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Moldova fails to adequately protect lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals from discrimination

Amnesty International is concerned that the recently adopted anti-discrimination law fails to adequately protect LGBTI individuals from discrimination on the grounds of sexual orientation and gender identity and fails to introduce a comprehensive anti-discrimination framework.

On 28 May 2012, the President of the Republic of Moldova signed the new anti-discrimination law ("Law on Ensuring Equality") that had been adopted by the Parliament on 25 May 2012.

Amnesty International welcomes the broad definition of discrimination provided by the Law, which includes direct and indirect discrimination, the creation of the Council for Preventing and Combating Discrimination and Ensuring Equality, which represents an important mechanism of redress for victims of discrimination, and the shared burden of the proof between the victim of discrimination and the defendant.

However, Amnesty International deeply regrets that the Law fails to provide comprehensive protection against discrimination on the grounds of sexual orientation and gender identity. Indeed, while discrimination on other grounds such as race, ethnicity, religion or belief and disability is generally forbidden in all areas of life, discrimination on the ground of sexual orientation is explicitly prohibited only in employment (article 7(1)). Discrimination on the ground of gender identity is not explicitly prohibited in any area of life. Amnesty International is also concerned that according to the Law the prohibition of discrimination can not impair the definition of family conceived as based on marriage between a man and a woman, which can significantly narrow down the material scope of the legislation.

Amnesty International urges the Moldovan authorities to amend the law in light of Moldova's international obligations and introduce a comprehensive anti-discrimination framework providing protection against discrimination on all grounds, explicitly including sexual orientation and gender identity, and in all areas of life.

Background information

Due to the increasingly polarized public debate in Moldova during the past year around on the draft Anti-Discrimination Law, which originally prohibited discrimination on the ground of sexual orientation in all areas of life and which stirred strong opposition from members of parliament and representatives of the Orthodox Church, the Government amended the law narrowing down the prohibition to discrimination on the ground of sexual orientation. State of health, property and social background originally included as prohibited grounds, were also removed from the text. Gender identity was never included as a prohibited ground in early drafts.

Over the recent years, Amnesty International has documented widespread discrimination by both state and private actors against lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals in Moldova. In March this year the local councils in the city of Bălți (north of Moldova), the villages of Chetriș, and Hiliuți in Făleşti District and the Anenii Noi District (east-central Moldova) adopted measures which discriminate against lesbian, gay and bisexual individuals in their exercise of the rights to freedom of expression and to freedom of peaceful

assembly. The Bălți City Council banned “aggressive propaganda of non-traditional sexual orientation”. Other local councils adopted similar provisions. On 29 March, the local councils of Drochia (north) and Cahul (south) have adopted similar decisions to those of Balti, Anenii Noi and Falesti. Amnesty International has called on local authorities to repeal these provisions. One village in Făleşti District repealed its decision upon intervention of the Ombudsperson Institution in Moldova.

Amnesty International is concerned about the longstanding practice of the Moldovan authorities to either ban or fail to protect LGBTI public events. In May 2008, Chişinău City Hall banned a demonstration by the LGBT organization *Information Center GenderDoc-M* stating that religious organizations, school students and residents of the capital had reacted negatively to the planned demonstration.

Some elected government officials as well as member of the Orthodox Church, have on several occasions publicly used homophobic language. For instance Marian Lupu, speaker of the Parliament of the Republic of Moldova, made several homophobic statements during the talk-show on one of Moldovan TV channels on 21 May. Amnesty International emphasizes that public officials and those seeking political office should refrain from promoting homophobic and transphobic messages which may contribute to fuelling discrimination against LGBTI individuals.

The introduction of an anti-discrimination law which does not provide protection against discrimination on the grounds of sexual orientation and gender identity is inconsistent with obligations under international treaties to which Moldova is a state party. Article 2 of the International Covenant on Civil and Political Rights (ICCPR) requires states to ensure the respect of all the rights enshrined in the Covenant without discrimination. Article 26 of the ICCPR requires states to guarantee to all persons equal and effective protection against discrimination on any ground. The Human Rights Committee has clarified that the prohibition of discrimination included article 2 and 26 of the ICCPR should be construed as to including sexual orientation among the prohibited grounds of discrimination (see for instance Toonen v. Australia, communication 488/1992, Young v. Australia, communication 941/2000). Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms prescribes that the rights set forth by the Convention must be secured without discrimination on any ground. Furthermore, the exception included in the legislation and relating to the definition of family could lead to further discrimination on the ground of sexual orientation in the access to good and services such as health or social services. For instance the European Court of Human Rights has found that the refusal to extend a sick insurance to the homosexual partner of an insured person constituted a violation of the right to private life and to the right to be free from discrimination (P.B. and J.S. v. Austria).

End/