

Briefing for the EU – Moldova Human Rights Dialogue

18-th of April 2012

MOLDOVA: Impunity for hate speech and hesitation of political actors create a fertile ground for discriminatory attitudes rooting inequality and prejudice.

This briefing is submitted by the Non-discrimination Coalition,¹ GENDERDOC-M², The Human Rights Resource Group supported by Soros Foundation - Moldova³ and the Legal Resources Centre, Moldova.⁴

Background:

The general situation in the country is similar to the one described in the briefing submitted a year ago (24-th of March 2011) on “Discriminatory attitudes, impact on society and negative consequences from the Human Rights Perspective”. What is different is the presence of discussions related to discrimination in the public sphere, which have both positive and negative effects on the population. The positive side of discussions is the education of public about equality and non-discrimination, as well as identification of important issues that need to be tackled. In particular, the Public National Broadcasting Company Teleradio Moldova (TRM) started reporting on various aspects of non-discrimination, which is beneficial for the overall understanding of discrimination in Moldova.

At the same time, discussions regarding the anti-discrimination draft law have offered to some political parties a cheap possibility of making political capital by opposing to sexual orientation criteria in the draft law and have spurred more intolerant actions on behalf of various politicians and the Moldovan Orthodox Church. Although the Government has taken some important steps to reinforce its adherence to non-discrimination principles, it still seems to be lacking the powers to enforce coherently these principles. The national courts are solicited more and more in regard to various aspects, which they do not seem to be fully ready to adequately examine.

¹ Non-discrimination Coalition is a voluntary union of several civic associations (14 at the moment) whose major aim is the protection and promotion of human rights and freedoms. The coalition was formed in 2007 because of acute problems in terms of human rights in the Moldovan society, and thus aims to contribute to the development and consistent application of a non-discriminatory legal framework in Moldova, and to promote international good practices in compliance with relevant international standards.

² “GenderDoc-M” Information Centre is a non-governmental community-based organization registered in the Ministry of Justice of the Republic of Moldova on May 8, 1998. It is the only organization in the country protecting the rights of sexual minorities (www.lgbt.md).

³ The Human Rights Resource Group supported by Soros Foundation - Moldova is a group of key human rights activists who are striving to constantly monitor, document and report on human rights violations and undertake advocacy efforts for change. The Group was established in 2010 and it comprises of 13 activists who act both in their individual capacity and/or represent important human rights NGOs.

⁴ The Legal Resources Centre is a registered public association that seeks to contribute to raising the awareness of the authorities about and to the eradication of human rights problems; strengthening an efficient, transparent, fair and credible judiciary; creating a culture of respect for human rights; developing public policies on observance of human rights. The LRC current main activities are focused on the implementation of human rights treaties and reforms in the justice sector.

The briefing below highlights some of the most positive and negative experiences since the last briefing. It is by no means a comprehensive briefing covering all relevant issues related to anti-discrimination in Moldova.

Anti-discrimination law:

After the Government's withdrawal at the end of March 2011 of the draft law on prevention and combating of discrimination (anti-discrimination draft law) from the Parliament, the draft law has undergone several amendments within the Ministry of Justice. The amendments were consulted with the civil society in several rounds, in particular in July - September 2011 and February – March 2012. The draft law has not been finalized at the moment of drafting of the current briefing and, consequently, has not been consulted in its final version, before submission to the Parliament, with the civil society. Before the Human Rights Dialogue takes place in May, there may be additional information on the content of the draft law.

The February 2012 version of the draft law remedied most of the concerns raised by several civil society groups, including in particular the following: the “reverse burden of proof” rule applies to both court proceedings and proceedings before the Anti-Discrimination Council proceedings; the Anti-Discrimination Council shall have an apparatus to ensure its functionality; definitions and types of discrimination have improved as recommended. The draft law would still benefit from improvements, for example to provide more clarity regarding the proceedings before the Anti-Discrimination Council, to entrust the Anti-Discrimination Council with competences to offer assistance to victims of discrimination and the right to petition the Constitutional Court. These aspects may perhaps be remedied through amendments to the law, once the draft law is adopted.

At the same time, the draft law was amended with new provisions in response to protests against the draft law and comments of the Moldovan Orthodox Church. Hence, Art. 1 of the draft law expressly provides that “this law does not apply to marriage and adoption relations, governed by specific laws, as well as the religious groups and their components, as far as it relates to their religious convictions”. This is a provision that we do not support. But, it seems to be part of the “compromise” between the religious groups and the Government regarding the draft law and will most probably remain in the law.

However, even this provision did not satisfy the Moldovan Orthodox Church (subordinated to the Russian Church). After the meeting of the Moldovan Patriarch with the speaker of the Parliament on 9 April 2012⁵ the debate regarding the sexual orientation criteria has taken over the discussions regarding the draft law. Although the Government seems to be firm

⁵ Details are available here: <http://www.info-prim.md/?x=22&y=45705>. After the meeting the Moldovan Patriarch declared that the draft law overall is ok, except the expression “sexual orientation”. The Speaker declared that the draft law is not contrary to Orthodox principles and encouraged people to read the draft law to realize that. He also declared that the draft law was not yet finalized, but once it reaches the Parliament, the latter will make sure that the law is adopted in a form that is supported by public authorities, Orthodox Church and the society at large. Immediately after this meeting the Government issued a public statement mentioning that the draft law is still not finalized and will be further consulted before approval and that the Government will seek to ensure fundamental human rights in line with Moldova's European integration objectives.

regarding the draft law and the protected grounds, several recent politicians' declarations⁶ raise serious concerns regarding the feasibility of the draft law being adopted by the Parliament or, at least, the feasibility of keeping the sexual orientation criteria.

Hate speech:

On the 28-th of December 2011, the first court condemned the racist and discriminatory speech made by former minister of security and defence Anatol Plugaru towards Roma ethnic groups made on the 24-th of February 2010 during a press conference. The court ordered Mr. Plugaru to offer public apologies for Nicolae Radita and Ana Lepadatu (plaintiffs) and Roma community. Despite the fact that the court did not admit the claim of moral damages (15.000 MDL ~ 1000 EUR) this decision is a premiere in the Republic of Moldova sanctioning racist and discriminatory speech.

The beginning of 2012 saw a new wave of discriminatory speeches and decisions by municipalities of several cities in Moldova.

The first unsanctioned racist declaration belongs to the former president of Moldova – Mr. Vladimir Voronin who made a racist remark towards John Onoje who recently obtained citizenship of the Republic of Moldova and applied for candidateship for presidential elections in spring. During a public assembly of the Communist Party supporters on the 18-th of February Mr. Voronin made a rude statement towards people of African descent, which went into most of media sources. The Nondiscrimination Coalition and other human rights NGOs demanded that the General Prosecutor's Office open a criminal case, but there were no actions from police or prosecutor's office.

It is important to mention that GENDERDOC-M and Nondiscrimination Coalition have repeatedly demanded the Prosecution Office and police to sanction discriminatory speeches which incited to hatred, violence and represented direct public threats to Muslims and LGBT members of the society made during a press conference⁷ by the veterans of Transnistrian war – Valeriu Ciobanu and others. Neither the police department nor the Prosecutors office found "elements of crime" in the hateful press conference, of which both the police and prosecutors informed us by a letter. GENDERDOC-M contested this decision in court and plans to take the case to ECHR unless it is solved by national courts.

On the other hand, the General Secretary of the Social Democratic Party – Sergiu Coropceanu - was arrested for possession of 1300 brochures against anti-discrimination law in his car on the 2-nd of April. The police searched the head office of the party as well as 2 churches in Balti. The brochures contained information on "dangers of adoption of anti-discrimination law", defamatory information on the Prime-Minister, Minister of Justice and other members of Liberal Democratic Party. The police motivated the arrest on violation of

⁶ For example, declaration of the Liberal-Democrat MP Petru Vlah on 17 Aprilie 2012, available here: <http://jurnal.md/ro/news/deputat-nu-primim-in-pldm-oameni-cu-orientare-sexuala-nenormala-218677/> or the 17 April 2012 interview of Liberal Mayor of Chisinau, Dorin Chirtoaca, available here <http://www.europalibera.org/content/article/24551230.html>

⁷ Links to the press conference as well as relevant letters can be accessed at this link: http://nediscriminare.md/index.php?module=news&item_id=207

art. 346⁸ of the Criminal Code which prohibits actions intended to incitement to hatred, division of society and national discord. Due to lack of interaction by the police on previous cases of incitement to hatred and presence of political defamation in these brochures we presume that without the political order there would be no prohibition of distribution of these leaflets, which can only mean that ordinary persons remain unprotected of hate speech.

The impunity of hate speakers results in an indirect encouragement of other public persons to make discriminatory speeches and each new one bursts out in the public space with more severe and offensive words towards minorities. This has a negative effect on the general public, which is easily manipulated due to lack of awareness about rights and high influence of the church.

Church clerics were never sanctioned as well for their discriminatory speeches on LGBT, anti-discrimination law and Muslim community. This is one of the reasons why their speeches turned into aggressive lobby actions.

The negative trends present in the Russian Federation on the ban of “homosexual propaganda” made their way in Moldova’s politics and through the Russian Church to which the Metropolitan Orthodox Church of Moldova is subordinate. Thus on the 23-d of February the Municipal Council of Balti district (where the majority are members of the Communist Party) voted for a decision which proclaimed the Balti district a “zone of support for the Metropolitan Orthodox Church of Moldova and would prohibit homosexual propaganda and Muslim activity”. Similar decisions were later on taken by other localities as Falesti, Drochia, Cahul and small villages from these localities. GENDERDOC-M has demanded through court that the anti-constitutional decision of Balti municipality be repealed, but the first instance court refused to satisfy the demand. GENDERDOC-M intends to appeal the respective court decision. Although the adopted decision does not foresee any sanctions or procedures of recognition of such propaganda these decisions as well as feeble actions from the state send alarming messages for the respect of freedom of speech, religion, secularity of public officials and respect for rule of law in general.

Having followed a notification of illegality received from the Chancellery of State, through the public official representative of the national government in Balti, authorities of Chetris village (near Falesti) voluntarily repealed their homophobic decision on 22-nd of March.

Despite such a positive development in one of the “affected” localities, it is very alarming how swiftly these identical decisions are adopted by the Communist-led local councils on the request of the Moldovan Orthodox Church. The alliance between the Communist Party of Moldova and the Moldovan Orthodox Church perpetuates homophobic sentiments in the society as a political tool against the current government.

⁸ Criminal Code of the Republic of Moldova: Article 346. Intentional actions directed to incitement to hatred or national, racial or religious division.

Intentional actions, public exhortations, including through the written and electronic media, aimed at incitement of national, racial or religious enmity or discord, humiliation of national honor and dignity, humiliation and limitation, direct or indirect of the rights or establish benefits direct or indirect, depending on citizens nationality, race or religion is punishable by a fine of up to 250 conventional units or unpaid community work from 180 to 240 hours, or with imprisonment up to three years.

The “liberal” Chisinau municipality is not a discrimination free zone either. By the decision to refuse the granting of status of social advertising for the Non-discrimination Coalition (NDC) billboard sketch⁹ (letter motivating refusal received on the 6-th of January 2012), the representatives of the “Architecture and urbanism” department headed by the deputy mayor Nistor Grozavu have invented a pseudo-democratic mechanism to refuse our request due to presence of 2 boys holding hands in the sketch, by organizing an ad-hoc commission to examine our sketch (ad-hoc working group constituted on the on 22-th of December 2011). The members of the commission – the Association of Persons with Disabilities, SINTI organization and others have recommended that the Roma woman and the person in the wheelchair be represented in a “more decent manner”. It is important to mention 3 things in this process: 1. NDC representatives were not invited at the meeting to motivate the choice of the caricature and representation of persons by the caricaturist. 2. The NGO SINTI was constituted by the Chisinau municipality and has no visible activity, webpage, and contact numbers in any official databases. 3. The only institution that can confirm the correspondence with the Law on Advertising of any advertising is the National Agency on Competition Protection, which we have officially contacted to request official expertise on the NDC’s billboard sketch. The respective Agency responded that the billboard does not infringe the Law on advertising. NDC has sued the Chisinau municipality. The first court hearing was on the 3-d of April, the next one is on the 7-th of May.

Recommendations:

Based on the above, we call the EU to raise the following issues within the EU – Moldova Human Rights dialogue:

- *Encourage the Parliament to adopt the Anti-discrimination Law.* The law should provide for an effective procedure before the Anti-Discrimination Council. No protected ground included in the draft law should be omitted. MPs should refrain from populist declarations that distort the meaning of the draft law;
- *Encourage the Government to plan sufficient resources for the establishment of the Anti-Discrimination Council;*
- *Adequately raising awareness on the phenomenon of discrimination.* The state should provide and facilitate the overall informing of the population on what is discrimination, how to prevent it and educated tolerance and respect for human rights. In particular, public broadcasting institution should be encouraged to continue to report on issues related to discrimination. The Ministry of Education should revise the school curriculum to include topics related to equality, non-discrimination, tolerance and diversity;
- *Conduct trainings for police officers, prosecutors and judges on hate speech, including qualification of crimes and sanctioning;*

⁹ The billboard sketch and relevant letters in Romanian can be accessed at this link: http://nediscriminare.md/index.php?module=news&item_id=221

- *Conduct trainings to civil servants, judges, lawyers, prosecutors and police officers on matters of non-discrimination and adequate conduct towards vulnerable groups. In particular, the National Institute of Magistrates, the Police Academy and the Public Administration Academy under the Presidency should be encouraged to revise their curriculum to include issues of non-discrimination.*

For further information on the topic and follow-up please contact:

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