



To: European Commission against Racism and Intolerance (ECRI), contact persons: Zeynep USAL-KANZLER (zeynep.usal-kanzler@coe.int) and Maya RASMUSSEN (maya.rasmussen@coe.int);

Subject: Submission to ECRI's 5th Round Interim Follow-Up process and reexamination the situation in Republic of Moldova

Submitted by: Legal Resources Centre from Moldova (LRCM, www.crjm.org), contact person: Daniel GOINIC (daniel.goinic@crjm.org)

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1. Introduction

The Legal Resources Centre from Moldova (LRCM)¹ presents this submission on the Republic of Moldova to the European Commission against Racism and Intolerance (ECRI) in the context of the 5th Round Interim Follow-Up process and reexamination of the situation in Moldova at the ECRI's plenary meeting in December 2020.

This submission focuses mainly on developments regarding ECRI's recommendations on amending legislation to combat hate speech and hate crimes and on effectiveness of equality bodies - the Council to Prevent and Combat Discrimination and Ensure Equality (the CPPEAE) in particular, and the Ombudsoffice. LRCM is concerned about Moldova's slow progress in adopting legislation and allocating sufficient resources to strengthen the institutional capacity of the equality bodies, as well as lack of any progress in adopting legislation and taking effective actions to combat and prevent hate speech and hate crimes.

2. Selected ECRI recommendations and brief information on their implementation

(§ 2) ECRI reiterates its recommendation to Moldova to ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible.

Moldova has still not ratified Protocol No. 12 to the European Convention on Human Rights (ECHR) and the authorities have not indicated any date for its ratification (although the national authorities undertook to do so). Ratification of Protocol no. 12 to the ECHR could be prioritized especially if Moldova needs to restore some trust on the international arena. We recommend ECRI to reiterate the need for urgent ratification in the next report.

(§ 11) ECRI recommends amending the Criminal Code to include the following elements: the offences of incitement to violence; public insults and defamation; threats; the public expression with a racist aim of an ideology which claims the superiority or which depreciates or denigrates a group of persons; the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes; the production or storage aimed at public dissemination or

¹ The Legal Resources Centre from Moldova (LRCM) is a non-profit organization that contributes to strengthening democracy and the rule of law in the Republic of Moldova with emphasis on justice and human rights. We are independent and politically non-affiliated. Our work includes research and advocacy. LRCM is a think tank with extensive expertise in analyzing the activity and reforming the justice sector; reporting on human rights; representation before the European Court of Human Rights; ensuring the equality and non-discrimination; promoting reforms for an enabling environment for civil society organizations. More information about LRCM is available at www.crjm.org.

distribution, of written, pictorial or other material containing manifestations covered by GPR 7 § 18 a, b, c, d and e; the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; and legal persons' liability. The grounds of colour, national or ethnic origin, language, citizenship, as well as sexual orientation and gender identity should also be inserted in all the relevant provisions, including as an aggravating circumstance.

This recommendation has not yet been implemented. Several elements were included in a draft law initiated in 2017 by the CPPEDAE, then by the Ministry of Justice and registered with the Parliament at the end of 2018 (draft law no. 235). The draft law included several important concepts/definitions on equality and non-discrimination and provisions on additional competencies of the CPPEDAE. Although the draft could be significantly improved by attributing direct sanctioning powers for discrimination to the the CPPEDAE, even in the drafted form it presented an improvement to the current law on equality (law no. 121) and the law on the the CPPEDAE (law no. 298). However, since the draft law was not adopted by the Parliament at least in the first reading during the respective session, it became null.

Another relevant draft law is the draft Law no. 301, which includes a set of legislative amendments of the Criminal and Contravention (misdemeanours) Codes. The draft law increased the list of protected grounds for qualifying as hate/bias crimes, maintaining the hate/bias motivation as a general aggravating circumstance and including it as a separate qualifier for a variety of offences. It also enhanced the penalties under a variety of offences when committed with a bias/hate motivation. This is generally a welcomed approach, largely corresponding to good practices in this field at the regional and international levels. The draft law was adopted in the first reading on 8 December 2016, merging two draft laws – one developed by the Ministry of Interior and another one by the Ministry of Justice. After that the draft law was next included on the Parliament's agenda for the second reading only on 26 April 2018. However, at that sitting, the parliamentary fraction of the European Popular Parliamentary Group requested the withdrawal of the draft law as the fraction had additional comments by the authors (Valeriu Ghilechi, a member of the Council of Europe PACE at that moment) was not present. Another two years passed until the next step was taken regarding the draft law. On 5 March 2020, the Parliamentary Committee on Legal Affairs, Appointments and Immunities and the Committee on Human Rights (more accurately, two MPs representing the Party for Action and Solidarity, currently an opposition party) held a [public consultation](#) on the draft law no. 301. Following these consultations, within 10 days, the Parliamentary Committee should have finalized the final version of the draft law, taking into account the amendments proposed by civil society organizations and the the CPPEDAE. However, this has not happened yet. Due to this delay, on 10 June 2020, the civil society organisations have issued [a public appeal requesting the adoption of the law](#). However, no action followed. To date, the draft is still waiting to be finalized and to be proposed for second reading. The issues related to hate crime and hate speech are ignored by the current parliamentary coalition.

We recommend ECRI to reiterate this recommendation in the next report and to urge national authorities (Parliament) to adopt the draft law no. 301, taking into account the recommendations of the civil society organisations in line with European and international standards.

(§ 22) ECRI recommends that the authorities amend the anti-discrimination legislation to remedy the gaps identified above in line with its General Policy Recommendation (GPR) No. 7. In particular, they should i) include national origin, citizenship, sexual orientation and gender identity in the list of grounds of prohibited discrimination; ii) include announced intention to discriminate, instructing another to discriminate and aiding another to discriminate; introduce a legal provision placing public authorities under a duty to promote equality in carrying out their functions; iv) include a fast-track option for bringing discrimination cases to the courts; v) provide for the possibility of dissolution of organisations or political parties which promote racism and the suppression of their public financing; and vi) ensure that NGOs and other bodies that have a legitimate interest in combating racism and racial discrimination can bring civil cases even if a specific victim is not referred to.

The recommendations on legislative amendments have not been implemented. The legislation does not include all forms of discrimination, such as announced intention to discriminate, instructing another to discriminate and aiding another to discriminate, as recommended by ECRI for civil and administrative legislation. Some elements were included in the draft law no. 235, referred to above.

The current legislation does not provide for the possibility of dissolution of organizations or political parties which promote racism and the suppression of their public financing. To date there was no activity/work initiated to tackle these important recommendations. Given the widespread and increased hate speech especially during electoral campaigns, amending the legal framework to add specific provisions on the possibility of dissolution of organizations or political parties which promote racism and the suppression of their public financing is particularly important for Moldova.

We recommend ECRI to reiterate the recommendations from § 22 in the next report and to urge national authorities to improve the national legislation in line with the respective recommendations.

(§ 26) ECRI recommends that the authorities i) amend the Law on the People's Advocate to entitle any person under Moldovan jurisdiction to lodge complaints with the Ombudsman and to extend this right to legal persons, ii) grant the Council to Prevent and Combat Discrimination and Ensure Equality (the Equality Council) the right to initiate proceedings before the Constitutional Court, grant the Ombudsman and the Equality Council the right to initiate court cases even when a specific victim is not referred to, and iv) provide both institutions for protection against retaliatory measures in their respective legislation.

We recommend ECRI to reiterate the recommendation from para. 26 in its next report with emphasis that national authorities must organize a new cycle of public consultations to improve and change the legal framework (a new draft similar to no. 235) for amend the Law on the People's Advocate to entitle any person under Moldovan jurisdiction to lodge complaints with the Ombudsman and to extend this right to legal persons, grant the CPPEDAE the right to initiate proceedings before the Constitutional Court, grant the Ombudsman and the CPPEDAE with the right to initiate court cases even when a specific victim is not referred to, and provide both institutions for protection against retaliatory measures in their respective legislation.

Also we recommend ECRI to keep the recommendation for the Parliament to revise the relevant legislation, in particular the Law no. 121 and the Law no. 298 and the Contravention Code, to either grant the CPPEDAE direct sanctioning powers or resolve the procedural inconsistencies that impede the the CPPEDAE drawing effective protocols for acts of discrimination amounting to misdemeanours.

(§ 31) ECRI recommends that the authorities take measures to combat the use of sexist hate speech and pay particular attention not to perpetuate gender stereotypes.

According to Promo-LEX Association last reports on hate speech², the hate speech based on the sexist and gender ground was almost doubled in the August-November 2019 (293 cases) compared to the January - April 2019 (162 cases). Mostly, the speeches build on sexist attitudes, the use of stereotypes and gender prejudices and clichés related to the social roles of women in society. In politics, prejudice-based comparisons are frequently used to denigrate or ridicule the opponent. The upcoming presidential elections again bring back sexist language similar to the 2016 campaign.

² Promo-LEX Association, Report, Hate Speech and Incitement to Discrimination in the public space and media in the Republic of Moldova 2019/2, page. 14, available at: https://promolex.md/wp-content/uploads/2019/12/A4_hate_II_eng.pdf ; Report, Hate Speech and Incitement to Discrimination in the public space and media in the Republic of Moldova 2019/1, page. 8, available at: https://promolex.md/wp-content/uploads/2019/07/A4_hate_eng.pdf ;

Also there were many cases when sexist expressions exploiting the image of the woman as a sexual object were used. The exaggerated number of sexism cases denotes a serious problem in the Republic of Moldova in terms of response, prevention and combating of sexist hate speech and gender based discrimination. We are not aware of any specific measures taken by the authorities to combat sexist hate speech, in particular hate speech used by political and religious leaders.

We recommend ECRI to maintain this recommendation in the next report.

(§ 42) ECRI strongly recommends that the authorities take urgent steps to ensure that anyone who engages in hate speech as defined in Article 346 of the Criminal Code is duly prosecuted and punished.

Hate crimes are severely underreported in Moldova and are not adequately investigated. This is due both to a poor legislative basis, as well as inadequate police and prosecution practices³. Thus, if in 2018, in the public space and media in the Republic of Moldova were registered on average 2 cases of hate speech per day, in 2019 their number increased to 4.2 cases per day. Jointly for the seven months of 2019, a total of 835 hate speech cases were identified⁴. The most among the cases, the authors were men (87%): politicians, representatives of the Orthodox Church, journalists, opinion formers etc.

The Criminal Code does not adequately define hate crimes and has a limited list of grounds, missing grounds as colour, national or ethnic origin, language, citizenship, sexual orientation and gender identity. The draft law no. 301, referred to above, should implement this recommendation if improved and adopted. It is still pending in the Parliament. We recommend ECRI to reiterate this recommendation in its next report.

(§ 46) ECRI strongly recommends that the authorities encourage the Audiovisual Coordinating Council to take firm action in all cases of hate speech and impose appropriate sanctions, whenever necessary.

The Audiovisual Coordinating Council (ACC) can directly apply a sanction for failure to respect the provisions of the Code of Audiovisual Media Services, depending on the gravity of the committed violation, its effects and the frequency of violations committed in the past 12 months. The ACC has a good legal basis in tackling it via complaints, but has so far examined a few complaints only and is mostly also tackling hate speech via awareness raising activities. Also during the 2019 parliamentary elections, according to ACC, no television company admitted incitement to hate speech or discrimination, therefore no sanctions towards them were applied⁵. According to the information available in some monitoring reports of the ACC, during the parliamentary elections of 15 March 2020, in the uninominal constituency from Hincești municipality, between 15 February and 13 March 2020, no television station admitted incitement to hate speech or discrimination⁶. Also, according to the last activity report (April-June 2020), the ACC applied only 2 sanctions (public warnings) on cases of incitement to hatred or discrimination⁷. At present, the ACC does not disaggregate the data on hate speech or discrimination, so it is impossible to analyse the ACC's reaction to this type of facts.

³ Nadejda Hriptievshi, Policy brief, Strengthening the mechanisms for fighting discrimination and hate speech in Moldova, April 2018 https://www.soros.md/files/publications/documents/Discrimination.%20Hriptievshi_2.pdf

⁴ Promo-LEX Association, Report, Hate Speech and Incitement to Discrimination in the public space and media in the Republic of Moldova 2019/2, page. 13, available at: https://promolex.md/wp-content/uploads/2019/12/A4_hate_II_eng.pdf

⁵ Report on the activity of the Audiovisual Coordinating Council of the Republic of Moldova in 2019, 2020, available in Romanian at: <http://www.audiovizual.md/files/RAPORT%20CA%202019.doc.pdf>;

⁶ ACC monitoring report, 2020, available in Romanian: http://www.audiovizual.md/files/Raport%20alegeri%20parlamentare%2015%20martie%202020%20%28Hancesti%29%20-%20D%2012-62%20din%2029.06.2020_0.pdf

⁷ ACC activity report for the second quarter of 2020, available at: <http://www.audiovizual.md/files/Raport%20cu%20privire%20la%20activitatea%20Consiliului%20Audiovizualului%20din%20trim.%20II%202020.pdf>, page 47;

We recommend ECRI to reiterate this recommendation in the next report, adding that the Audiovisual Coordinating Council disaggregates the published data on hate speech and discrimination.

(§ 49) ECRI recommends that the authorities develop, jointly with the relevant civil society groups and international organisations, a comprehensive strategy to prevent and combat hate speech. This strategy should make effective use of ECRI's General Policy Recommendation No.15 on combating Hate Speech. It should, inter alia, include (i) a proactive hate speech monitoring mechanism; (ii) closer cooperation between law enforcement authorities and other relevant bodies, such as the CPPEDAE, in order to facilitate the prosecution of hate speech; and (iii) a stronger involvement of the authorities in initiating and leading awareness-raising campaigns on preventing and combating hate speech, in collaboration with law enforcement bodies, the CPPEDAE, the Ombudsman, the Audiovisual Coordinating Council, the Press Council as well as the Central Electoral Commission.

There is no coordinated strategy among the relevant public authorities, such as law enforcement bodies, the Audiovisual Coordinating Council, the Central Electoral Commission, the the CPPEDAE, the Ombudsperson institution and the Press Council, mobilizing them to prevent and combat hate speech in the Republic of Moldova.

The most problematic area remains the use of hate speech in electoral campaigns, which needs rapid response mechanisms that are not provided by any public authority. The electoral legislation does not include any provisions on combating hate speech and the electoral body does not intervene due to lack of express competencies in this field.

We recommend ECRI to reiterate this recommendation in its next report.

(§ 52) ECRI recommends that the authorities should condemn hate speech and promote counter-speech by politicians and high-ranking officials. All political parties in the country should adopt codes of conduct which prohibit the use of hate speech and call on their members and followers to abstain from using it.

Hate speech was mostly used in political and religious context, but also in other social fields, while politicians are the public stakeholders that use and gain most out of this type of speech. There is practically no counter-speech by high level officials. Political parties and politicians should condemn hate speech and adopt codes of conduct that prohibit the use of hate speech. They must urge party members and supporters to refrain from using hate speech and impose disciplinary sanctions if deviations are found⁸. However, such practice is not prevalent in Moldova. For instance, we have checked the official websites of 5 political parties, represented in the actual Parliament - no one have published such codes of conduct. If even only 2 of them have published the its codes of conduct and integrity, within these codes, there are no provisions for prohibit the use of hate speech and call on their members and followers to abstain from using it.

Also, the duty to promote equality is not among the public officials' duties, which probably reduces from the it is not very likely that the authorities will act on this recommendation. We recommend ECRI to reiterate this recommendation in the next report.

(§ 53) ECRI recommends that the authorities discuss with the leadership of the Moldovan Orthodox Church ways in which the Church could use its moral standing to prevent and combat hate speech, including homo/transphobic as well as sexist hate speech, and ensure that their representatives refrain from making derogatory comments.

Regretfully, the current parliamentary coalition, including the incumbent President, promote the hate speech, including homo / transphobic and sexist discourse, and their close relationship with the

⁸ Promo-LEX Association, Report, Hate Speech and Incitement to Discrimination in the public space and media in the Republic of Moldova 2019/2, page. 50, available in Romanian at: https://promolex.md/wp-content/uploads/2019/12/A4_hate_ro_II_web.pdf ;

leadership of the Moldovan Orthodox Church makes us understand that they are in unison promoting hate speech. The most common pattern of hate speech is the rhetoric of the protection of traditional values and family. A number of fictitious dangers are promoted in the religious context: homosexuality, islamisation, invasion of immigrants and refugees and distorting women's role in the family and society due to gender equality and feminism⁹. Therefore, no action was taken to prevent and combat these from the Moldovan Orthodox Church. We recommend ECRI to reiterate this recommendation in the next report.

(§ 57) ECRI recommends that the authorities put in place a system for collecting disaggregated data in order to provide a coherent, integrated view of the cases, by recording the specific bias motivation of racist and homo/transphobic hate crime (hate speech and violence) reported to the police as well as the follow-up given by the justice system, and that this data is made available to the public.

The the CPPEDAE is the only public authority that publishes data on discrimination. The the CPPEDAE publishes two types of data: data from public perception surveys about discrimination, in line with ECRI's GPR no. 4, and disaggregated data on discrimination complaints received by the the CPPEDAE and their outcomes. The National Bureau of Statistics publishes population related data, which is usually disaggregated by gender, age, areas (rural/urban). Data on hate speech can be found in the the CPPEDAE and Ombudsperson institution's annual reports. Relevant data can be also individually collected from the information on cases / complaints examined by the Press Council and the Audio-Visual Coordinating Council. But overall, Moldova does not routinely publish data on hate crimes. Moldova reports to the OSCE/ODIHR hate crime reporting, but the reported crimes still miss the bias motivation, since the law enforcement agencies do not record it separately¹⁰. Data on hate crimes are registered by the Ministry of Interior (police) and the prosecution office in the same way as all crimes are collected. There is no separate data collection system for hate crime. The court system does not have a compartment for tracking discrimination cases and therefore the automated court case system, which is quite advanced in the Republic of Moldova, does not generate data on discrimination cases. The the CPPEDAE cannot track the court discrimination cases, unless it is a party or one of the parties or the court requests its conclusions¹¹.

Authorities do not collect disaggregated data on hate speech, which makes it impossible to analyse the dynamics, trends and areas where intervention is needed to sanction hate speech and provide support to victims, when needed. We recommend ECRI to reiterate this recommendation in the next report.

(§ 61) ECRI strongly recommends that racial profiling by the police is defined and prohibited by law, in accordance with its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.

The current legislation does not include the term "racial profiling" and does not prohibit it. There are no studies on racial profiling by police since this issue is simply overlooked by the Moldovan authorities. We recommend that ECRI maintains its recommendation in the next report.

(§ 68) ECRI recommends that the police and prosecution services thoroughly investigate all cases of alleged hate crime and that they ensure that a possible existence of a bias motivation is consistently taken into consideration in police reports and investigations, as well as in any further judicial proceedings. Furthermore, ECRI recommends that in order to address the problem of underreporting

⁹ Promo-LEX Association, Report, Hate Speech and Incitement to Discrimination in the public space and media in the Republic of Moldova 2019/2, page. 15, available at: https://promolex.md/wp-content/uploads/2019/12/A4_hate_II_eng.pdf ;

¹⁰ Council of Europe, Baseline study for assessing the national non-discrimination mechanisms in Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus, Report written by Nadejda Hriptievski, October 2019, pages. 41-42, available at: <https://rm.coe.int/baseline-study-pgg-ii-regional-project-eng/16809e5355>

¹¹ Idem;

the authorities implement confidence-building measures to enhance the relationship between the police and vulnerable groups, in particular the Roma and the LGBT community.

There is no significant progress regarding effective investigation of hate crimes, including due to lack of progress on improving the legal framework (the provisions of the Criminal Code) that is used as an excuse for effective investigations. In most cases, people who suffer from hate crimes and incidents refuse to turn to law enforcement or go to court. In many cases, even the relatives or parents are the ones who apply the violence. The cases reported to the GENDERDOC-M Centre report represent only a small number of the total number of cases in the Republic of Moldova¹². We recommend to reiterate this recommendation in the next report.

(§ 99) ECRI recommends that the authorities should strengthen the institutional capacity of the Council to Prevent and Combat Discrimination and Ensure Equality (CPPEDAE) and the People's Advocate (the Ombudsman). In this regard, the authorities should, in particular, i) amend the relevant procedural rules to ensure the effective implementation of the mandate of the CPPEDAE, allocate both institutions sufficient financial and human resources, including funding to provide for awareness-raising campaigns, iii) ensure that both institutions maintain their full financial independence from the government, and intensify their efforts to promote compliance with the recommendations of the CPPEDAE and the Ombudsman.

Given that some aspects of necessity to amend the relevant legislation to ensure the effective implementation of the mandate of the CPPEDAE have been mentioned above, we will mention here that even in 2020, institutional capacity of the CPPEDAE and the People's Advocate still requires human resources, funding and budget independence from Government.

The level of remuneration of the the CPPEDAE's staff is inadequate, lower even if compared to the Ombudsman staff due to the fact that the legislation does not provide for a chief of staff / secretary of the apparatus and, consequently, all other levels of remuneration for the lower staff positions are downgraded. Since its establishment, the the CPPEDAE has never filled all its staff positions due to lack of interested candidates and a high fluctuation of human resources¹³. This is a significant weakness in the CPPEDAE's activity. The the CPPEDAE does not have full financial independence to adequately implement its mandate, as recommended by ECRI. The main limitation consists of the insufficiency and rigidity of the public budget. The public / state budget covers only costs related to staff salaries, office maintenance and translation of the CPPEDAE's decisions (translation upon request). Another limitation is the rigidity with which the the CPPEDAE's budget is set. The budget is practically decided by the Ministry of Finance and adopted by the Parliament, with no consultation of the the CPPEDAE.

During the UN Special Rapporteur on Human Rights Defenders in June 2018, the Office of the Ombudsperson and the the CPPEDAE shared with the Special Rapporteur their concerns about the excessive control exercised over their expenditure, which they perceived as a form of intimidation by the Government.¹⁴

Hence, no progress was registered regarding § 99 recommendation. We recommend ECRI to reiterate this recommendation in the next report.

¹² Genderdoc-M, Report, Situation of LGBT People's Rights in the Republic of Moldova, 2019, page. 11, Available at: https://gdm.md/files/untitled%20folder/Annual_Report_GENDERDOC-M_2019%20English.pdf

¹³ Nadejda Hriptievshi, Report, Assessment of the effectiveness of access to justice for victims of discrimination, hate crime and hate speech through non-judiciary redress mechanisms in the Republic of Moldova, (unpublished, available upon request), page. 21

¹⁴ Report of the Special Rapporteur on the situation of human rights defenders, Human Rights Council, A/HRC/0/60/Add2, 15 March 2019, para. 78.

(§ 106) ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment in line with the Council of Europe guidelines.

The situation of trans people in the Republic of Moldova remains complicated. Since 2019, transgender health issues will no longer be considered as mental and behavioural disorders with the 11th edition of the International Classification of Diseases of the World Health Organization's. The newly approved version instead places issues of gender incongruence under a chapter on sexual health. However, the Republic of Moldova has not yet taken any steps to change the system in accordance with this decision. Transgender people are still required to provide a certificate with the diagnosis of "transsexuality", in order to be able to request the change of gender and name in the identity papers. So far, the change of documents is possible only through the decision of the courts, which takes about 6-12 months¹⁵. The transgender social group remains the most stigmatized and vulnerable, as the physical changes are usually becoming visible and cannot be hidden. We recommend ECRI to reiterate this recommendation in the next report.

¹⁵ Genderdoc-M, Report, Situation of LGBT People's Rights in the Republic of Moldova, 2019, page. 14, Available at: https://gdm.md/files/untitled%20folder/Annual_Report_GENDERDOC-M_2019%20English.pdf