrictions over women in order to protect them or gender neutral solutions that overlook the causes of gender-based violence."

(...)

THE LAW

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLES 3 AND 8 OF THE CONVENTION

(...)

51. The Court notes that the applicant was a single woman aged 72 at the relevant time. As such, she was particularly vulnerable to attacks by A.M., who had a long history of violent behaviour against her (see paragraph 14 above). He had entered her house without permission and stayed there for more than a year, so he had had the possibility to ill-treat her at any time and the applicant had had to find refuge with the neighbours. It considers that that risk to the applicant's physical and psychological well-being was imminent and serious enough as to require the authorities to act swiftly. The national authorities could have charged A.M. with at least three different criminal offences as early as December 2009: bodily harm and threat of such harm (Articles 152 and 155 of the Criminal Code), given that A.M. was no longer a member of the applicant's family and that, accordingly, Article 2011 of the Criminal Code did not apply, break-in (Article 179 of the Criminal Code) and failure to abide by a court decision (Article 320 of the Criminal Code), all cited in paragraphs 23 and 24 above. This would have allowed the courts to take resolute action, either by way of criminal sanctions or, as it eventually happened, by formally finding that A. M. was mentally ill and by ordering his mandatory psychiatric treatment.

(...)

B. Merits

58. The applicant claimed that the authorities had failed to take appropriate action aimed at preventing domestic violence, protecting from its effects, investigating the complaints and punishing the perpetrator. They thus promoted further violence from A.M., who felt immune to any State action. The violence was gender-based and amounted to discrimination contrary to Article 14 of the Convention.

59. The Government argued that there had been no discriminatory treatment in the present case. Unlike in the case of *Opuz*, cited above, the authorities had not been inert to the applicant's complaints and had taken all reasonable action to prevent her ill-treatment, having started criminal proceedings against A.M. and eventually sending him for mandatory medical treatment. Even if some shortcomings in the practical implementation of the law against domestic violence could still be found, this was due to the relative novelty of that law, dating from 2007.

60. The Equal Rights Trust submitted that there was well-established evidence that domestic violence impacted disproportionately and differently upon women. If it was to be effectively tackled, such violence demanded a particular response, which included treating such violence as a form of gender-based discrimination. Failing to realise this amounted to a failure to acknowledge the magnitude of the problem and its impact upon the dignity of women. They referred to the General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women of the Committee on the Elimination of Discrimination against Women (CEDAW/C/2010/47/GC.2), in accordance with which "States parties have a due diligence obligation to prevent, investigate, prosecute and punish such acts of gender based violence".

61. The Court recalls that it has already found the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional (see *Opuz*, cited above, § 191).

62. In the present case, the Court refers to its findings (see paragraphs 8, 9, 14, 16 **and 51** above) that the applicant was subjected to violence from A.M. on a number of occasions and that the authorities were well aware of that. It observes that A. M. was allowed to live in the applicant's house for more than a year, that three protection orders had to be taken by a court and that they were not enforced during all that time. Moreover, during that time A.M. openly opposed the local police and social workers (see paragraph 15 above), refusing to acknowledge in writing having been warned not to harm the applicant and repeating his violent acts against her. Despite several legal provisions allowing the authorities to initiate criminal proceedings against A.M. and thus to subject him to a psychiatric examination with a view to deciding on the need to order his compulsory psychiatric treatment, it took the authorities almost a year to do so.

63. In the Court's opinion, the combination of the above factors clearly demonstrates that the authorities' actions were not a simple failure or delay in dealing with violence against the applicant, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards her as a woman. The findings of the United Nations Special rapporteur on violence against women, its causes and consequences (see paragraph 30 above) only support the impression that the authorities do not fully appreciate the seriousness and extent of the problem of domestic violence and its discriminatory effect on women.

64. Accordingly, in the particular circumstances of the present case, the Court finds that there has been a violation of Article 14 in conjunction with Article 3 of the Convention.

Eremia and Others v. Moldova (Application No. 74839/10)

(...)

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1973, 1995 and 1997 respectively and live in Vălcineț.

A. The background of the case

7. The first applicant was married to A., a police officer based at the Călăraşi police station. The second and third applicants are their daughters. According to the first applicant, following the birth of the second daughter A. would often come home drunk and assault her, sometimes in the presence of their daughters. On 2 July 2010 the first applicant petitioned for divorce, having been assaulted by A. the day before and having witnessed him verbally abuse their teenage daughters. A. subsequently became more violent, regularly assaulting the first applicant and insulting both her and their daughters.

8. On 30 August 2010 the first applicant contacted the local police to report that she had been punched in the head by A. that day. On 18 September 2010 A. was fined by an administrative court the sum of 200 Moldovan lei (MDL, then worth approximately 12.40 euros (EUR)). On 30 September 2010 he was given a formal warning by the authority in charge of the police, the Ministry of Internal Affairs, to stop his violent behaviour.

9. On 5 November 2010 A. came home drunk and assaulted the first applicant. On 6 November 2010 she reported the incident to the local prosecutor's office.

10. According to the applicants, on 11 November 2010 A. again assaulted the first applicant in the presence of their daughters. He did the same on 12 November 2010, this time almost suffocating the first applicant, following which she lost her voice for a day and a half. On an unknown date the deputy head of the Călăraşi police station invited the applicant to undergo an examination by a forensic physician in order to establish the extent and nature of injuries to her body. The examination took place on 23 November 2010 but no such injuries were found.

B. The protection order and subsequent events

11. On 29 November 2010 the applicants applied to the Călăraşi District Court for a protection order. A protection order was made on 9 December 2010, the judge finding that A. had been abusive towards the first applicant by beating her, insulting her, imposing his will upon her, causing her stress and psychological suffering, threatening her and mistreating their pet. Moreover, this violence had often taken

place in the presence of their teenage daughters, whose psychological well-being was being adversely affected as a result. A. was ordered to stay away from the house for ninety days and an exclusion zone of 500 m was attached to the order, prohibiting A. from contacting the applicants or committing any acts of violence against them. The applicants notified the local police, prosecutor's office and social services of the order, which on 12 December 2010 was served on A.

12. On 9 December 2010 the first applicant requested that Judge B.N. from the Călăraşi District Court revoke the six-month waiting period he had insisted the parties observe when the first applicant petitioned for divorce. She based her application on the protection order made that day and submitted that A.'s history of violence prevented any possibility of reconciliation. The first applicant alleged that she was informed by Judge B.N.'s secretary that the judge had refused to treat her divorce as an urgent case. On 12 January 2011 the first applicant complained to the President of the Călăraşi District Court about the judge's refusal.

13. On 10 December 2010 Călăraşi police opened a case against A. to oversee enforcement of the protection order of 9 December 2010. Between 12 December 2010 and 17 January 2011 the local police visited A. on six occasions to warn him against alcohol abuse, bringing shame upon his family, insulting his relatives and breaching the protection order.

14. On 14 December 2010 A. was cautioned by local police for his violent behaviour and was made to confirm in writing that he had understood the terms of the protection order. It was established that A. had moved out of the family home and was in temporary local authority housing.

15. On 16 December 2010 A. saw the first applicant in the street and followed her, using insulting and threatening language and trying to apprehend her. He continued to harass her in a shop where she had tried to seek refuge.

16. On 19 December 2010, A. entered the family home notwithstanding the terms of the protection order. According to the Government, however, the applicants had given their permission for him to return until 16 January 2011. The applicants maintained that they had not given such permission, A. having assaulted the first applicant, destroyed certain possessions and verbally abused the third applicant on his return. On 23 December 2010 the first applicant reported the incidents of 16 and 19 December 2010 to the police. Most of the complaints to various authorities were then forwarded to the Călăraşi Prosecutor's Office.

17. On 10 January 2011 the first applicant was invited to give statements at Călăraşi police station regarding her complaints against A. She submitted that she was then pressured by the police into withdrawing her criminal complaint, because if A. had a criminal record and lost his job, this would have a negative impact on their daughters' educational and career prospects. A meeting with the local prosecutor was fixed for the following day, this time with A. being present. During that meeting the first applicant told the prosecutor that she wanted a divorce but did not want to cause any trouble for her husband.

18. On 12 January 2011 the first applicant was informed that the prosecutor would not be initiating a criminal investigation. On 13 January 2011 A. returned to the family home. He again assaulted and verbally abused the first applicant, simulating strangling her, and threatened to kill both her and her aunt if she did not withdraw her criminal complaint. On 14 January 2011 a medical expert found four

haematomas on the first applicant's neck and one on her clavicle, which could have been sustained in the way the first applicant had described.

19. The Government alleged that on 1 March 2011 A. telephoned the third applicant to wish her a happy birthday. They further submitted that having obtained permission from the first applicant, A. returned to the home to congratulate his daughter in person, spending twenty minutes there in the presence of all three applicants and his father-in-law.

20. The first applicant reported the incident to the Călăraşi District Court on 2 March 2011, informing it that she had rejected a request by A. to visit the family home the day before, but that he had turned up nonetheless, in clear breach of the protection order. She asked the court to extend the duration of the order for a further ninety days. On 14 March 2011 A. was called before the court and served with an extension of the order.

21. On 15 March 2011 the Călăraşi Social Assistance and Family Protection Department informed the first applicant that owing to a clerical error the protection order of 9 December 2010 had never been enforced by the local social services.

22. On 14 April 2011 the Chişinău Court of Appeal upheld A.'s appeal, partly revoking the protection order of 9 December 2010. The appellate court found that the law neither expressly provided for the minimum exclusion zone of 500 m, nor did it expressly prohibit the abuser from harassing or using physical violence against the victim, although these were implied in the general obligation not to make contact. The appellate court therefore decided to remove these terms from the order.

C. Criminal proceedings against A. and the applicants' request for administrative sanctions against him

23. On 13 December 2010 the first applicant requested that a criminal investigation be initiated into A.'s acts of violence. On the same day the applicants requested that the second and third applicants be officially recognised as victims of domestic violence for the purposes of the investigation.

24. On 17 January 2011 the applicants' lawyer complained to the Prosecutor General's Office that she had not been invited to the meeting on 11 January 2011 at the Călăraşi Prosecutor's Office (see paragraph 17 above) at which the first applicant had been pressured into withdrawing her criminal complaint in A.'s presence. Also on 17 January 2011 a criminal investigation was finally initiated in respect of A. On 25 January 2011 the applicants again requested that the prosecutor's office officially recognise the second and third applicants as victims of domestic violence for the purposes of the investigation.

25. On 19 January 2011 the first applicant was invited to a meeting with social workers, who allegedly advised her to attempt reconciliation with A. since she was "neither the first nor the last woman to be beaten up by her husband". On 20 January 2011 the applicants complained to the Ministry of Labour, Social Protection and Family about the social workers' attitude.

26. On 17 February 2011 the applicants asked the Călăraşi police to fine A. for breaching the protection order on 16 December 2010, 20 and 22 January and 6 February 2011, her main reason being that A. had contacted the first applicant and pressured her into withdrawing her criminal complaint. In response she

was informed that on 24 February 2011 the administrative case file against A. had been sent to the Călăraşi District Court.

27. On 1 April 2011 a prosecutor from the Călăraşi Prosecutor's Office established that A. had admitted earlier that day to having physically and psychologically abused three members of his family. A. then concluded a plea bargain with the prosecutor asking to be conditionally released from criminal liability. The prosecutor found that there was substantive evidence of A.'s guilt in the form of various medical reports, witness statements, documents relating to his fine and warnings issued by his employer, the Ministry of Internal Affairs. However, given that he had committed a "less serious offence", did not abuse drugs or alcohol, had three minors to support, was well respected at work and in the community and "did not represent a danger to society", the prosecutor suspended the investigation for one year subject to the condition that the investigation would be reopened should A. commit another offence during that time.

28. On 13 April 2011 the applicants appealed against the prosecutor's decision of 1 April 2011. On 18 April 2011 the senior prosecutor rejected that appeal on the grounds that suspending the investigation against A. would afford better protection to the applicants.

(...)

37. In her report concerning the visit to Moldova from 4 to 11 July 2008 (document A/HRC/11/6/Add.4, 8 May 2009), the United Nations Special Rapporteur on violence against women, its causes and consequences noted, inter alia:

> *"... patriarchal and discriminatory attitudes are increasing women's vulnerability to violence and abuse. In this context, domestic violence in particular is widespread, largely condoned by society and does not receive appropriate recognition among officials, society and women themselves, thus resulting in insufficient protective infrastructure for victims of violence. ...*
>
> *... 19. Moldovan women suffer from all forms of violence. However, domestic violence and trafficking are major areas of concern. The two are intimately connected and are linked to women's overall subordinate position in society. ...*
>
> *20. While reliable data and a systematic registering of cases on the nature and extent of the phenomenon is lacking, domestic violence is said to be widespread. According to a Ministry of Labour, Social Protection and Family report: "[...] At present, the frequency of domestic violence, whose victims are women and children, is acquiring alarming proportions. Unfortunately, it is very difficult for the State to control domestic violence since in most of the cases it is reported only when there are severe consequences of the violence, the other cases being considered just family conflicts.*
>
> *21. Despite this acknowledgement, unless it results in serious injury, domestic violence is not perceived as a problem warranting legal intervention. As a result, it is experienced in silence and receives little recognition among officials, society and women themselves.*

22. According to a survey conducted in 2005, 41 per cent of women interviewed reported encountering some form of violence within the family at least once during their lifetime. The survey revealed that psychological violence, followed by physical violence, is the most widely reported form of abuse in the family. Almost a third of the women interviewed indicated having been subjected to multiple forms of violence. The study notes that domestic violence runs across lines of class and education; however, women with a higher level of education or economic status may tend not to disclose incidents of violence. Sexual violence remains the least reported form of violence. This may be due to lack of recognition of sexual abuse within the family as a wrongdoing or the fear among victims that they will be held responsible and become outcasts.

23. The perpetrators of violence against women are often family members, overwhelmingly husbands or former husbands (73.4 per cent), followed by fathers or stepfathers (13.7 per cent) and mothers or stepmothers (7 per cent). Staff at the shelter in Chisinau indicated that husbands of many of the women who seek help at the shelter are either police officers or from the military, which makes it far more difficult for these women to escape the violent environment and seek divorce. ...

29. There are also a number of widely held misconceptions about violence against women which treat the problem as isolated cases concerning a particular group. These misconceptions are: (a) violence against women is a phenomenon that takes place in poor and broken homes; (b) victims of violence are inherently vulnerable women needing special protection; (c) violent men are deviants who use alcohol and drugs or have personality disorders; (d) domestic violence involves all members of the household, including men. It has been my experience that such misunderstandings often result in misguided and partial solutions, such as rehabilitation programmes for abusers, restrictions over women in order to protect them or gender neutral solutions that overlook the causes of gender-based violence."

(...)

THE LAW

66. In view of the manner in which the authorities had handled the case, notably the authorities' knowledge of the danger of further domestic violence by A. and their failure to take effective measures against him, and to ensure his punishment under the applicable legal provisions, the Court finds that the State has failed to observe its positive obligations under Article 3 of the Convention. There has, accordingly, been a violation of that provision in respect of the first applicant.

(...)

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLES 3 AND 8 OF THE CONVENTION

(...)

82. The applicants claimed that the authorities had failed to take appropriate action aimed at preventing domestic violence, protecting from its effects, investigating the complaints and punishing the perpetrator. They thus promoted further violence from A., who felt immune to any State action. The violence was gender-based and amounted to discrimination contrary to Article 14 of the Convention.

83. The Government argued that there had been no discriminatory treatment in the present case. Unlike in the case of Opuz, cited above, the authorities had not been inert to the first applicant's complaints and had taken all reasonable action to prevent her ill-treatment, having started criminal proceedings against A. and having released him from criminal responsibility under the condition that he would incur such responsibility if he committed any further offence. This resulted in increased protection for the first applicant. Even if some shortcomings in the practical implementation of the law against domestic violence could still be found, this was due to the relative novelty of that law, dating from 2007.

84. The Equal Rights Trust submitted that there was well-established evidence that domestic violence impacted disproportionately and differently upon women. If it was to be effectively tackled, such violence demanded a particular response, which included treating such violence as a form of gender-based discrimination. Failing to realise this amounted to a failure to acknowledge the magnitude of the problem and its impact upon the dignity of women. They referred to the General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women adopted by the Committee on the Elimination of Discrimination against Women (CEDAW/C/2010/47/GC.2), in accordance with which "States parties have a due diligence obligation to prevent, investigate, prosecute and punish ... acts of gender based violence".

85. The Court recalls that it has already found the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional (see Opuz, cited above, § 191).

86. In the present case, the Court refers to its findings (see paragraph **66** above) that the first applicant was subjected to violence from her husband on a number of occasions and that the authorities were well aware of that. It observes that, having suffered repeated acts of violence, the first applicant asked for an urgent examination of her request for a divorce. However, the judge apparently refused to speed up its examination and the President of the Călăraşi District Court did not take any action in reply to a formal complaint made in that respect (see paragraph 12 above).

87. The Court further notes that on 10 January 2011 the first applicant was called to the local police station and was allegedly pressured to withdraw her complaint against A. (see paragraph 17 above). Moreover, her lawyer's complaint about that was apparently left without any answer (see paragraph 12 above). It is also clear that the Călăraşi Social Assistance and family Protection Department had failed to enforce the protection order in the applicant's name until 15 March 2011 (see paragraph 21 above) and allegedly further insulted the applicant by suggesting reconciliation since she was anyway "not the first nor the last woman to be beaten up by her husband" (see paragraph 25 above).

88. Finally, having confessed to beating up his wife, A. was essentially shielded from all responsibility following the prosecutor's decision to conditionally suspend the proceedings (see paragraph 27 above).

89. In the Court's opinion, the combination of the above factors clearly demonstrates that the authorities' actions were not a simple failure or delay in dealing with violence against the first applicant, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman. The findings of the United Nations Special rapporteur on violence against women, its causes and consequences (see paragraph 37 above) only support the impression that the authorities do not fully appreciate the seriousness and extent of the problem of domestic violence in Moldova and its discriminatory effect on women.

90. Accordingly, in the particular circumstances of the present case, the Court finds that there has been a violation of Article 14 in conjunction with Article 3 of the Convention in respect of the first applicant.