



TOWARDS EQUALITY

DISCRIMINATION IN MOLDOVA

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in 2012 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2012

Index: EUR 59/006/2012
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

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1. INTRODUCTION

“My message to the Government and to the public is that diversity is among our highest values. A democracy is only as strong as its ability to protect its most vulnerable”

Navi Pillay, UN High Commissioner for Human Rights during a visit to Moldova in November 2011

The government of Moldova has made significant progress in bringing legislation and practice into line with European and international human rights standards, but it still faces significant challenges in combating discrimination. High levels of prejudice and negative stereotyping towards ethnic and religious minorities, lesbian, gay, bisexual, transgender and intersex (LGBTI) people, the disabled and others, create an environment in which violence and abuse against these groups are committed with impunity. As the cases in this briefing show, many people are prevented from claiming basic rights or deprived of redress for human rights violations: Johnbull Ugbo was subjected to a racist attack and was deprived of his right to remedy in Moldova when the crime against him was treated as a minor offence; Cornel Baran is unable to attend school because he cannot physically access the school building; Ion, a young gay man committed suicide after police threatened to expose his sexual orientation to his family; IH, a 48 year-old HIV-positive woman has been denied hip replacement surgery because of her condition.

Moldova has taken steps to comply with international and European standards regarding discrimination. The 2003 Labour Code prohibits discrimination in employment on the grounds of sex, race, nationality, language, social origin, material situation, religion, belief, association in public societies and other circumstances. In 2003 a National Plan to Promote Gender Equality was established, and in 2007 a Law on HIV prevention was adopted which prohibited discrimination on the basis of HIV status. In May 2012, after years of public debate and repeated recommendations by UN human rights treaty bodies and others, parliament passed the first “comprehensive” anti-discrimination legislation – the Law on Ensuring Equality, which will come into force on 1 January 2013. Victims of discrimination in Moldova are hoping that the new law, and the institutional framework that it proposes, will help them to claim their rights, but the new law falls short of international standards in some respects including by appearing to omit LGBTI people from some of the protection it offers.

In this briefing Amnesty International proposes changes to the Law on Ensuring Equality, and other legislation, as well as some other measures to assist Moldova in fulfilling international obligation to combat discrimination.

2. INTOLERANCE IN SOCIETY

Over the past two years, during discussions of new anti-discrimination legislation, political and religious leaders have made an unprecedented number of statements that reinforce negative attitudes towards ethnic minorities, Muslims, and LGBTI individuals. Public officials have a particular responsibility under international law to promote tolerance and respect for human rights, and not to promote or strengthen stereotypical views which are likely to foster intolerance and discrimination.

A sociological study carried out by the Soros Foundation in Moldova in 2011¹ revealed high levels of prejudice and negative stereotyping with regard to those with mental and physical disabilities, LGBTI, HIV positive people, and Roma: 63% of respondents thought that children with disabilities should be educated in separate schools, 45% thought that the right place for a person with mental disabilities was in a state institution, 46% expressed support for “punishing” lesbian and gay people by curtailing their rights, and over 70% of the respondents thought that Roma are beggars and pickpockets and that they live off others and are liars and cheats.

In September 2011, the former head of the Information and Security Service, Anatol Plugaru, held a press conference during which he equated homosexuals with paedophiles, “zoophytes and necrophiles”.² *GenderDoc-M*, a Moldovan NGO working on LGBTI rights, issued a claim against Anatol Plugaru under Article 3 Part 5 of the Law on Freedom of Expression (Guarantees of freedom of expression to not apply to instigation of hatred or violence), and demanding an apology to LGBTI people and asking for him to desist from such statements. Court hearings started in January 2012, but have been postponed because of the defendant’s repeated failure to show up, although under Moldovan Law, if the judge ascertains that the defendant has been properly informed, a case can be heard in the absence of the defendant.

On 18 February 2012, the leader of the Communist Party and former President of Moldova, Vladimir Voronin made openly racist comments at a political rally. During the rally, the Communist Party opposition and supporters of the government coalition, Alliance for European Integration, faced each other across the main street in the capital Chisinau. John Onoje, a Moldovan citizen from Sierra Leone was among the Alliance Party supporters. Vladimir Voronin mocked the government supporters saying: “They [the ruling coalition] brought a Negro here, who’s just climbed down from the trees, and now he’s doing politics for them.’

During public demonstrations against the adoption of anti-discrimination legislation, politicians and religious leaders invoked fear of “islamicization”³ along with “homosexualization” of Moldova.

For example, at the end of December 2011 the villages of Chetriş, and Hiliuţi in Făleşti District, and in March 2012 the local councils in the city of Bălţi (north of Moldova), and the Anenii Noi District (east-central Moldova) adopted discriminatory measures against LGBTI individuals, as well as Muslims. The Bălţi City Council declared itself a “zone of special

support for the Moldovan Orthodox Church” and banned “aggressive propaganda of non-traditional sexual orientation”. The villages of Chetriș, and Hiliuți in Fălești District also banned public Muslim worship in areas under their control. On 29 March, the local councils of Drochia (north) and Cahul (south) adopted similar decisions to those of Balti, Anenii Noi and Falesti. One village in Fălești District repealed its decision upon intervention of the Ombudsperson Institution in Moldova.

In April 2012, leaflets were distributed in Balti and other cities warning of the dire consequences of adopting the Anti-discrimination legislation: "The law on non-discrimination...acknowledges the dictatorship of homosexuality over normalcy and...gives them [pederasts] more rights than other people," one such leaflet proclaims. The leaflets also stated that because Moldova was once part of the Ottoman Empire, Muslims believe the country must be officially converted to Islam -- and that Christians will be considered "pagans" and beheaded. Police believed the Orthodox church was behind the leaflets and raided a number of churches, but found no evidence. Bishop Marchel from Balti denied distributing the leaflets, but openly supported them, stating: "Two months ago or maybe earlier, I had one of those leaflets in my hand and I can say that they contain the pure truth," he said. "Those leaflets present the true face of homosexuals."⁴

The European Commission against Racism and Intolerance (ECRI), a Council of Europe body of experts charged with issuing reports and recommendations to eliminate racism in Europe, has noted the frequency of intolerant remarks concerning several minority groups by representatives of the media, the general public and politicians in Moldova. In its Third Report on Moldova it drew attention to reports “that the Moldovan Orthodox Church has not always played the role it should in promoting tolerance among its followers.”⁵

Such expressions of intolerance and social prejudice by public officials create a climate in which graver human rights abuses are perpetrated and tolerated. The Moldovan government must ensure that public officials making such comments are appropriately sanctioned, and must take measures to build greater acceptance of diversity in society.

3. MOLDOVA'S INTERNATIONAL OBLIGATIONS

Under international law, discrimination is any difference of treatment based on a prohibited ground that does not have an objective and reasonable justification. Discrimination impairs the exercise of other human rights on an equal basis. Prohibited grounds can include any personal quality, characteristic or circumstances upon which arbitrary distinctions are made such as: ethnicity, religion, national or social origin, language, physical appearance, descent, gender, gender identity, sexual orientation, age or disability, religion or belief, domicile, or any other status.

A difference of treatment may be considered as having an objective or reasonable justification if it is for a legitimate purpose compatible with the human rights obligations of the state.⁶ A legitimate purpose could be related to public health or security, or public policy concerns such as health and safety. However, in order for a difference of treatment to qualify as objective and reasonable it should also be proportionate to the aim it seeks to achieve.⁷ The European Court of Human Rights has been insistent that unfavorable treatment based on prohibited ground will require particularly weighty justification to be compatible with human rights standards.⁸

International and European anti-discrimination law prohibits both direct and indirect discrimination. The latter occurs when an apparently neutral law, procedure or practice results in a disproportionate disadvantage for, or has a disparate impact on, a particular group without any objective or reasonable justification.

Moldova is party to several human rights treaties prohibiting discrimination. These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Elimination of All Forms of Discrimination against women (CEDAW), the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) Most recently in September 2010 Moldova ratified the United Nations Convention on the Rights of Persons with Disabilities.

What these obligations mean in practice is that Moldova must:

- Prohibit direct and indirect discrimination on all grounds and in all areas of life;
- Set up independent national anti-discrimination bodies to monitor and make recommendations regarding respect for non-discrimination legislation that have effective investigative powers, a mandate to examine individual complaints of discrimination in both the private and the public sector and take binding and enforceable decisions, and adequate staff and funds;
- Provide access to effective judicial remedies for victims of discrimination including measures such as the provision of legal aid and representation by non-governmental

organizations;

- Ensure effective monitoring of the impact of legislation and policies on different groups and collection of accurate disaggregated data to use in identifying and addressing discrimination.

Although discrimination on the grounds of sexual orientation is not explicitly mentioned in the non-discrimination provisions of the ICCPR and the ECHR, both instruments include non-exhaustive lists of prohibited grounds of discrimination, noting that States must combat discrimination on any grounds. Moreover, the European Court of Human Rights has clarified that the list of prohibited grounds included in Article 14 of the ECHR covers sexual orientation⁹ and the Human Rights Committee has reached the same conclusion with respect to the non-discrimination provisions of the ICCPR.¹⁰

Crimes which fall under the definition of “hate crimes” are the most insidious manifestation of intolerance and discrimination. The Organization for Security and Co-operation in Europe (OSCE) has defined hate crimes as “criminal offences, including offences against persons or property, where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of a group”.

The European Court of Human Rights (ECHR) has found that states have the duty to take all necessary steps to unmask possible racist motivations behind crimes:

... [W]here there is suspicion that racial attitudes induced a violent act it is particularly important that the official investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and ethnic hatred and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence.¹¹

It also found that crimes perpetrated with a racist bias cannot be treated as common crimes because they are particularly destructive of fundamental rights.¹²

The European Commission against Racism and Intolerance (ECRI) has addressed the role of the police in combating racist offences and monitoring racist incidents. In its General Policy Recommendation No. 11, ECRI calls on the governments of Council of Europe member states to:

- ensure that the police thoroughly investigate racist offences, including by fully taking the racist motivation of ordinary offences into account;
- establish and operate a system for recording and monitoring racist incidents, and the extent to which these are brought before prosecutors and are eventually qualified as racist offences;
- encourage victims and witnesses of racist incidents to report such incidents.

4. DOMESTIC LEGISLATION

There are significant problems with existing legislation which must be rectified if Moldova is to comply with its international obligations to prevent discrimination: the new Law on Ensuring Equality excludes discrimination on the grounds of sexual orientation and identity from most of its provisions; existing Articles of the Criminal Code which provide for aggravating factors such as racism are rarely used, and also fail to protect LGBTI individuals, and many hate crimes are prosecuted under the Code on Contraventions which does not provide for aggravating factors at all.

LAW ON ENSURING EQUALITY

In May 2012, following years of vociferous public debate, the Moldovan parliament finally succeeded in passing a new Law on Ensuring Equality, which comes into effect on 1 January 2013. The introduction of anti-discrimination legislation has been part of successive National Action Plans on Human Rights. In October 2007 the Ministry of Justice of Moldova established an Anti-Discrimination Working Group, and in July 2008 a draft Law was presented to key civil society representatives and officials. The first and subsequent drafts were also presented to the OSCE mission in Moldova for comment. At the end of 2010 the passing of comprehensive anti-discrimination legislation also became one of a package of reforms required under a visa liberalization plan for Moldovan citizens entering the EU. A final draft was submitted to parliament in February 2011, but was withdrawn because of controversy over the inclusion of discrimination on the grounds of sexual orientation. Amnesty International is concerned that in an effort to make the Law on Ensuring Equality acceptable to parliament and the public, the Ministry of Justice limited the protection from discrimination on the grounds of sexual orientation.

Article 1, Part 1 of The Law on Ensuring Equality sets out the purpose of the law:

“The Purpose of this law is to prevent and combat discrimination, as well as to guarantee equal opportunities or treatment for all the persons on the territory of the Republic of Moldova in political, economic, social, cultural and other areas of life irrespective of race, colour, nationality, ethnic origin, language, religion or religious belief, sex, age, disability, opinion, political affiliation, or any other similar criterion”.

The law specifically prohibits discrimination on these grounds in employment (article 7), access to goods and services available to the public (article 8) and access to education. Article 7 of the law explicitly adds sexual orientation to the list of prohibited grounds of discrimination in employment.

Chapter 3 of the law provides an institutional framework for combating discrimination by setting up a Council for Preventing and Combating of Discrimination. The Council must consist of at least five members, three of whom must be qualified lawyers, appointed by parliament for a five year term following an open and transparent recruitment procedure. The Council is empowered to investigate and consider individual complaints and apply sanctions in accordance with the Code on Contraventions, and will forward criminal complaints to prosecutors. The Moldovan government must start the process of recruiting members for the

council as soon as possible if the body is to be up and running by 1 January 2013.

OMITTED GROUNDS

Amnesty International is concerned that the law does not provide adequate protection against discrimination on the grounds of sexual orientation and gender identity. The final version of the law no longer lists sexual orientation among the forbidden grounds of discrimination in the introductory Article 1, although it was listed in previous versions of the law. The law has never included gender identity as a forbidden ground. The government have argued that the list is open-ended because it includes the phrase “other similar criterion”, but given the high levels of prejudice directed at LGBTI individuals in Moldovan society, sexual orientation and gender identity may not be interpreted by courts and prosecutors as “similar” to discrimination on the grounds of belief or disability or any of the other criteria listed. Furthermore, the fact that sexual orientation is mentioned explicitly in Article 7 of the law (Prohibition of Discrimination at Work) and but not in the more general Article 1, implies that its omission from the latter was deliberate, raising the possibility that the law will be interpreted as limiting the protection against discrimination on the grounds of sexual orientation to the sphere of employment.

In the final version of the law the Ministry of Justice also dropped “state of health” from the list of forbidden grounds, and Amnesty International is concerned that given the failure to implement the existing anti-discrimination provision of the law on HIV/AIDS, HIV positive people may find themselves deprived of additional protection.

If the law is not amended or interpreted in such a way as to protect people from discrimination on the basis of sexual orientation in areas other than employment, Moldova will fail to live up to its obligations under international treaties.

EXCEPTIONS TO THE LAW

Article 1, Part 2 of the Law states:

“The provisions of this law do not apply to and cannot be interpreted as interfering with: a) the family, based on the freely consented marriage between a man and a woman.”

This narrow definition of a family discriminates against same-sex relationships, as well as cohabiting couples and any other forms of relationship. Denial of equal civil recognition of same-sex relationships prevents many people from enjoying a whole range of other rights, such as rights to housing and social security, and stigmatises those relationships in ways that can fuel discrimination and other human rights abuses against LGBT people. The European Court of Human Rights advocates a flexible approach to the interpretation of what constitutes a family, which takes into account the diversity of modern family arrangements, and the evolution of social attitudes and medical technology.

HATE CRIME LEGISLATION

Current Moldovan legislation covering hate crime is flawed and the Moldovan authorities need to make changes to the Criminal Code to ensure that people are effectively protected against hate crimes.

Article 176 of the Criminal Code on Violation of Citizens’ Equality of Rights prohibits “the

violation of citizens' rights and freedoms guaranteed by the Constitution and other laws on the grounds of sex, race, color, language, religion, political, or any other opinions; national or social origin; association with a national minority; property; birth or any other situation" when committed by an official and when resulting in considerable damage. It provides for a maximum sentence of three years. However, as can be seen from the case of John Onoje who attempted to prosecute a public official for racially insulting him (see p. 6), this article is difficult to apply in practice. John Onoje complained to the General Prosecutor about the racist comments made by Vladimir Voronin under Article 176, but his complaint was rejected on the grounds that "there was no evidence of a crime".

In 2010, the Organization for Security and Cooperation in Europe (OSCE) published comments on amendments to the Moldovan Criminal code concerning hate crimes.¹³ The OSCE study points out that it is not clear precisely which acts are covered by Article 176 and how many might actually constitute hate crimes.

Article 346, Part 1 of the Criminal Code prohibits "deliberate actions, public instigation, including through mass-media, written or electronic, targeted to provoke national, racial or religious enmity or discord, to humiliate the national honour and dignity, as well as the direct or indirect limitation of the rights or establishing of direct or indirect advantages for citizens depending on their national, racial or religious affiliation." International standards allow for the restriction of freedom of speech in certain specific circumstances, but the European Court of Human Rights has stressed that such legislation must allow scope for information or ideas that "offend shock or disturb." The OSCE has recommended that Article 346 should outline more clearly what forms of insulting or humiliating behaviour are covered to ensure that the right to freedom of expression is not unduly compromised.

Article 77-1 (Aggravating Circumstances) provides a list of factors to be taken into consideration when determining punishments for crimes. The list includes "social, national, racial or religious enmity or hatred". Article 77-1 should also include hatred based on sexual orientation and identity, and disability.

In most cases hate crimes are prosecuted under generic criminal offences such as Article 287 of the Criminal Code ("hooliganism"), without the addition of Article 77-1 to mark the crime as a hate crime. In many cases crimes motivated by hatred against a specific group are classified as contraventions and prosecuted under the Contravention Code, in which case there is no possibility to include the aggravating factor. The decision as to whether to class a hate crime as a criminal act or a contravention will rest on the degree of seriousness of the injuries judged by the number of days of lost work.

INADEQUATE PROSECUTION OF HATE CRIMES

Johnbull Ugbo, a Nigerian citizen who has been resident in Moldova for many years, was subjected to a racist attack on 3 September 2011 as he was leaving a chemist's shop with his son. Four men approached him as he entered the shop and shouted: "Hey you black, come here. What are you doing in Moldova?". One of the men held his arms while a second played with his hair. The security guard in the chemist's shop was able to force the men to leave the premises and Johnbull Ugbo remained inside and phoned the police. The police came after 25 minutes, but as they escorted Johnbull Ugbo to the police car, the men attacked him in the police car attempting to pull him out of the car through the side doors. The men tugged at him, two on each side of the

car, causing him considerable pain. The policemen did nothing and after a short time the men drove off. On 10 October one of the perpetrators was fined 200 Lei (13 Euros) for minor hooliganism in accordance with the Contravention Code. However, Johnbull Ogbo was not informed of the decision, and neither was he invited to give a witness statement. On 5 December his lawyer applied to the prosecutor to annul the decision to fine the perpetrator and asking for a reinvestigation of the case as a criminal offence with the aggravating factor of racism (Art. 287 (Hooliganism) and Art. 77 (crimes based on social national or religious hatred). However, this application was rejected, and at the court hearing the police officers changed their statement claiming that Johnbull Ugbo had been the aggressor in the case and not the four men.

The case of Johnbull Ugbo highlights the failure of the police to treat racist crimes with appropriate seriousness. *GenderDoc-M* have documented blatantly homophobic attitudes by police officers (see p. 15).

In an attempt to prosecute for hate speech against LGBTI individuals lawyers have also used Article 3, Part 5 of the Law on Freedom of Expression which provides for prosecution of hate speech: "Guarantees of freedom of expression do not extend to instigation of hatred and violence". The laws defines instigation of hatred as "any statements calling for, propagandizing, supporting or justifying racial hatred, xenophobia, anti-Semitism or other expressions based on intolerance and hatred." It offers a broader definition of motivation than Article 176 of the Criminal Code which does not cover hatred against LGBTI people.

Amnesty International calls on the Moldovan authorities to bring its legislation in line with international standards of freedom of expression while ensuring that hate crimes can be prosecuted effectively.

5. DISCRIMINATION IN MOLDOVA

The examples of discrimination in this section are not intended to be an exhaustive description of all forms of discrimination in Moldova, but are intended to illustrate the main legislative shortcomings. The Roma in Moldova, for example, face multiple discrimination; they face social prejudice and may be targeted by law enforcement officers or refused services because they are Roma, but they may also face further barriers because they are among the poorest people in the poorest country in Europe.¹⁴ They have little access to health care; they often cannot register for the state health insurance policy not only because of the cost, but because they lack the necessary documents. Forty-three per cent of Roma children do not attend school, compared to six per cent of non Roma.¹⁵

SEXUAL ORIENTATION AND GENDER IDENTITY

“Unfortunately they know that it is not a crime, but inside every gay man there is the fear that he is doing something amoral and illegal. Because they hear on the TV all the time that they should be killed or drowned. They are ready to do anything or pay so that nobody finds out.”

Aleksei Marchkov, Chair of *GenderDoc-M*

LGBTI individuals face negative stereotyping and discriminatory treatment based on ignorance and intolerance by members of the public and officials. The discussion in parliament of the Draft Anti-Discrimination Law which originally included sexual orientation as one of the grounds for discrimination caused enormous opposition from members of parliament and representatives of the Orthodox Church. In his presentation to the Human Rights Council for the Universal Periodic Review in March 2012 the Deputy Minister of Justice admitted that the discussion of the Draft Law had revealed “certain sensitivities within society”.¹⁶

“The inclusion of the term “sexual orientation” as a criteria for protection from discrimination in the law goes against the centuries-long traditions of our orthodox society, according to which homosexual practice is condemned and considered immoral.”

Vladimir Plakhotnyuk, Vice President of Parliament, Democratic Party.

Some elected government officials as well as members of the Orthodox Church have publicly used homophobic language. For instance, Marian Lupu, speaker of the Parliament of the Republic of Moldova, made several statements expressing negative stereotypes and aggression against LGBTI people during a television talk show on 21 May 2012. Amnesty International emphasizes that public officials should refrain from making statements that fuel stereotypes and discrimination against LGBTI individuals.

In 2011, an outspoken Baptist, Vitalie Marian, placed a black list on his personal website of public figures who either “supported homosexuality”, affirmed that homosexuality was normal, or were themselves gay. The list included one of the Parliamentary Representatives for human rights, and the heads of all leading civil society organizations including the Chair of Amnesty International Moldova. On 1 August 2011, a court issued an injunction prohibiting Vitalie Marian from spreading such statements. He appealed against the ban but

his appeal was turned down, but he has ignored the injunction and the black list remains on his website.

Amnesty International has repeatedly documented discrimination of LGBTI people in the exercise of their rights to freedom of assembly in Moldova. In May 2008, Chişinău City Hall banned a demonstration by the LGBTI organization, *GenderDoc-M*, stating that religious organizations, school students and residents of the capital had reacted negatively to the planned demonstration. In April 2010 the Chisinau appeal court upheld a ban on a pro-equality march organized by LGBTI activists due to "security and public morality concerns". Chişinău city authorities applied to get the march banned in response to numerous petitions from a range of religious and other anti-LGBTI groups. A counter-demonstration organized by those groups took place on the same day. On 12 June 2012, the European Court of Human Rights (the Court) ruled that the banning of a lesbian, gay, bisexual and transgender demonstration in May 2005 violated the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and ordered the Republic of Moldova to pay *GenderDoc-M* 11,000 Euros within three months.

DISCRIMINATORY ATTITUDES BY POLICE

According to a report by *GenderDoc-M* published in 2012, police officers frequently discriminate against LGBTI people, and many LGBTI individuals cite difficulty in accessing justice when they are victims of crimes because the police show more interest in their lifestyles than in the crime that has been committed. Andrei, was robbed in November 2010. He submitted a complaint to the police, but when reporting to the police officer in charge of his case he found that he was interrogated about his private life, and the police officers cracked homophobic jokes. In May 2011 when he was again robbed he was again subjected to insults with reference to his sexual orientation, and he has received no information about the robbery. Andrei complained to the Prosecutor General's Office about the discriminatory treatment, but has received no substantive response.¹⁷

According to Alexei Marchkov, Chair of *GenderDoc-M*, the general acceptance of discrimination against LGBTI individuals and stigmatization of homosexuality combined with corruption in the police mean that gay men are prone to blackmail and extortion by the police at known gay meeting points. Despite the fact that homosexuality is no longer a criminal offence, gay men fear exposure, and do not believe that they are protected by the state.

"In this country where the police are badly paid it is a catastrophe. They (LGBTI people) become victims of crime, discrimination, blackmail and even death."

Aleksei Marchkov, Chair of *GenderDoc-M*

ION

On 6 December 2010 Ion committed suicide following his detention by the police after he was picked up at a gay meeting point in Chisinau. In his suicide note he wrote: "Forgive me mum. I am gay."

Ion was detained along with another young man in the toilets at a park in Chisinau. Slava, who carries out HIV Aids prevention work among men who have sex with men (MSM) as part of a programme run by *GenderDoc-M*, was present in the park that evening and saw two policemen, one armed, entering the toilets and coming out with two young men, and asked the police why they were detaining the men. The policemen led

the men to a police car saying that they would be taken to the police station. On the way they insulted them and threatened to expose them to their families. Slava reported that after checking their documents the policemen released the young men. Ion returned to his aunt's house where he committed suicide that night by hanging himself. *GenderDoc-M* reported the incident to the police and held a press conference, but the police have denied that the policemen acted illegally and claimed that they were responding to a complaint following an incident when a 5 year-old child entered the toilets alone. According to *GenderDoc-M* this case is part of a pattern of threats and extortion that gay men are subjected to at the hands of the police.

The police must play a positive role in combating discrimination, yet in Moldova LGBTI people are subjected to discriminatory treatment and possible extortion at the hands of the police. This means that LGBTI people feel excluded from protection under the law and are unlikely to complain hate crimes and other discriminatory treatment thus prolonging the cycle of abuse.

DISABILITY

"These people were kept in residential homes and boarding schools so people never saw them and people think that everybody should look like them. They are not used to people who are different."

Ludmila Malcoci, Keystone, Moldova

According to the UNDP there are 170,000 people with disabilities in the Republic of Moldova who "often face discrimination, social exclusion, poverty, unemployment and low access to public services, being therefore deprived of the opportunity to exercise their fundamental rights."¹⁸

According to a sociological survey carried out by the SOROS Foundation in Moldova, 2/3 of respondents stated that children with disabilities should be educated in special schools, 40% believe that persons with disabilities are unable to work, 39% consider that persons with mental disabilities are dangerous and should be isolated, and 28% consider that persons with disabilities can have no family.¹⁹

Children with disabilities face many types of discrimination, but lack of education is one of the most grave. UNICEF estimates that there are as many as 15, 321 children with physical or mental disabilities in Moldova, yet in 2010 – 2011 only 3,148 of these children were enrolled in school (special or otherwise) or receiving education of any kind.²⁰ This means that as many as 11,000 children with disabilities may not be receiving any education at all. There are very few statistics on levels of discrimination in Moldovan society and according to a UNICEF study on vulnerable, excluded and discriminated children in Moldova there are clusters of "invisible" groups of children, such as those with disabilities and Roma children, who are completely undocumented.

Legislation requires that if a child is not able to attend school because of physical barriers, a teacher should teach him/her at home, however, NGO employees working with children with disabilities say that this often does not happen particularly in rural areas. In any case the number of hours of education offered is limited which means that it can take children much longer to complete the curriculum, and teachers do not have guidance on how to work with children with disabilities.

DENIAL OF EDUCATION

“Children should go to school. You have friends. It is more interesting”.

Cornel Baran is 19 years old and uses a wheelchair. His formal education started when he was nine years old because of his disability and he has been educated at home since then: “I started education when I was nine years old. I wanted to go to school when I was younger, but my mother was told that children like me couldn’t go to school”.

He is offered 5 hours per week of home schooling during which his teachers come to his house. He is intending to go to university, but still has two years of schooling to take his school leaving exams because of the limited hours of tuition that he is offered. He told Amnesty International that he would much rather go to school because then he would have company and friends, but the main problem he faces are “architectural barriers”. There are 10 steps to enter the school building and the class rooms are spread over four floors. This would necessitate the installation of a lift to make the school accessible to students with similar mobility disabilities, and the school have replied to Cornel that there is no money to install a lift.

The authorities in Moldova are bound to respect, protect and fulfil the right to education without discrimination under a number of international human rights treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child. Under these standards, education must be accessible to all, including the most vulnerable groups, in law and fact without discrimination.²¹ The UN Committee on Economic, Social and Cultural Rights, which provides authoritative interpretations of obligations under the ICESCR, has clarified that primary education must be compulsory and available free to all, and it must be accessible – physically and economically – to everyone, without discrimination.²² Furthermore, Article 9 of the UN Convention on the Rights of Persons with Disability calls on states parties to eliminate obstacles and barriers to access to schools, housing, medical facilities and other facilities. Article 24 refers to education and calls on states parties to do all that is necessary to ensure that persons with disabilities are able to “develop their human potential” without discrimination.

In 2011 the Committee on Economic Cultural and Social Rights expressed concern “that children with disabilities often do not attend mainstream schools or classes, even in cases in which the nature of the disability would not preclude regular education”, and asked the state party to ensure the implementation of inclusive education of children with disabilities.²³

STATE OF HEALTH – HIV POSITIVE PEOPLE

“The stigma and discrimination are rooted in prejudice and social stereotypes which in turn are based on lack of information, ignorance and lack of experience of interacting with such people.”

IDOM report on the rights of people living with HIV/AIDS²⁴

According to the national centre for AIDS there were 5,290 cases of HIV/AIDS registered in 2009. In 2007 the government passed a law on HIV/AIDS Prevention which required the government to set up training programmes on prevention, guaranteed the right to confidentiality for those with HIV/AIDS, and prohibited discrimination in various spheres

including access to health, and to work on the basis of HIV/AIDS status. Despite these measures HIV positive people continue to face stigma, and discrimination in the workplace, in society, and in accessing health care.

DENIAL OF MEDICAL TREATMENT

"The doctors are discriminating against me with the pretext of being cautious. It is unacceptable that people who have taken the Hippocratic refuse to treat patients in special situations." IH, Chisinau

I.H., a 48 year old HIV positive woman, suffers from severe deterioration of a hip joint (osteonecrosis). She is suffering severe pain, is only able to walk with the aid of crutches, and has been unable to work for the past 6 months. In May 2011, she was put on a waiting list for a hip replacement operation at the Traumatology and Orthopedics Hospital in Chisinau.

However, on 21 November 2011, after performing pre-operative tests doctors at the hospital refused to carry out the operation, claiming there the surgery was too risky for somebody with her health problems. The matter was also discussed by the Medical Board at the hospital which also decided not to operate. She was told orally by the Deputy Director of the hospital that such surgery could not be performed on HIV positive patients.

She sought help from the NGO, the Institute for Human Rights (IDOM), which is running a project on the rights of people living with HIV, including a strategic litigation programme. Lawyers from the NGO consulted other specialists from medical institutions in Chişinău. Some of whom indicated that a hip replacement operation could be performed and that there were no risks for the patient. However, none of these specialists were willing to perform the surgery, and publicly contradict the influential members of the Medical Board. In January 2012 the UNDP human rights representative wrote to the Ministry of health expressing the opinion that IH was being discriminated against because of her HIV status. IDOM also held a press conference to highlight the case. Following these actions, the hospital agreed to repeat the tests and on 22 February 2012 IH was given the go ahead for her operation, only subsequently to be told that the operation would be too risky for her health because she is HIV positive. In July IDOM were assisting her to be treated in a private hospital.

Article 12 of the International Covenant on Economic, Social and Cultural Rights recognises right of everyone to the enjoyment of the highest attainable standard of physical and mental health". A number of International human rights Conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Elimination of All Forms of Racial Discrimination oblige states to ensure that people have access to health without discrimination. Hip replacement operations are regularly carried out on HIV positive patients throughout the world and experts agree that such surgery does not result in postoperative complications if the preoperative immune system is healthy.²⁵ Amnesty International is concerned that I.H. has been denied medical treatment because of her HIV status in violation of Moldova's obligations to prevent discrimination.

6. CONCLUSION AND RECOMMENDATIONS

If it is to live up to European and international human rights standards, the Moldovan government must strive to create a society in which diversity is viewed not as a threat, but as a source of enrichment for society as a whole. It must take measures to prevent the use of negative stereotypes in public discourse, and strive to raise awareness of discrimination and build tolerance through education and public information. It must ensure that victims of discrimination are provided with redress. The following recommendations are intended to help Moldova fulfil its international human rights obligation to eliminate discrimination, and to build a more equal society.

Legislative Reform

- Amend the new Law on Ensuring Equality as follows:
 - include sexual orientation, sexual identity and state of health as forbidden grounds for discrimination in Article 1;
- Amend Article 77-1 of the Criminal Code (Aggravating Circumstances) to include crimes motivated by hatred based on sexual orientation and identity, and disability.

General Measures

- High level officials must publicly acknowledge the seriousness of discrimination and the need to take concerted action to address it;
- Statistics on incidents of discrimination should be centralized and regularly published, in order to identify patterns of violations and establish appropriate remedial action;
- Ensure that victims of discrimination have access to means of redress and enjoy an enforceable right to reparations, including fair and adequate compensation.

Ministry of Internal Affairs

- Develop clear guidelines and training for police on dealing with hate crimes:
 - Guidelines should be informed by and comply with Moldova's obligations under international human rights law. (See for example Amnesty International's 12-Point Guide for Good Practice in the Training and Education for Human Rights of Government Officials and CERD's General Recommendation XIII on training of law enforcement officials).

General Prosecutor's Office

- Develop clear guidelines and training for prosecutors in how to deal with hate crimes and cases of discrimination;
- Issue instructions to prosecutors that all crimes that discriminate against particular groups are prosecuted as hate crimes using Article 77-1 of the Criminal Code.

Ministry of Justice

- Start recruitment of the members of the Council to Ensure Equality as soon as possible
 - the members of the Council should consist of lawyers as stipulated in the law, and in addition should include representatives of civil society with proven knowledge in the field, and representatives of those communities most frequently discriminated against;

Ministry of Education

- Comply with the recommendations of the Committee on Economic Cultural and Social Rights to ensure the implementation of inclusive education of children with disabilities, including:
 - availability of assistive devices and support in classrooms;
 - accessibility of school buildings.

Ministry of Health

- Ensure that the Law on Prevention and Control of HIV/AIDS is fully enacted and in particular that Article 25 which states that each individual shall have equal access to medical services regardless of perceived or actual HIV status is respected;
- Provide obligatory training to health professionals on the prohibition of discrimination in the provision of health care.

ENDNOTES

¹ Soros Foundation-Moldova, *Perceptions of the Population of the Republic of Moldova on Discrimination: Sociological Study*, Ludmila Malcoci, Moldova 2011, http://www.soros.md/files/publications/documents/Studiu_sociologic_EN.pdf

² Press conference 15 September 2011, "Anti-state and international requirements and recommendations of experts from the European Union and the UN", <http://www.privesc.eu/Arhiva/6368/Conferinta-de-pres-a-cu-tema--Cerinte-si-recomandari-antistatale-si-antinationale-ai-unor-experti-din-Uniunea-Europeana-si-ONU>

³ Moslems have been prevented from freely worshipping for years in Moldova, and finally in March 2011, after over a decade of being refused registration, the Islamic League of the Republic of Moldova was finally registered as a religious organization despite opposition from the Orthodox Church. The Chair of the Islamic League, Salman Socirca, reported a radical improvement in the situation of Freedom of worship for Moslems since they had been able to register. In the past they had been subjected to fines and constant surveillance around their places of worship.

⁴ Radio Free Europe, *Moldova: Battle Over Moldovan Antidiscrimination Bill Reaches Fevered Pitch*, July 20, 2012, http://www.rferl.org/content/moldova_gay_antidiscrimination_law_opposition/24541486.html

⁵ European Commission against Racism and Intolerance, *Third report on Moldova*, Strasbourg, 29 April 2008, p.24.

⁶ Human Rights Committee (HRC) General Comment No. 18, para13.

⁷ <http://www.legislationline.org/topics/country/14/topic/4v>. United Kingdom (Application No. 9214/80), judgment of 28 May 1985, para72.

⁸ Amnesty International, *Dealing with difference: A framework to combat discrimination in Europe, reasonable and objective justification*, pp18–19, <http://www.amnesty.org/en/library/info/EUR01/003/2009/en>

⁹ see *L. and V. v. Austria* and subsequent decisions.

¹⁰ see for example, *Young v. Australia*, Communication No. 941/2000.

¹¹ *Nachova and others v. Bulgaria*

¹² *Šečić v. Croatia*.

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Opinion-Nr.: HCRIM– MOL/156/2010 Warsaw, 7 June 2010, <http://www.legislationline.org/topics/country/14/topic/4>.

¹⁴ A UNDP study in 2007 found that Roma faced a risk of poverty two times higher than the non-Roma - 59% of Roma in absolute poverty and 50% in extreme poverty compared to the national averages of 24% and 19% respectively. UNDP, *Roma in the Republic of Moldova*, 2007, p.127

¹⁵ UNICEF, *The Situation of Roma Children in Moldova*, 2010: 23. Data for 2005-2006.

¹⁶ Draft Report of the Working Group on the Universal Periodic Review, Republic of Moldova, Human Rights Council Twelfth Session, Geneva 3 – 13 October 2011,

¹⁷ GenderDoc-M, *2011 Report on State of Human Rights of LGBT People in the Republic of Moldova*, http://ilga-europe.org/home/guide/country_by_country/moldova/report_on_state_of_human_rights_of_lgbt_people_in_the_republic_of_moldova_2011

¹⁸ United Nations Development Programme, *The Republic of Moldova will have a new methodology to determine disability*, July 2011, http://www.undp.md/presscentre/2011/21_07_2011%20METODOLOGIE%20DE%20DETERMINARE%20A%20DIZABILIT/index.shtml

¹⁹ *Perceptions of the population of the Republic of Moldova on Discrimination: Sociological Study*, Soros Foundation Moldova, January 2011, p.6.

²⁰ *Situation analysis of Vulnerable, Excluded and Discriminated Children in Moldova*, UNICEF Moldova, November 2011, p.74 http://www.unicef.org/moldova/Raport_ENG.pdf.

²¹ Committee on Economic, Social and Cultural Rights, General Comment No. 13, The Right to Education, E/C.12/1999/10, para. 6(b).

²² Committee on Economic, Social and Cultural Rights, General Comment No. 13, para. 6.

²³ Committee on Economic, Social and Cultural Rights, Concluding Observations of the consideration of report submitted by Moldova, Geneva, 2-20 May 2011, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/441/27/PDF/G1144127.pdf?OpenElement>

²⁴ *Isolation or Social Integration? Moldova: Respect for the rights of people living with HIV/AIDS, IDOM, PQS, Moldova 2011* (in Russian).

²⁵ See for example: Jeong Joon Yoo, et al. Operations about Hip in Human Immunodeficiency Virus-Positive Patients. *Clinics in Orthopedic Surgery*, 2010 March; 2(1): 22–27.

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TOWARDS EQUALITY

DISCRIMINATION IN MOLDOVA

In Moldova high levels of prejudice and negative stereotyping towards ethnic and religious minorities, lesbian, gay, bisexual, transgender and intersex (LGBTI) people, the disabled and others, create an environment in which violence and abuse against these groups are committed with impunity.

In this briefing Amnesty International shows that many people are prevented from claiming basic rights or deprived of redress for human rights violations. The briefing highlights its concerns with existing legislation, including the new Law on Ensuring Equality, which must be rectified if Moldova is to comply with its international obligations to prevent discrimination.

Amnesty International makes a variety of recommendations which will help Moldova to fulfil its international human rights obligation to eliminate discrimination, and to build a more equal society. These include amending the new Law on Ensuring Equality to include sexual orientation, sexual identity and state of health as forbidden grounds for discrimination and developing clear guidelines and training for police and prosecutors on dealing with hate crimes.

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Index: EUR59/006/2012
September 2012

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