

European Commission  
against Racism and Intolerance

**ECRI**  
Commission européenne  
contre le racisme et l'intolérance

COUNCIL OF EUROPE



CRI(2018)34

# **ECRI REPORT ON THE REPUBLIC OF MOLDOVA**

**(fifth monitoring cycle)**

Adopted on 20 June 2018

Published on 2 October 2018

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States of the Council of Europe regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country monitoring deals with all member States on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 23 March 2018; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**





## SUMMARY

**Since the adoption of ECRI's fourth report on the Republic of Moldova (hereafter Moldova) on 20 June 2013, progress has been made in a number of fields.**

The visibility and the work of the Council to Prevent and Combat Discrimination and Ensure Equality (the CPPEDAE) have improved. With the adoption of Law on the People's Advocate (the Ombudsman) in 2014, the status of the Ombudsman was reformed and has also increased its impact.

It is now possible to record information on racially motivated offences in the Ministry of the Interior's tool for crime statistics. Since 2014, the National Institute of Justice has provided training on non-discrimination and equality for judges and prosecutors. Furthermore, in cooperation with the OSCE, seminars for police had been organised to effectively identify and investigate bias-motivated crimes.

In June 2016, the Moldovan Government approved a new Action Plan in support of the Roma population for 2016-2020 which includes, inter alia, measures in the areas of education, employment, housing, health as well as other fields such as social protection, culture, community development and participation in decision-making.

In December 2016, the Strategy for the Consolidation of Interethnic Relations for 2017-2027 to promote the integration of persons belonging to national minorities was adopted. This Strategy includes measures with a view to prevent and to eliminate discrimination, xenophobia and ethnic stereotypes through capacity-building programmes for civil society and public institutions.

Within the framework of the National Strategy on Migration and Asylum for 2011-2020, the Moldovan government approved the Action Plan for 2016-2020 on the capacity of non-nationals such as migrants and refugees to have access without discrimination to employment, housing, healthcare and basic services.

**ECRI welcomes these positive developments in Moldova. However, despite the progress achieved, some issues give rise to concern.**

Moldova has still not ratified Protocol No. 12 to the European Convention on Human Rights and the authorities have not indicated any date for its ratification.

The Moldovan criminal law is not entirely in line with the ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination and does not provide for aggravating circumstances in cases of homo/transphobic motivation. Gaps also remain with regard to civil and administrative law provisions.

There is no reliable data on hate speech and hate-motivated violence. Criminal action is almost never taken and most cases are treated as misdemeanors. There is a high level of underreporting and the lack of prosecutions does not provide an effective deterrent against such crimes. There is no known conviction where the court took into account racial or xenophobic motivation during sentencing. The insufficient level of knowledge and expertise among the law enforcement bodies and the judiciary in recognising hate crime prevents proper qualification of such crimes.

Racist and intolerant hate speech in public discourse is escalating; the main targets are LGBT persons, Roma and Black community. LGBT persons have especially been the subject of derogatory comments both as individuals (in the work place) or as a group (by politicians, opinion leaders or some church representatives). The authorities fail to voice any counter-hate speech message to the public. Prejudice against LGBT persons is still widespread and they experience different forms of discrimination in their daily lives.

The national Roma strategies have not been implemented fully and the situation of the Roma community remains extremely difficult. School drop-out rates are still high and access to employment is alarmingly low. Roma women are particularly vulnerable in

access to rights due to the multiple discrimination they are subjected to, both on the basis of their gender and ethnicity. The decentralisation reform in the country negatively affected the system of Roma community mediators.

The equality bodies, both the Council to Prevent and Combat Discrimination and Ensure Equality (CPPEDAE) and the Ombudsman, severely lack the financial and human resources necessary to carry out their mandates effectively.

**In this report, ECRI requests that the authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.**

Moldova should ratify Protocol No. 12 to the European Convention on Human Rights.

The Moldovan authorities should bring the Criminal Code, as well as civil and administrative law provisions, in general, into line with ECRI's General Policy Recommendation No. 7.

The authorities should develop, jointly with the relevant civil society groups and international organisations, a comprehensive strategy to prevent and combat hate speech.

The authorities should 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 police and prosecution services should thoroughly investigate all cases of alleged hate crime and 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, in order to address the problem of underreporting the authorities should implement confidence-building measures to enhance the relationship between the police and vulnerable groups, in particular the Roma and the LGBT community.

The authorities should also provide training activities for law enforcement officials and the judiciary on hate crime, including hate speech. Such training should cover racist and homo-/transphobic hate crime as well as racial profiling.\*

Adequate funding should be allocated for the effective implementation of the Action Plan in support of the Roma population for 2016-2020. Furthermore, the authorities should allocate sufficient funding to enable the recruitment of Roma community mediators, as planned in the earlier Roma Action Plan, without any further delay.

The authorities should strengthen the institutional capacity of the Council to Prevent and Combat Discrimination and Ensure Equality (CPPEDAE) and the Ombudsman.\*

An action plan should be adopted to protect LGBT persons against hate speech, violence and discrimination and to raise awareness about their living conditions as well as to make their right to equal treatment a reality.

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\* This recommendation will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

## FINDINGS AND RECOMMENDATIONS

### I. Common topics

#### 1. Legislation against racism and racial discrimination as per General Policy Recommendation (GPR) No.7<sup>1</sup>

##### - Protocol No. 12 to the European Convention on Human Rights

1. The Republic of Moldova<sup>2</sup> (hereafter Moldova) signed Protocol No. 12 in 2000 but has still not ratified it. ECRI considers ratification of this instrument, which provides for a general prohibition of discrimination, to be vital in combating racism and racial discrimination.
2. ECRI reiterates its recommendation to Moldova to ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible.

##### - Criminal law

3. Criminal law provisions corresponding to ECRI's General Policy Recommendation No. 7 (GPR No. 7) on national legislation to combat racism and racial discrimination can be found in the Criminal Code.<sup>3</sup> Despite ECRI's recommendation in its fourth report (§ 32), the provisions of the Criminal Code designed to combat racism and racial discrimination still seems to fall behind the requirements of §§ 18-23 of GPR No. 7. ECRI was informed by the authorities that some of the gaps mentioned below will be filled once the draft Law on Hate Crimes and Holocaust denial - amending and supplementing certain acts<sup>4</sup> (hereafter the draft Law) is adopted.
4. Article 346 of the Criminal Code criminalises incitement to hatred or discrimination on account of nationality, race and religion through mass media, either printed or electronic, with punishments of fines, community service or up to three years' imprisonment. There is no reference to incitement to violence, as per ECRI's GPR No. 7 § 18 a. Article 346 does not mention the grounds of colour, national or ethnic origin, language and citizenship. Sexual orientation and gender identity are also missing.<sup>5</sup>
5. Contrary to what is recommended in GPR No. 7 § 18 b and c, threats, public insults and public defamation are not defined under the Criminal Code. The Criminal Code also lacks a reference to the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a group of persons on grounds of their race, colour, language, religion, nationality or national or ethnic origin, as per GPR No. 7 § 18 d.

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<sup>1</sup> According to ECRI's General Policy Recommendation (GPR) No.7, "racism" shall mean the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. According to GPR No. 7 "racial discrimination" shall mean any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

<sup>2</sup> ECRI notes that in the eastern (Transnistrian) region of Moldova (known as "Transnistria"), following the declaration of Moldovan independence of 23 June 1990, the self-proclaimed "Republic of Transnistria" came into being on 2 September 1990. As the Transnistria region is not under the effective control of the Moldovan authorities to whom this report is addressed, ECRI will not examine the situation in that region.

<sup>3</sup> The Moldovan Criminal Code (2002, last amended in 2016).

<sup>4</sup> Draft Law no. 301, pending before the Moldovan Parliament, was prepared by the inter-institutional working group set up in 2014 by the Ministry of Justice to revise criminal law provisions on hate crimes. Currently, it is pending on its second reading at the Parliament. For preliminary assessment of the draft law, see McBride, J. (2017); OSCE/ODIHR (2016).

<sup>5</sup> GPR No.7 does not contain these grounds, however, they are relevant for sections I.2, I.3 and II.3 of this report.

6. ECRI notes that the Criminal Code does not penalise the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes, as recommended in § 18 e of GPR No. 7. In addition, there is no designated provision on the prohibition of public dissemination, distribution, production and storage of racist written, pictorial and other materials, as per GPR No. 7 § 18 f. However, ECRI welcomes the ratification by Moldova of the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems which entered into force on 1 June 2017. ECRI was informed by the authorities that draft legislation has been prepared to transpose this into Moldovan legislation.
7. Article 46 and 47 of the Criminal Code define participation in organised criminal groups and criminal associations, respectively. However, none of these articles include promoting racism among the goals. Article 185 makes it an offence to organise, lead or actively participate in a group carrying out an activity in the form of religious preaching and religious rites. ECRI recalls that paragraph 3 of the explanatory memorandum to GPR No. 7 stresses that criminal law has a symbolic effect which raises the awareness of society of the seriousness of racism and racial discrimination and has a strong dissuasive effect. ECRI considers, therefore, that by not referring specifically to the creation or the leadership of a group which promotes racism, support for such a group and participation in its activities, these provisions do not satisfy paragraph 18 g of its GPR No. 7.
8. Genocide and crimes against humanity are criminalised under Article 135 of the Criminal Code, in compliance with GPR No. 7 § 19.
9. As per GPR No. 7 § 21, Article 77 (1)(d) of the Criminal Code establishes an aggravating circumstance for all criminal offences committed due to social, national, racial, or religious hatred. ECRI considers that the reference to “social” hatred does not suffice to encompass clearly all the other grounds recommended by ECRI. In particular, ECRI recalls the importance of making homo/transphobic motivation an aggravating circumstance for any ordinary offence to ensure effective protection of vulnerable groups (§§ 62, 63). ECRI has been informed that the proposed amendments in the draft Law mentioned above will include sexual orientation and gender identity as a ground and it therefore strongly encourages the authorities to adopt these amendments swiftly.
10. While Article 21 defines the criminal liability of legal persons, ECRI notes that its application is limited to certain crimes under the special part of the Criminal Code and is subject to specific conditions, such as resulting or threatening to result in considerable damage, contrary to what is recommended in GPR No. 7 § 22.
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 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.

- **Civil and administrative law**

12. ECRI notes that Article 16 of the Constitution<sup>6</sup> provides that all citizens are equal before the law and public authorities, regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin. The list of protected grounds provided by the Constitution is exhaustive and the grounds of colour, citizenship, sexual orientation and gender identity are missing.<sup>7</sup> Article 32 prohibits the incitement to violence to national, racial or religious hatred, or discrimination.
13. Article 2 of Law no. 121 on Ensuring Equality (hereafter the Equality Act)<sup>8</sup> prohibits direct and indirect discrimination and sets out an open-ended list of protected grounds, including, race, colour, nationality, ethnic origin, religion or belief, sex, age, and opinion. National origin, citizenship, sexual orientation and gender identity are not listed. Sexual orientation is provided expressly as a protected ground only in the employment field under Article 7 of the Equality Act. ECRI recommends the explicit inclusion of these grounds throughout the Equality Act. The analysis below focuses on areas of GPR No. 7 that have not been covered or remaining gaps, as per GPR No. 7.
14. Regarding forms of discrimination, there is no mention of announced intention to discriminate, instructing another to discriminate or aiding another to discriminate, as recommended in GPR No. 7 § 6.
15. While Article 6 of the Equality Act prohibits discrimination by public authorities, it does not expressly mention their positive duty to promote equality in carrying out their functions, as is called for in GPR No. 7 § 8.
16. ECRI notes that paragraph 7 of Article 2 and paragraph 6 of Article 70 of Law no. 131 on Public Procurement<sup>9</sup> place public authorities under a duty to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination, as per GPR No. 7 § 9.
17. Moldovan legislation provides for easily accessible judicial and/or administrative proceedings, including conciliation, in discrimination cases. Victims of discrimination may apply to the relevant state body, the Council to Prevent and Combat Discrimination and Ensure Equality (hereafter the CPPEAE), the People's Advocate (hereafter the Ombudsman) or the court. These provisions are in line with recommendations in ECRI's GPR No. 7 §§ 10 and 12, except for expressly providing fast-track procedures in urgent cases.
18. Article 19 of the Equality Act reverses the burden of proof, as per GPR No. 7 § 11. With regard to GPR No. 7 § 13, Article 26 of Law no. 52 on the People's Advocate, the Ombudsman is entitled to monitor the constitutionality of laws as well as their conformity with international treaties and may initiate proceedings before the Constitutional Court. However, ECRI notes that the CPPEAE does not have the same powers and therefore urges the Moldovan authorities to grant it these powers.<sup>10</sup>
19. The Equality Act applies to all sectors of private and public employment. Similarly, the Labour Code prohibits direct and indirect discrimination in the field of employment and working conditions.<sup>11</sup> Article 12 of the Labour Code provides that provisions of an employment contract worsening the situation of employees

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<sup>6</sup> The Constitution of Moldova (1994).

<sup>7</sup> See footnote 6.

<sup>8</sup> Adopted on 25 May 2012.

<sup>9</sup> Adopted on 3 July 2015.

<sup>10</sup> ECRI was informed by the state authorities that a new draft law to this effect is currently under public consultation and expected to be submitted to the Government for approval.

<sup>11</sup> Article 8 of the Law no.154 on Labour Code (adopted on 28 March 2003).

shall be null and void. Article 220 of the Civil Code<sup>12</sup> further ensures that a legal act shall be null if contrary to law, public order and good morals. ECRI considers that these different pieces of legislation make it possible to amend discriminatory provisions or declare them null and void in individual or collective contracts or agreements, as referred to in GPR No. 7 § 14.

20. Article 2 of the Equality Act prohibits harassment as recommended in GPR No. 7 § 15. However, Moldovan legislation, such as the Equality Act, Law no. 294 on Political Parties and the Law no. 581 on Foundations, does not contain an obligation to suppress public financing of organisations, including political parties, which promote racism nor does it provide for the possibility of dissolution of such organisations, as recommended in GPR No. 7 §§ 16 and 17.
21. While Article 18 (2) of the Equality Act allows public associations that have a legitimate interest in combating discrimination to initiate court proceedings on behalf of a specific victim, it is not clear whether it is necessary to obtain the victim's consent. Furthermore, the law does not grant these bodies the right to initiate proceedings without referring to a specific victim, contrary to ECRI's recommendation in GPR No. 7 § 25.
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; iii) 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.

- **Equality bodies**<sup>13</sup>

- *The People's Advocate (the Ombudsman)*

23. The People's Advocate (the Ombudsman), whose statute was reformed following the adoption of the Law on the People's Advocate in 2014<sup>14</sup>, is a multi-mandated,<sup>15</sup> independent administrative body. The competences of the Ombudsman in the field of preventing and combating discrimination include, inter alia, investigating complaints; making recommendations on concrete cases of discrimination and initiating court cases. In principle, the Ombudsman's competence covers any natural and legal person in Moldova.<sup>16</sup> However, Article 18 (1) of the Law on the People's Advocate only refers to complaints by

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<sup>12</sup> Law no.1107 of 6 June 2002 (last amended on 29 July 2016).

<sup>13</sup> The term "national specialised bodies" was updated to "equality bodies" in the revised version of GPR No. 2 which was published on 27 February 2018.

<sup>14</sup> Law no. 52 of 3 April 2014. It replaced the Parliamentary Advocate with the People's Advocate.

<sup>15</sup> Ombudsman, National Preventive Mechanism, National Human Rights Institution and Ombudsperson for Child's Rights.

<sup>16</sup> Article 1 (1) of Law no. 52 reads "the Ombudsman ensures the protection of all human rights and freedoms by the public authorities, by the organizations and companies, no matter of the type of property and the legal organizational form, by the non-commercial organizations and by decision-makers at all levels."

individuals<sup>17</sup>, which means that legal persons cannot complain to the Ombudsman.<sup>18</sup>

- *The Council to Prevent and Combat Discrimination and Ensure Equality (the CPPEDAE)*

24. The Council to Prevent and Combat Discrimination and Ensure Equality (the CPPEDAE), which was set up in 2013 under the Equality Act, is an independent authority that has been designated as the central body for the elimination of discrimination and ensuring equality. The competencies of the CPPEDAE can largely be divided into three areas<sup>19</sup>: advocacy and public policy; prevention of discrimination, including awareness raising; and examining individual complaints and issuing recommendations. While the CPPEDAE can monitor legislation that raises issues of equality and non-discrimination, as recommended in § 24 of GPR No. 7, it is severely limited in this role due to its inability to request a constitutional review (see §18).
25. ECRI notes that both bodies<sup>20</sup> have most of the powers and competencies listed in ECRI's GPR Nos. 2 and 7. There are, however, no provisions that cover the recommendations made in §§ 25 and 27 of GPR No. 7, concerning the right to initiate court cases even when a specific victim is not referred to and protection against retaliatory measures.
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 CPPEDAE) the right to initiate proceedings before the Constitutional Court, iii) grant the Ombudsman and the CPPEDAE 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.
27. For more information concerning the effectiveness of the equality bodies, ECRI refers to section II.2. Topics specific to Moldova.

## 2. Hate speech<sup>21</sup>

### - Data

28. ECRI regrets that there is no reliable data on hate speech in Moldova. Although Moldova regularly reports hate crime data to the OSCE's Office for Democratic Institutions and Human Rights (ODIHR)<sup>22</sup>, this data does not distinguish between hate speech and hate-motivated violence. According to the limited information provided by the authorities, between 2014 and 2017, only six cases were adjudicated as possible violations of Article 346 of the Criminal Code (incitement to violence and hatred). However, the authorities have not informed ECRI on the

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<sup>17</sup> According to this provision, only physical persons who have or had permanent or temporary residence on the territory of the Republic of Moldova may submit complaints to the Ombudsman.

<sup>18</sup> See CoE, Venice Commission (2015): para.66-68.

<sup>19</sup> Law no. 298 on the Activity of the CPPEDAE of 21 December 2012.

<sup>20</sup> The CPPEDAE has limited victim support functions and does not have litigation functions as defined in § 14 (c) and (d) of revised GPR No. 2. The decision-making competences are limited due to lack of sanctioning powers, as defined in § 17 (c) of the revised GPR No.2.

<sup>21</sup> According to ECRI's GPR No. 15 on combating Hate Speech, "hate speech" shall mean the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.

<sup>22</sup> OSCE-ODIHR, Hate Crime Reporting: Moldova, <http://hatecrime.osce.org/moldova>

outcome of these cases nor provided data about the incidents treated as misdemeanours and under civil liability (§ 43).

- **Political and other forms of public discourse**

29. In its last report (§ 111), ECRI recommended that the highest representatives of the state should publicly promote tolerance towards all ethnic and religious minorities and publicly condemn all discriminatory comments. ECRI notes that racist statements in the public sphere have continued to be a common phenomenon and have escalated especially around election times. For example, in the 2014 parliamentary election campaign, the leader of a political party, Renato Usatâi, held a press conference where he called the leader of another political party a 'dirty and stinky gypsy'.<sup>23</sup>
30. The 2016 presidential campaign, particularly before the runoffs between the male (Igor Dodon) and female candidate (Maia Sandu), was also marked with several derogatory public statements, including xenophobic, sexist as well as homophobic language.<sup>24</sup> A striking example was the false information<sup>25</sup> spread through the distribution of flyers, claiming that Ms. Sandu would bring in massive numbers of refugees if elected. These flyers included statements such as "aggressive Muslims' will spread all over the country, rape women and girls and rob locals". According to the OSCE, the authorities, including the Central Electoral Commission, failed to react against these practices.<sup>26</sup> Reports<sup>27</sup> also show that the Moldovan Orthodox Church, which was actively involved in the campaign, made several statements targeting Ms. Sandu that contained sexist language. For instance, during a press conference in November 2016, the representatives of the Moldovan Orthodox Church called on people to vote for the male presidential candidate, as he is "male, married, with children," as opposed to the female one who is a "woman, not married, without children".<sup>28</sup> ECRI recalls the particular danger of hate speech targeting women on account of their gender which is often coupled with one or more other characteristics<sup>29</sup> and therefore encourages the authorities to take measures to combat the use of sexist hate speech.
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.
32. Concerns have been expressed about a rise in anti-Gypsyism in terms of societal perceptions<sup>30</sup>, resulting in Roma constantly enduring hatred and insults in public life. A recent study suggests that Roma people are often portrayed as 'thieves, liars, beggars, lazy'<sup>31</sup> which reinforces bias and increases their social exclusion.
33. In 2014, the Council to Prevent and Combat Discrimination and Ensure Equality (the CPPEDAE) started an ex-officio investigation into a company that launched a new brand of brown bread, called O.N.O.J.E., thus denigrating the Moldovan citizen John Onoje, who is of African descent. Finding several promotional statements racist, the CPPEDAE ordered the company to issue a public apology<sup>32</sup>, which was eventually followed. The Black community in Moldova has

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<sup>23</sup> Grecu et al (2015): 44.

<sup>24</sup> OSCE (2016): 15.

<sup>25</sup> Center for Investigative Journalism (2016)

<sup>26</sup> OSCE (2016): 15.

<sup>27</sup> US Department of State (2016): 21; Promo-LEX and Anti-Discrimination Centre (2017):8.

<sup>28</sup> Reports show that there were also accusations about her sexual orientation. For detailed analysis of the sexist language in the 2016 presidential election campaign, see Handrabura, L. (2016).

<sup>29</sup> See Preamble of GPR No. 15 and § 31.

<sup>30</sup> See also Equal Rights Trust (2015): 130.

<sup>31</sup> Malcoci- Barbaroşie (2015): 31.

<sup>32</sup> CPPEDAE, Decision no. 180/14 of 16 December 2014.



also reported several incidents which reveal that they are the targets of a high level of prejudice and offensive language.<sup>33</sup>

34. Various interlocutors indicated that Islamophobic rhetoric has been employed by politicians, mostly during election campaigns, as a tool for reinforcing Christian unity.<sup>34</sup> NGOs have documented incidents of verbal harassment and insults against the Muslim women wearing headscarves in the public space.<sup>35</sup> ECRI considers that Muslim women wearing visible religious symbols are particularly vulnerable to discrimination due to the intersectionality of gender and religion, which can fuel feelings of isolation within a larger community and hinder the building of inclusive societies.<sup>36</sup>

- **Hate speech on the Internet and in the media**

35. In Moldova, hatred is often incited in cyberspace in particular in the comments sections of news portals, rather than in the articles themselves or the print media. A report<sup>37</sup> reflecting the monitoring of 15 news portals in Moldova showed that journalists have generally complied with professional ethics regarding language and avoided stigmatisation while addressing issues related to groups vulnerable to hate speech.<sup>38</sup> However, anonymous inflammatory comments against LGBT persons and members of the Russian minority were commonplace in user-generated content. In 2015, the Independent Journalism Center initiated a campaign entitled “Press can’t hate” to raise awareness about hate speech among journalists and social media users.<sup>39</sup>
36. ECRI notes that online hate speech goes largely unchecked and unpunished. For example, in May 2014, an article regarding LGBT persons on the website of Pro TV had resulted in aggressive comments inciting hatred and violence against these persons. While Pro TV was found to be responsible for incitement to discrimination due to lack of moderation of comments by the Court of First Instance<sup>40</sup> and was ordered to publish an apology, this decision was quashed by both the upper courts.<sup>41</sup> Reports also indicate that social media is used to attack and bully known LGBT persons anonymously.<sup>42</sup> In 2016, the staff member of the LGBT NGO, Genderdoc-M, received threats of violence through social networks.

- **Homo- / transphobic hate speech**

37. ECRI notes that there is an offensive discourse targeting LGBT persons by mainstream politicians. Throughout the presidential campaign in 2016 (see § 30), Igor Dodon, who was subsequently elected President, made a number of blatantly homophobic statements against the LGBT community. “After his election, in 2017, he stated that “he can neither be the representative nor the president of LGBT persons”<sup>43</sup> and also publicly opposed the Pride Parade, claiming it destroys moral Christian values as well as pledging to support a “festival of traditional families” instead.<sup>44</sup>

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<sup>33</sup> NGO Fatima (2017) and COTAARM – Community of Originals from Afro-Asian Countries (2017).

<sup>34</sup> See similar, Tărnă Rom et al. (2016): 8.

<sup>35</sup> *ibid.*

<sup>36</sup> See also ECRI GPR No.5 on Combating intolerance and discrimination against Muslims.

<sup>37</sup> Independent Journalism Center (2015): 9-17; Pirtac. O. (2016): 470.

<sup>38</sup> Among others, ethnic/sexual/religious minorities as well as refugees were defined among these groups.

<sup>39</sup> Independent Journalism Centre (2016).

<sup>40</sup> Court of Riscani sector (Chişinău), Decision no. 23 February 2015.

<sup>41</sup> This case is pending before the ECHR (GENDERDOC-M and Doina Straisteanu v. Moldova) See ILGA Inventory (2016).

<sup>42</sup> ILGA-Europe (2017):165.

<sup>43</sup> Pink News (2017).

<sup>44</sup> Open Democracy (2017). Reportedly, Igor Dodon recently posted a message on facebook where he stated “liberalism, tolerance and gender equality are false teachings for our people”, Moldova.Org (2018).

38. The Moldovan Orthodox Church has taken a clear anti-LGBT stance on various occasions.<sup>45</sup> For instance, in April 2016, while speaking at a parliamentary session, the head of the Moldovan Orthodox Church expressed his opposition on the Equality Act and stated that it destabilises society by protecting the rights of sexual minorities.<sup>46</sup> Similarly, the Bishop Marchel of Bălți and Fălești held in a TV interview that the same law has “created a heaven for homosexual persons” and called for their exclusion from employment.<sup>47</sup>

- **Measures taken by the authorities**

39. ECRI considers that hate speech is particularly worrying not only because it is often a first step in the process towards violence but also because of the pernicious effects it has on those who are targeted and on social cohesion in general. Appropriate responses include law enforcement channels (criminal, civil and administrative law sanctions) but also other mechanisms to counter its harmful effects, such as prevention, self-regulation and counter speech.

40. As for criminal responses, hate speech is covered by the criminal offence of incitement to violence and hatred on account of nationality, race and religion (Article 346 of the Criminal Code - see § 4 and ECRI refers to its recommendation in § 11). ECRI was informed that crime statistics are recorded according to the relevant article of the Criminal Code and, as concerns Article 346, are not broken down according to the bias motivation.

41. As stated earlier (§ 28), the authorities informed ECRI that only six cases went on to trial under Article 346 of the Criminal Code between 2014 and 2017 (five in 2014, one in 2015, none in 2016 and 2017). ECRI did not receive any other data regarding the number of convictions nor pre-trial proceedings initiated under Article 346. In any event, ECRI is astonished that so few cases of hate speech have reached court. It notes with concern that the criminal law provisions applicable to hate speech are rarely invoked and hardly ever successfully,<sup>48</sup> which in ECRI’s view, sends a strong message to the public that hate speech is not serious and can be engaged in with impunity. For instance, no other public authority than the CPPEDAE reacted in the case of Renato Usatâi (§ 29) or Igor Dodon (§ 37). In this context, ECRI welcomes the conclusions reached by the CPPEDAE, which found that the statements by both politicians contained elements of racist hate speech and hence issued recommendations for them to make a public apology and to refrain from further hate speech.<sup>49</sup> ECRI regrets to note that these recommendations have not been followed.

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.

43. Regarding civil and administrative law responses, Moldovan law also provides for the punishment of hate speech as a misdemeanour and under civil liability, under the Contravention Code,<sup>50</sup> the Law on Freedom of Expression<sup>51</sup> as well as the

<sup>45</sup> See Genderdoc-M (2016).

<sup>46</sup> ILGA-Europe (2017): 164.

<sup>47</sup> His statement was as follows: “the Equality Act has opened the gate and created a heaven for homosexuals. We demand (...) that they not be allowed to find employment in educational, healthcare or public food institutions. Imagine that a homosexual, 92 % of which are HIV carriers and infected with AIDS, are employed at a station for blood transfusion, this would be a catastrophe.”

<sup>48</sup> See similar, CERD (2017): para. 12 and 13 (a).

<sup>49</sup> CPPEDAE, Decision no. 159/14 of 13 October 2014 regarding Mr. Renato Usatii; CPPEDAE, Decision no. 73/17 of 25 September 2017 regarding Mr. Igor Dodon.

<sup>50</sup> Law no. 218 of 24 October 2008. For instance, Article 54 (2) (violation of the law on religious denominations) and Article 354 (petty hooliganism).

<sup>51</sup> Article 2 of Law No. 64 of 23 April 2010 expressly defines hate speech. Article 3 (5) also states that guarantees on freedom of expression shall not be applied for discourses that incite hate or violence.

Equality Act.<sup>52</sup> ECRI takes positive note of the amendments to Article 6 of the Audiovisual Code (AC)<sup>53</sup> in 2016 which prohibits the broadcasting of programmes that incite hatred on grounds of race, religion, sex or nationality but regrets that there is no obligation for media service providers to refrain from disseminating hate speech on the grounds of sexual orientation and gender identity.

44. In the case of Bishop Marchel of Bălți and Făleşti (§ 38), ECRI notes a decision of the Supreme Court of Justice with particular concern,<sup>54</sup> in which the Supreme Court examined whether Bishop Marchel's statements had constituted hate speech against homosexuals under the Law on Freedom of Expression. Although the first instance court had found the Bishop Marchel liable on account of incitement to discrimination, the Supreme Court overturned this decision, holding that the impugned speech was consistent with the teachings of the Orthodox Church and thus not unlawful.<sup>55</sup> Genderdoc-M undertook an analysis of information in the media after this Supreme Court decision and concluded that hateful messages against LGBT persons multiplied in the public domain.<sup>56</sup>
45. The Audiovisual Coordinating Council (ACC) is a regulatory body for public and private audiovisual media in Moldova which oversees compliance with the AC. While sanctions for violations range from warning to suspension of licence, it can also impose fines<sup>57</sup> when Article 6 is violated. Reportedly, due to its highly politicised structure, the ACC has not always effectively enforced media regulations.<sup>58</sup> ECRI is disappointed that it has issued only four warnings for breach of Article 6 since 2014.<sup>59</sup> In ECRI's view, any leniency in sanctioning intolerant speech might give the wrong impulse to media services and eventually lead to disregarding its importance. In this respect, ECRI is pleased to note that a new monitoring methodology is being developed by the ACC to identify hate speech.<sup>60</sup>
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.
47. As regards the Internet, ECRI is pleased to note the designation of a special department on cybercrime set up in 2013 within the General Inspectorate of Police. However, according to NGOs, complaints of threats and incitement to hatred in social networks are usually dismissed or not investigated properly by the police, mainly due to lack of capacity or because they are considered insignificant. On the other hand, reports suggest that the editorial responsibility for online posts is not always sufficiently understood by many internet portals and illegal content is not taken down and removed in a timely manner. In this context, ECRI notes that the Press Council, a self-regulatory body, monitors compliance with the Code of Ethics of Journalists, including media content on internet.
48. ECRI observes that in last years, some programmes were implemented to tackle hate speech. However, these programmes were usually initiated and supported

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<sup>52</sup> Article 2, 4 (a), 4(b) and 4(c).

<sup>53</sup> Law no. 260 of 27 July 2006 (as amended through Law no. 71 of 10 April 2016).

<sup>54</sup> Supreme Court of Justice, Decision no. 2ra-1448/15 of 16 September 2015.

<sup>55</sup> Reportedly, the Supreme Court also criticised lower courts for supposedly siding with LGBT NGOs. See ILGA-Europe (2016): 118.

<sup>56</sup> Human Rights Resource Group (2016): 13.

<sup>57</sup> Article 38, to the amount of 10 000 to 15 000 leu (around 490 to 735 EUR).

<sup>58</sup> Freedom House (2017): 6.

<sup>59</sup> According to the information provided by the authorities.

<sup>60</sup> This new draft monitoring methodology is expected to be opened for public debate in June 2018.

by international organisations<sup>61</sup> or foreign donors, in cooperation with NGOs. For instance, in 2015, the Independent Journalism Center carried out a project on combating online hate speech which had a wide portfolio of activities, including media monitoring and training journalists as well as website operators.<sup>62</sup> While acknowledging that national authorities, such as the ACC, have organised seminars on the responsibility of media and welcoming in particular the dedicated discussion panel on hate speech with NGOs and relevant interlocutors that took place in December 2017<sup>63</sup>, ECRI encourages the authorities to take more strategic approach to prevent and combat hate speech.

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.
50. ECRI considers that political and public figures should take a strong stand against intolerant statements by means of counter speech even if these do not reach the level required for criminal sanctions. Regrettably, there is no evidence that public figures engage actively in counter speech, in contrast to significant efforts made by civil society.<sup>64</sup> On the contrary, several homophobic and sexist statements were made by the President (see § 37) during the election campaign and after taking up the post. Moreover, after the statements of the representatives of the Moldovan Orthodox Church (§§ 30, 38), neither the Church nor any public official condemned these statements. This inaction was also confirmed by the Moldovan Constitutional Court, which concluded that the Moldovan Orthodox Church 'had an aggressive involvement in the 2016 presidential elections using a xenophobic, homophobic and sexist language' and that 'no public authority has intervened to prevent or stop it'.<sup>65</sup>
51. Several NGOs and members of vulnerable groups, including LGBT community, explained to ECRI that hate speech intensifies when people feel encouraged by political or opinion leaders, such as the representatives of the Moldovan Orthodox Church, who are echoing and promoting prejudices and resentments. The resulting acceptance of hate speech creates a general climate that facilitates the willingness to commit or tolerate acts of violence against these groups. ECRI understands the prominent role of the Orthodox Church in Moldovan society<sup>66</sup>, and it considers that this role places a moral obligation on its leaders to pronounce themselves clearly against any form of hate speech, including homophobic statements made by some of its representatives.

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<sup>61</sup> Moldova was part of Council of Europe's No Hate Speech Movement <http://nohatespeechmovement.org/>. However, it was reported that this campaign remained relatively weak and was limited to capacity building.

<sup>62</sup> Independent Journalism Centre (2016).

<sup>63</sup> This activity was part of measures defined under the National Action Plan for the implementation of the Republic of Moldova and the European Union (EU) Association Agreement (2017-2019).

<sup>64</sup> For example, in November 2016, several NGOs made a public appeal for state representatives to publicly condemn discriminatory statements during the 2016 presidential campaign. See CREDO (2016).

<sup>65</sup> Constitutional Court, Decision on confirming the results of the election and validation of the mandate of the President of the Republic of Moldova, 13 December 2016, para 165.

<sup>66</sup> See Voicu et al (2017).

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.
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.

### 3. Racist and homo/transphobic violence

#### - Data

54. According to Moldova's contribution to the OSCE-ODIHR hate crime data, which is collected by the Information Centre of the Ministry of Internal Affairs, the police, the General Prosecutor's Office and the National Bureau of Statistics, the police recorded four hate crime incidents in 2013; one in 2014; none in 2015 and five in 2016. The limited information provided by the state authorities to ECRI shows that from 2014 to 2017, a total of 22 incidents which concerned hate based violence against persons or property were prosecuted, primarily under Article 151-152 (bodily/serious bodily injury), 176 (violation of equality), 197 (endangering property) and 222 (profanation of graves) of the Criminal Code. The authorities did not provide any information where Article 77 (1)(d) (§ 9) was applied.
55. In contrast to official data, the data provided by NGOs indicate a higher number of hate crime cases. According to the data submitted by NGOs to OSCE-ODIHR, in 2016 alone, 27 incidents were reported. These included violent attacks against LGBT persons in 16 cases, destruction of synagogues and Jewish cemeteries in 10 cases and one violent attack against Roma. Another NGO submission suggested that, during 2010-2016, only four out of 56 hate crime cases registered with the police have been sent to courts.<sup>67</sup> Various interlocutors informed ECRI that the discrepancy between official and civil society data may be explained by underreporting as hate crime victims often do not report incidents to the police due to a lack of trust in the willingness or ability of the authorities to investigate these cases effectively.
56. ECRI recalls that one of the priority recommendations to the authorities in the last report concerned putting in place a system for recording and following up racist incidents reported to the police. As concluded earlier,<sup>68</sup> while it is now possible to record information on racially motivated offences in the Ministry of the Interior's tool for crime statistics, ECRI observes that there is still no automated system for the recording of offences. In addition, the separate recording of racist incidents by the General Prosecutor's office and the Ministry of the Interior fail to provide reliable and coherent data on hate crimes, which should include bias motivation. ECRI therefore reiterates its recommendation.
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.

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<sup>67</sup> Promo-LEX and Anti-Discrimination Centre (2017), *op.cit* : 11.

<sup>68</sup> ECRI (2016).

- **Racist violence**

58. As mentioned in its last report (§ 114), there is a relatively low level of racist violence in Moldova.<sup>69</sup> However, reports point out that violent attacks still occur, particularly targeting Black people and Roma.<sup>70</sup> Several incidents of damage to property have also been reported, mostly antisemitic cases that concerned vandalism in Jewish cemeteries and theft of synagogues.<sup>71</sup>
59. In 2013, a violent attack with a racist motive was reported about a Moldovan national originally from Burkina Faso<sup>72</sup>, Salifou Belemvire, who was insulted on account of his skin colour and sustained injuries. In 2016, a young man of Roma origin was severely beaten and insulted on the basis of his ethnicity, subjected to such terms of abuse as “dirty gypsy”, “scab”, “clean the village off gypsies”.<sup>73</sup>
60. Despite its recommendation in its last report (§ 160), ECRI regrets to note that the claims of racial profiling, in particular against Black community and Roma, have continued. For example, in 2015, a Roma woman was arrested while shopping because she resembled the description of a crime suspect. In this case, the CPPEAE found that the police committed racial profiling.<sup>74</sup> Furthermore, there are a number of reports of police officers who had refused or shown reluctance to investigate complaints from persons of African origin.<sup>75</sup> ECRI was informed that racial profiling is not expressly prohibited by law. Finding these practices alarming, ECRI recalls its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which calls for racial profiling to be defined and prohibited by law, as it has substantial negative effects and undermines trust in the police<sup>76</sup>, leading to underreporting of violent acts.
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.

- **Homo-/transphobic violence**

62. LGBT and human rights activists agree that the prevalence of stereotypes and prejudice against LGBT persons render them targets of violence in Moldova. According to a recent study, the right to physical and mental integrity is listed as the most violated right by the LGBT community.<sup>77</sup> Genderdoc-M, which annually monitors bias motivated violence based on sexual orientation and gender identity, has documented numerous incidents of harassment and violence against these persons, including physical assault and battery of varying levels of severity.<sup>78</sup> During and after the Pride Parade that took place in Chişinău in May 2017, acts of violence were also reported.<sup>79</sup>
63. Moreover, various sources indicate that an organised group, which is called “Occupy Paedophilia”<sup>80</sup>, has targeted the LGBT community in recent years. For

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<sup>69</sup> Equal Rights Trust (2016): 68.

<sup>70</sup> CoE, FCNM Advisory Committee (2017a): para. 44; UN Human Rights Council (2016a).

<sup>71</sup> See similar, UN CERD (2017): para.16.

<sup>72</sup> Equal Rights Trust, *op.cit.* 68.

<sup>73</sup> Promo-LEX (2016).

<sup>74</sup> The case of Cosmina Novacovici. CPPEAE, Decision no. 239/15 of 28 May 2015.

<sup>75</sup> NGO Fatima (2017). On a related note, ECRI regrets that a young Roma man was fined by the police for insulting his neighbour after having lodged a complaint of racially-motivated physical violence against him. See Equal Rights Trust, *op.cit.* 45.

<sup>76</sup> See the Explanatory Memorandum to GPR No. 11, §§ 27-39.

<sup>77</sup> The People’s Advocate/OHCHR/UNDP Moldova (2016): 23.

<sup>78</sup> Report on the LGBT rights situation in the Republic of Moldova (2014) (2015) and (2016).

<sup>79</sup> Genderdoc-M (2017).

<sup>80</sup> This group originates from Russia and has branches in Ukraine. ILGA-Europe (2015): 115.

example, in October 2014, a young man was brutally attacked. In 2015, three members of that group were condemned to pay a fine of 6000 leu (300 EUR) by the Bălți Court on account of bias-motivated assault.<sup>81</sup>

- **Measures taken by the authorities**

64. In its fourth report (§ 119), ECRI strongly recommended that the police and the justice system ensure that criminal law is effectively applied in response to all cases of racially motivated violence against persons belonging to an ethnic or religious minority. ECRI notes that some measures have been taken to this end, as pointed out below, but these cannot be considered satisfactory and hence it encourages the authorities to continue and intensify their efforts.
65. ECRI recalls the legal framework as noted in § 4, 5 above and urges the authorities to remedy any shortcomings in the light of its recommendation in § 11, including adding sexual orientation and gender identity as a hate motive under Article 77(1) (d). It also notes with satisfaction the recommendation concerning the methodology used for investigations into hate crimes which was adopted by the General Inspectorate of Police in 2015 with a view to ensuring keeping hate crime records and treating them with special diligence. ECRI is pleased to note that the authorities have finally adopted the National Human Rights Action Plan (2018-2022)<sup>82</sup> on 24 May 2018.<sup>83</sup> Albeit its draft envisaged measures with respect to hate crimes, ECRI was not provided any information about the details of its final text.
66. Similar to other international bodies,<sup>84</sup> ECRI is deeply concerned about the insufficient application of the available legal framework. Many interlocutors also claimed that due to underreporting, police records do not reflect the true extent of hate crimes. ECRI notes that hate-motivated violence has rarely been classified and that the bias motivation is not specified. In fact, the majority of cases reported have been treated as misdemeanours under the Contravention Code, mostly resulting in fines, whereas there was evidence of more serious criminal behaviour. For instance, in the Salifou Belemvire case (§ 59), the perpetrator was sentenced on account of hooliganism but the complaint on hate crime was dismissed by the courts.<sup>85</sup> Similarly, in case of a young Roma man (§ 59), the Soroca Court rejected the claims on bias motive and sentenced the perpetrator to unpaid community service and 5000 leu (250 EUR) for moral damages.<sup>86</sup>
67. Reiterating the crucial importance of effective investigation and prosecution as well as deterrent sanctioning of perpetrators, ECRI notes the above practice with concern and considers that lack of prosecution might send a message of impunity. In this respect, ECRI strongly recommends the authorities to take steps to ensure the effective functioning of the justice system against hate crimes and refers to the case-law of the European Court of Human Rights (ECHR) which obliges states to take all reasonable steps to establish whether violent incidents were racially motivated.<sup>87</sup>
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

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<sup>81</sup> ILGA-Europe (2016): 118.

<sup>82</sup> ECRI was informed that this Plan was initially designed for the period 2017-2021. However, the political instability and public administration reform stalled the process. See also EU Commission (2017): 4.

<sup>83</sup> <http://parlament.md/ProcesulLegislativ/Proiectedeacteleislative/tabid/61/LegislativId/3988/language/ro-RO/Default.aspx>

<sup>84</sup> UN CERD (2017): para.12-15; CoE, FCNM (2017a): para.46-48.

<sup>85</sup> Equal Rights Trust (2015): *op.cit.* 68. This case is currently pending before the UN CERD (No. 57/2015).

<sup>86</sup> Promo-LEX (2016), *op.cit.*

<sup>87</sup> Nachova and others v. Bulgaria [GC], nos. 43577/98, 43579/98, 6.7.2005, §§ 160-168.

reports and investigations, as well as in any further judicial proceedings. Furthermore, ECRI recommends that in order to address the problem of underreporting the authorities implement confidence-building measures to enhance the relationship between the police and vulnerable groups, in particular the Roma and the LGBT community.

69. Lastly, ECRI was informed that since 2014, the National Institute of Justice, the body responsible for initial and in service training of judges and prosecutors, has provided training on non-discrimination and equality, in cooperation with international organisations, such as the OSCE and the OHCHR. Seminars for police have also been organised by the OSCE to effectively identify and investigate bias-motivated crimes.<sup>88</sup> While these activities have helped enhance the capacity of law enforcement bodies, the representatives of judiciary and the state prosecution office have stressed that they continue to experience problems – and to certain extent confusion - in identifying hate crime/speech and applying the legislation. ECRI underlines the importance of the proper qualification of hate crimes and urges the authorities to improve the knowledge and expertise among the responsible law enforcement agencies in understanding and recognising hate crime dynamics.
70. ECRI recommends that the training activities for law enforcement officials and the judiciary on hate crime, including hate speech, are scaled up. Such training should cover racist and homo-/transphobic hate crime as well as racial profiling. ECRI also recommends that the authorities carry out an impact assessment to evaluate the training to establish to what extent it helps to identify hate crime effectively and to adjust it, if necessary.

#### **4. Integration policies**

##### **- Data**

71. According to the 2014 census<sup>89</sup>, the ethnic structure of the population in Moldova includes the following: Moldovans (75.1%), Romanians (7%), Ukrainians (6.6%), Gagauzians (4.6%), Russians (4.1%), Bulgarians (1.9%) and Roma (0.3%), while the remaining ethnic groups constitute less than 1% of the population.
72. Moldova has adopted integration policies in respect of three groups, namely, Roma, national minorities and non-nationals, which include refugees and persons who have been granted subsidiary protection.

##### **- Roma**

73. Based on the 2014 census, the Roma population in Moldova amounts to 13 900 people, but the real number is estimated to be significantly higher (CoE estimate 107 100).<sup>90</sup> The discrepancy is explained primarily by the reluctance among Roma to self-identify as such in censuses for fear of stigmatisation and discrimination.<sup>91</sup> ECRI considers that the lack of accurate figures on Roma might pose a serious obstacle for planning and implementing an adequate response by the state authorities. ECRI also notes that the public perception of Roma is negative in the country. A study in 2015 indicated a drastic drop, from 21% in 2010 to 12%, in the acceptance of Roma people, meaning that only 12% would accept Roma as neighbours, colleagues, friends or family members.<sup>92</sup> Largely as a result of this prejudice on the part of the majority population, Roma continue to

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<sup>88</sup> OSCE Mission to Moldova (2017).

<sup>89</sup> National Bureau of Statistics of the Republic of Moldova, *Population and Housing Census 2014*. <http://www.statistica.gov.md/pageview.php?l=en&idc=479> The total population is 2 998 235.

<sup>90</sup> CoE, Estimates on Roma population in European countries, <http://www.coe.int/en/web/portal/roma>

<sup>91</sup> ECMI (2017): 4.

<sup>92</sup> Malcoci- Barbaroşie (2015), *op.cit.* 31.



suffer from discrimination, notably in employment, education and health, accentuating their socio-economic marginalisation.

74. In recent years, Moldova has invested efforts into improving the inclusion of Roma through the National Action Plans. In June 2016, the authorities adopted a new Action Plan in support of the Roma population for 2016-2020, which is the latest in a series of strategic documents. ECRI welcomes the fact that the document entails a comprehensive strategy covering key areas such as education, employment, housing, health as well as other fields such as social protection, culture, community development and participation in decision-making.
75. Although it is too early to assess the results of the new Action Plan, some data are available regarding the previous integration strategies, in particular the Action Plan for 2011-2015. In February 2016, the Bureau for Interethnic Relations published a final report<sup>93</sup>, and found that only 37% of the measures had actually been implemented. As expressed by civil society representatives to ECRI, the report also revealed that despite having well-defined measures, the Action Plan contained neither concrete timeframes nor indicators of success to measure their impact. As stated above (§ 73), the unavailability of disaggregated data on the Roma population makes it difficult to track and evaluate progress in implementation. ECRI therefore encourages the authorities to improve the capacity for collecting accurate statistics and increase the use of administrative data.
76. Like its predecessor, the Roma Action Plan for 2016-2020 also sets up an Inter-Ministerial Working Group<sup>94</sup>, which is chaired and coordinated by the Bureau for Interethnic Relations, to monitor the Plan's implementation through annual progress reports as well as working sessions to be held at least twice a year.
77. ECRI regrets to note that the decentralisation reform in the country, which had shifted the responsibility of implementing a large number of measures to local administrations and had consequently led to unclear competences between different levels of state authorities, as well as the insufficient budget allocation, had resulted in the Roma Action Plan for 2011-2015 being poorly implemented, monitored and assessed.<sup>95</sup> In this context, while ECRI welcomes the elaboration of annual action plans at local level to implement the measures defined in the Action Plan for 2016-2020<sup>96</sup>, it is deeply concerned that these measures are also not allocated a budget and therefore fears that the effective implementation of the current Plan would face similar pitfalls.<sup>97</sup>
78. ECRI recommends that the authorities ensure that the Action Plan in support of Roma population for 2016-2020 is accompanied by an evaluation of all integration projects implemented over recent years, on the basis of comprehensive equality data. The strategy should be revised systematically to include more targeted measures and success indicators to measure its impact and to redefine its parameters and goals where necessary. This should be done in close cooperation with local authorities as well as members of the Roma community and adequate funding should be allocated for the strategy to be effective.

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<sup>93</sup> Government of the Republic of Moldova, Evaluation Report on the Implementation of the 2011- 2015 Action Plan for the Support of Roma People from the Republic of Moldova, 2016.

<sup>94</sup> The Inter-Ministerial Working Group for Roma Action Plan 2011-2015 included several members, including, Ministry of Economy, Ministry of Justice, Ministry of Labour and Social Protection, Ministry of Health, Ministry of Education, Ministry of Internal Affairs, Ministry of Culture, Ministry of Finance, the Ombudsman, the City Hall of Chişinău, the local authorities and members of the Roma NGOs.

<sup>95</sup> See similar conclusions in CoE, FCNM (2017) : para.8, UN Special Rapporteur (2017) : para.61.

<sup>96</sup> According to the information provided by the state authorities.

<sup>97</sup> Similar in UN Special Rapporteur (2017) : para. 61 ; UN CERD (2017) : para. 25.

79. ECRI notes that one of the fundamental objectives of the Action Plan 2011-2015 was to introduce “community mediators”, which was considered to be a crucial step towards promoting the access to rights of Roma in the areas of employment, education and social services at local level. To this end, this Action Plan called for the employment of 48 such community mediators in 44 settlements inhabited predominantly by Roma people. By the end of 2014, the Ministry of Labour and Social Services had recruited 25 mediators. However, following the decentralisation reform, responsibility for paying mediators’ salaries shifted to the local authorities, which had a negative effect on the recruitment of mediators.<sup>98</sup> Because of the hesitation reportedly shown by many municipalities in allocating mediators’ salaries within the local budgets as well as in understanding their important role, the number of mediators decreased to 12 in 2016. ECRI was informed that, as of October 2017, only seven mediators were in service.<sup>99</sup> The representatives of the Roma community informed ECRI of the positive impact these mediators have made on the social integration of Roma, by building a constructive dialogue between the community and local authorities which has yielded tangible results. Stressing the instrumental role of Roma community mediators, ECRI urges the authorities to take action so that they can be hired and fully perform their functions.
80. ECRI recommends that the local authorities allocate sufficient funding to enable the recruitment of 48 Roma community mediators, as planned in the earlier Roma Action Plan, without any further delay.
81. As regards education, ECRI takes positive note of several reports pointing to an increase in the educational inclusion of Roma children, particularly at primary school level,<sup>100</sup> owing mainly to Roma community mediators and civil society. However, ECRI regrets that no recent data has been provided by the state authorities on the educational attainment of Roma children. According to the earlier data available from other sources<sup>101</sup>, enrolment rates for Roma children are still lower than for non-Roma at all stages of education. For instance, just 21% of Roma children attended pre-school (compared to 79% among the general population) whereas this rate increased to 54 % at primary school level (compared to 90%) and stood at 16% at high school level (compared to 78%).<sup>102</sup> Research suggests that obstacles to education include widespread poverty<sup>103</sup> among Roma, who cannot afford the hidden costs of education;<sup>104</sup> problems related to transportation from remote rural settlements<sup>105</sup>; as well as the persistence of low-quality education for Roma which contributes to the phenomenon of early school drop-out. Seasonal work, change of residence and parents’ resistance to schooling has also been stated as factors for poor

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<sup>98</sup> ECRI was informed by the state authorities that there is a draft Government Decision which envisages financing community mediators through transfers from the central state budget to local level budgets, the central budget of the autonomous territorial units and the municipal budgets of Bălți and Chişinău. This decision aims to ensure the full employment of community mediators.

<sup>99</sup> The state authorities informed ECRI that in September 2017, the Ministry of Finance was asked to exceptionally allocate money from the central state budget to local levels for the recruitment of community mediators. This initiative increased their number to 25 by February 2018.

<sup>100</sup> CoE, FCNM (2017a): para. 77.

<sup>101</sup> UNDP (2013) : 14.

<sup>102</sup> Ibid.

<sup>103</sup> The average monthly income of a Roma family is about 1,000 leu (approximately 45 EUR), 40% less than the average income of 1,597 leu (approximately 70 EUR) of a non-Roma household.

<sup>104</sup> Although primary and secondary education is free of charge and the 2011–2015 Action Plan provided for free teaching materials and manuals for Roma children, the practice of informal payments (e.g. clothes, meals, transportation) for schooling is widespread. As a result of these indirect costs, large numbers of Roma children are forced to drop out of school before completion of compulsory education.

<sup>105</sup> Roma community stated to ECRI that despite a legal provision for free transportation in all cases where the distance is more than 3 kilometers, this is often not the case in practice.

attendance.<sup>106</sup> In view of these considerations, ECRI strongly urges the authorities to properly implement the measures in the Action Plan 2016-2020 with a view to ensuring as well as increasing the access to education of Roma children.

82. On a related note, ECRI notes the inequalities faced by Roma women and girls in education with particular concern. According to a UN study<sup>107</sup>, 45% of Roma women have no formal education compared with 2% of non-Roma women and 33% of Roma men. In addition, only 52% of Roma girls are enrolled in primary education as compared with 84% of non-Roma girls and 55% of Roma boys. This difference widens at the secondary level, with only 14% of Roma girls enrolled as compared with 78% of non-Roma girls and 17% of Roma boys. Several interlocutors stated that the drop-out rate among Roma girls is higher due to early marriages. ECRI recalls that girls are particularly vulnerable in access to education due to the multiple discrimination they are subjected to, both on the basis of their gender and ethnicity, and invites the authorities to take effective measures to combat and prevent early marriages. In this context, ECRI regrets to note that the Roma Action Plan 2016-2020 does not contain any measures to this end.
83. Another negative factor for Roma integration is limited and unequal access to employment. Available data indicate that only 21% of the employable Roma population (between 15-64 years) are employed (compared to 46 % among the general population)<sup>108</sup>, mostly trading in the informal economy and doing seasonal work. On a positive note, ECRI welcomes the gradual increase in the number of Roma persons registered in employment programmes run by the National Agency for Employment<sup>109</sup>, as these programmes have the potential to provide opportunities for vocational and other professional training and facilitate access to full health insurance.<sup>110</sup>
84. Research suggests that due to the negative perception of Roma and prejudice deeply rooted in society, reluctance in employing Roma persists<sup>111</sup>, even resulting in cases<sup>112</sup> where qualified Roma are allegedly discriminated against in recruitment processes. ECRI considers that the authorities should take a more targeted approach to break the vicious circles of unemployment of Roma. In this regard, ECRI considers that the authorities would help to increase the economic empowerment of the Roma by endorsing more innovative measures, particularly in reaching out to private employers through subsidies and/or incentives, for example in the field of taxation.
85. Concerns have also been expressed about the housing conditions of Roma. ECRI notes that although the Law on Housing, which was enacted in 2015, recognises Roma as one of the beneficiaries of social housing, its application is questionable due to the severe lack of financial resources. The ECRI delegation was able to witness *in situ* the very poor housing conditions of Roma communities in Hîncești, with limited access to drinking water, canalisation and a regular power supply, thus affecting children in particular. A study carried out by the European Roma Rights Centre, which included five Roma settlements in Moldova, also pointed out the deplorable living conditions, including homes that

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<sup>106</sup> Equal Rights Trust (2016), *op.cit.* 48.

<sup>107</sup> UN Women/UNDP/UN High Commissioner for Human Rights (OHCHR) (2014): 30.

<sup>108</sup> UNDP (2013), *op.cit.* : 38. The same data set suggests that among the employed, only 19% of the Roma were in permanent employment (as compared to 69% for non-Roma).

<sup>109</sup> ECMI (2017): *op.cit.*, 15.

<sup>110</sup> Roma Action Plan for 2016-2020 have measures in this regard (See Objective 2.1).

<sup>111</sup> Equal Rights Trust (2016), *op.cit.* 53-56.

<sup>112</sup> The case of Zapescu v. Turbo Plus in which the Roma applicant was not selected after an interview, of which was conducted in a reserved attitude by the employer. See *ibid* : 53-54.

lacked flushing toilets<sup>113</sup> and access to water from untreated unprotected water sources shared with animals.<sup>114</sup> ECRI is pleased to note that the Action Plan for Roma for 2016-2020 includes measures with respect to such problems<sup>115</sup> and encourages the authorities to place greater focus on solving them.

- **National minorities**

86. ECRI is pleased to note that the country adopted the Strategy for the Consolidation of Interethnic Relations for 2017-2027<sup>116</sup> to promote the integration of persons belonging to national minorities in December 2016.<sup>117</sup> This Strategy defines four priority areas: participation in public life; policies in relation to both the state and minority languages; intercultural dialogue and civic belonging and mass media.<sup>118</sup> The first Action Plan for its implementation for 2017-2020 was approved on 15 November 2017.<sup>119</sup>
87. While it is too early to assess the results of this strategy, ECRI welcomes the measures envisaged in particular to prevent and to eliminate discrimination, xenophobia and ethnic stereotypes<sup>120</sup> through capacity-building programmes for civil society and public institutions. However, ECRI regrets the lack of information provided by the authorities on the details of the Action Plan, which raises some concerns about its long-term sustainability and impact. ECRI is aware that there is no part of the national budget specifically earmarked for this Action Plan and most measures do not clearly specify sources of funding. Furthermore, the Action Plan does not contain concrete timeframes and indicators of success to measure progress. In view of these considerations, ECRI strongly urges the authorities to revise the Strategy and its accompanying action plans systematically to include more targeted measures at local and national level and to provide adequate allocation of financial resources<sup>121</sup> through creating a separate budget for their effective implementation.
88. ECRI notes that in general, interethnic relations in Moldova<sup>122</sup> are peaceful and national minorities are well-integrated into Moldovan society, as it witnessed in Comrat, the capital of Autonomous Territorial Unit of Gagauzia, during its contact visit. In spite of this, many interlocutors, including members of minority groups, told ECRI that insufficient knowledge of the state language remains a major obstacle to their social integration.<sup>123</sup> Reports<sup>124</sup> also suggest that in schools where mother-tongue education is offered to minority students, state language instruction is of low quality, impacting the minority students' ability to access higher education and employment opportunities which require knowledge of the state language. For instance, in many cases, national minorities are not able to

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<sup>113</sup> European Roma Rights Centre (ERRC) (2017) : 35. See also UN Special Rapporteur (2014): para.83

<sup>114</sup> Ibid: 32-33.

<sup>115</sup> See Objectives 4.2.3 and 4.2.5.

<sup>116</sup> Decision of the Government no. 1464 of 30 December 2016.

<sup>117</sup> For further details on issues concerning national minorities, please consult the Fourth Opinion on the Republic of Moldova (2017) of the CoE Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM).

<sup>118</sup> CoE, FCNM (2017b): 7.

<sup>119</sup> Bureau for Inter-Ethnic Relations (2017).

<sup>120</sup> Objective III.3 of the Action Plan (2017-2020).

<sup>121</sup> Various interlocutors informed ECRI that the Bureau for Interethnic Relations foresaw 35 000 EUR for the implementation of this Strategy, whereas an external expert made an estimate of 700 000 EUR.

<sup>122</sup> See similar UN Special Rapporteur (2017): para. 93.

<sup>123</sup> ECRI notes that there is a notable division of Moldovan society into two large language groups: speakers of the state language and speakers of Russian. National minorities traditionally attend Russian language schools and minority languages, e.g. Ukrainian, Gagauz, Bulgarian, are only taught in these schools. See CoE, FCNM (2017a): para.5; UN Special Rapporteur (2017): para. 25.

<sup>124</sup> See *ibid*: para. 31 ; UN CERD (2017): para.18 and CoE, FCNM (2017a): para. 88-91.

meet the language requirements in the entry tests for public service<sup>125</sup> and therefore they are underrepresented in such posts.

89. ECRI would like to recall that teaching of the state language and knowledge of the minority language are both legitimate goals that can be pursued as part of a minority education strategy.<sup>126</sup> Furthermore, it considers that learning and having a good command of the state language are crucial for ensuring integration in any society. In this context, while ECRI acknowledges the authorities' increasing efforts to improve the learning of the state language, as prioritised in the Strategy for the Consolidation of Interethnic Relations for 2017-2027, it strongly urges them to endorse more comprehensive measures in this regard with a view to facilitating the integration of these people in all spheres of life.
90. ECRI recommends strengthening the integration of national minorities by taking measures in the education system so that pupils belonging to these groups can gain full proficiency in the state language. These measures should also include adult education.

- **Non-nationals**

91. Although Moldova is a country significantly affected by outward migration, which is triggered by high levels of poverty and a lack of socio-economic opportunities,<sup>127</sup> it also continues to be a country of transit and destination for migrants and persons in need of international protection. According to UNHCR data, between 2000 and July 2017, a total of 2 501 persons applied for asylum in Moldova. As of 1 July 2017, 404 persons were granted international protection (refugee status and subsidiary protection) and 69 applications were still pending.<sup>128</sup>
92. The Law on the Integration of Foreigners<sup>129</sup> offers integration measures for non-nationals, including refugees and beneficiaries of subsidiary protection, by granting free access to the social security system, primary and secondary education, medical insurance, orientation courses for socio-cultural adaptation, state language courses as well as help in accessing the labour market. The Government also adopted the National Strategy on Migration and Asylum for 2011-2020<sup>130</sup> and more specifically, the Action Plan for 2016-2020 on the capacity of non-nationals such as migrants and refugees to have access without discrimination to employment, housing, healthcare and basic services. ECRI regrets the lack of information provided by the authorities on the scope and the level of implementation of these documents. In ECRI's limited knowledge, no assessment has been conducted on their impact. ECRI considers that the absence of regular evaluation makes it very difficult to assess the situation of non-nationals and to monitor the results of integration policies.
93. ECRI recommends that the authorities carry out a comprehensive evaluation of the National Strategy on Migration and Asylum for 2011-2020 and its accompanying action plans. On the basis of its findings, the authorities should develop objectives and targeted activities with time-frames, funding and success indicators which are supported with effective monitoring as well as a regular evaluation system.

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<sup>125</sup> CoE, FCNM (2017a): para.97.

<sup>126</sup> ECRI considers that issues related to the right to education in a minority language can best be addressed in the context of the FCNM. See: CoE, FCNM (2017a).

<sup>127</sup> According to polls, 60% of adults are willing to emigrate definitively or temporarily. See EU (2016): 41.

<sup>128</sup> See also UNHCR (2016).

<sup>129</sup> Law No. 274 of 27 December 2011.

<sup>130</sup> This Strategy was developed pursuant to the National Program for the implementation of the EU - Moldova Visa Liberalization Action Plan.

## **II. Topics specific to Moldova**

### **1. Interim follow-up recommendations of the fourth cycle**

94. The three interim follow-up recommendations from ECRI's fourth round report are discussed in the relevant thematic sections above (§§ 2, 56, 57, 67, 68 and 97).

### **2. Effectiveness of the equality bodies**

95. Various interlocutors stated that the Council to Prevent and Combat Discrimination and Ensure Equality's (CPPEDAE) crucial role in tackling discrimination became more visible and praised its constructive dialogue with civil society<sup>131</sup> as well as its progressive decisions on topical issues, such as hate speech by politicians (§ 41) ECRI also observed that the effectiveness of both the CPPEDAE and the People's Advocate (the Ombudsman) has significantly improved since its last report.

96. Despite their increasing impact, ECRI notes that both institutions severely lack the financial and human resources necessary to carry out their mandates effectively. ECRI was particularly astonished to learn that the total number of staff of the CPPEDAE is only 20. Furthermore, the physical conditions of these institutions are poor due to inadequate premises, which are not easily accessible. For instance, the CPPEDAE is located on the top floor of a building without any noticeable sign.

97. Concerns have also been expressed that the budgets of both institutions are dependent on the discretion of the Ministry of Finance, although the legislation requires their approval by Parliament following proposals submitted by these institutions. Furthermore, ECRI is alarmed by draft laws which allegedly make the Government directly responsible for deciding on these institutions' budgets.<sup>132</sup> In addition, ECRI was informed by these institutions that in spite of their mandates, they can rarely initiate awareness-raising campaigns for society at large due to budgetary constraints. ECRI regrets that the effectiveness and independence of these institutions have been compromised by such challenges and urges the authorities to remedy these shortcomings.

98. Lastly, ECRI notes that when examining complaints, the CPPEDAE can only issue recommendations and/or issue a misdemeanour protocol finding violations, which has to be further maintained by the court.<sup>133</sup> While the court can apply administrative sanctions if it upholds the misdemeanour protocol, the CPPEDAE is unable to impose sanctions on its own. In practice, the majority of such protocols issued by the CPPEDAE are seemingly annulled due to procedural inconsistencies between the Equality Act and the Contravention Code, making this remedy ineffective.<sup>134</sup> Reports<sup>135</sup> and civil society have indicated that the deficiencies of the sanctioning mechanism due to these procedural inconsistencies hamper the effectiveness of the CPPEDAE and they have claimed that the impact of the case work of the CPPEDAE would be enhanced by empowering it to apply effective, proportionate and dissuasive sanctions.

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

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<sup>131</sup> For example, in 2015, the CPPEDAE established three partnerships with civil society and provided 70 training activities for over 1,700 persons.

<sup>132</sup> In December 2017, the Venice Commission concluded that the draft proposal fails to maintain the guarantees of financial independence of the Ombudsman. CoE, Venice Commission (2017): para. 33-35.

<sup>133</sup> Grecu and Hriptievshi (2017) : 4.

<sup>134</sup> For instance, between 2013 and 2016, out of 32 misdemeanour protocols issued by the CPPEDAE, only two were upheld by courts.

<sup>135</sup> See Grecu et al (2015), *op.cit*, 173; Wadham and Russi (2016): 59; Roagna and Petrusic (2016): 23.

authorities should, in particular, i) amend the relevant procedural rules to ensure the effective implementation of the mandate of the CPPEDAE, ii) 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 iv) intensify their efforts to promote compliance with the recommendations of the CPPEDAE and the Ombudsman.

### **3. Policies to combat discrimination and intolerance vis-à-vis LGBT<sup>136</sup>**

#### **- Data**

100. There is no official data on the size of the LGBT population in Moldova. According to the Act on Personal Data Protection, information related to a person's LGBT status is considered personal data which cannot be processed without the person's explicit consent.<sup>137</sup> However, Recommendation CM/Rec (2010) 5 of the Council of Europe's Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity indicates that personal data referring to a person's sexual orientation or gender identity can be collected when this is necessary for the performance of a specific, lawful and legitimate purpose. In ECRI's view, data collection on LGBT persons, on a voluntary basis and in line with this Recommendation can serve as a useful starting point for addressing discrimination and intolerance against this group.
101. On the Rainbow Europe Map 2017 reflecting the European countries' legislation and policies guaranteeing LGBT human rights, Moldova ranks 43<sup>rd</sup> over 49 European countries scored, with an overall score of 13%.<sup>138</sup> According to a survey carried out in 2015, LGBT persons are the most rejected social group in Moldovan society.<sup>139</sup> Over 40% of the respondents of this survey expressed qualifications such as "immoral, foolery" concerning LGBT persons and around 35% of them considered them as "sick person". Nearly 53% said that homosexual relations should be punishable. The share of answers with positive perceptions was just around 2%.<sup>140</sup>
102. ECRI recommends that the authorities undertake research and collect data on LGBT persons in Moldova as well as on discrimination and intolerance against them.

#### **- Legislative issues**

103. Where criminal law is concerned, ECRI refers to the analysis and recommendations contained in § 4, 10 and 12 of this report. As regards civil and administrative law, ECRI notes that the Equality Act mentions sexual orientation among the grounds of discrimination, albeit solely for the purposes of protection in the employment field, but makes no mention at all of gender identity (see § 13 and the recommendation in § 22)<sup>141</sup>. ECRI is pleased to note that the CPPEDAE has examined several cases on the basis of sexual orientation<sup>142</sup> by relying on the open-ended list of prohibition grounds in the Equality Act and through directly applying the European Convention on Human Rights.

<sup>136</sup> For terminology, see the definitions set out in CoE Commissioner for Human Rights 2011.

<sup>137</sup> Articles 3 and 6.

<sup>138</sup> <https://rainbow-europe.org/country-ranking>

<sup>139</sup> CPPEDAE/OHCHR/UNDP Moldova (2015): 18-19.

<sup>140</sup> *ibid*: 29-33.

<sup>141</sup> Pursuant to Article 1 (2)(a), the Equality Act does not apply to family including marriage, which is based on the consented marriage between man and woman; adoption relations; religious institutions.

<sup>142</sup> For examples see Grecu, P. et al (2015): 63-65.

104. Concerning family matters, Article 48 (2) of the Constitution defines the family as “founded on a freely consented marriage between man and woman”, thus establishing a constitutional ban against same-sex marriages. Similarly, the Family Code of Moldova does not provide for registered partnership for same-sex couples.<sup>143</sup> ECRI believes that this absence of recognition leads to various forms of discrimination in the field of social rights and therefore draws the authorities attention to the above mentioned Recommendation CM/Rec(2010)5.<sup>144</sup>
105. ECRI notes that there is no specific legislation regulating gender reassignment. The Moldovan Civil Status Documents Act<sup>145</sup> provides for the possibility for transgender persons to change their name and gender on identity documents, only upon presenting an official document confirming their sex change.<sup>146</sup> However, there is a legal vacuum on this issue, as neither the related procedures nor the responsible bodies are clearly defined.<sup>147</sup> ECRI considers, therefore, that the legislation needs to be further developed to include the essential information and necessary steps concerning both gender recognition and gender reassignment.<sup>148</sup> For example, gender reassignment should not be a prerequisite for gender changes in personal documents.<sup>149</sup> In this respect, ECRI would like to draw the authorities’ attention to Resolution 2048 (2015) of the Council of Europe’s Parliamentary Assembly<sup>150</sup> and encourages the authorities to ensure the legal recognition of a person’s gender reassignment in a quick, transparent and accessible way.
106. ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment in line with the Council of Europe guidelines.
107. Lastly, ECRI notes that Moldova has explicitly recognised in its national legislation that sexual orientation is included in the notion of “membership of a particular social group”.<sup>151</sup> Therefore, persons fleeing persecution on grounds of their sexual orientation are able to be recognised as refugees and benefit from international protection.

- **Promoting tolerance and combating discrimination**

108. There are several studies showing that intolerance and discrimination towards LGBT persons are widespread in Moldovan society. In a nationwide survey,<sup>152</sup> for example, 83% of respondents said that they would not accept a homosexual as their neighbour, while 92% of them would not want an LGBT teacher in their children’s classroom. 42% of the respondents also thought that homosexuals should be imprisoned. These extremely low levels of societal acceptance contribute to significant discrimination and stigmatization against LGBT persons in key areas of life, including impeding their ability to access goods and services.<sup>153</sup> During interviews conducted by the Equal Rights Trust in 2015, many

<sup>143</sup> Articles 2 (3), 11, 14 and 15 of the Family Code (2000) and Article 1 (2) (a) of the Equality Act. ECRI notes that the registered partnerships are not recognized for heterosexual couples under the Family Code.

<sup>144</sup> Council of Europe, Committee of Ministers, Recommendation CM/Rec(2010)5, 31.3.2010: §§ 24, 25.

<sup>145</sup> Article 66 (2) (c) of the Law No. 100 of 26 April 2001.

<sup>146</sup> ILGA (2016): 38.

<sup>147</sup>In practice, the Gender Dysphoria Commission, under the Ministry of Health, issues medical certificates confirming a transsexualism diagnosis and makes recommendations for amending official documents.

<sup>148</sup> Despite the Moldovan Supreme Court of Justice issued a non-binding recommendation on the judicial practice standardisation regarding the procedure for the examination of applications related to the correction of the civil status documents due to gender reassignment in November 2012, NGOs report that the absence of legislation continues to create problems in practice ( see GENDERDOC, 2016b).

<sup>149</sup> ECRI notes that the ECHR ruled that requiring sterilisation for legal gender recognition violates human rights: A.P., Garçon and Nicot v. France, (nos. 79885/12, 52471/13 and 52596/13), 6 April 2017.

<sup>150</sup> Parliamentary Assembly of the CoE, Resolution 2048(2015): in particular §§ 6.2.1 and 6.3.1.

<sup>151</sup> Article 10 of Law on Asylum of 18 December 2008.

<sup>152</sup> Institutul de Politici Publice (IPP) (2014).

<sup>153</sup> UN Human Rights Council (2014): 7.



individuals gave personal testimony supporting this conclusion.<sup>154</sup> In this respect, ECRI takes positive note of the decision of the CPPEDAE, which found the banning of a homosexual couple from a night club as discrimination on the basis of sexual orientation in accessing services.<sup>155</sup>

109. As regards health, transgender persons have the same access to general health care services as all other individuals. However, medical treatment related to gender reassignment, both surgery and hormone therapy, is not covered by the national health insurance system.<sup>156</sup>
110. ECRI is pleased to note that the Moldovan authorities have made significant progress in ensuring the organisation of Pride Parades following the ECHR judgment of 2012<sup>157</sup>, in which Moldova was found to be in violation of the freedom of assembly of LGBT people. In 2013, 2014, 2015 and 2016, the Parades were held successfully in Chişinău. Similarly, in 2017, the largest Pride Parade to date in Moldova took place involving around 300 participants. While some counter-demonstrators, including the representatives of the Moldovan Orthodox Church, attempted to assault the participants, the police provided effective protection along a cordoned-off route. However, several NGOs claimed that by cordoning off the entire route to prevent incidents, the police had secured the safety of participants at the expense of freedom of assembly.<sup>158</sup>
111. ECRI is not aware of any awareness-raising activities on LGBT issues organised by the authorities that target the general public. Several NGOs informed ECRI that there is rather a persistent reluctance among the authorities to fight the deeply-rooted sociological stigma and bias against LGBT persons. On a related note, ECRI is particularly concerned about the recent draft laws<sup>159</sup> currently pending before the Moldovan Parliament, which ban “propaganda of homosexual relations” among minors as it considers that such initiatives may only curb the rights of LGBT persons and deepen social divides. In this respect, ECRI refers to the recent case-law of the ECHR<sup>160</sup> which held that by adopting such laws, the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the values of equality, pluralism and tolerance.
112. Although the problem of intolerance vis-à-vis LGBT persons is evident, there is no policy to combat this phenomenon in Moldova. ECRI regrets that the draft National Human Rights Action Plan (2018-2022) contains no measures to promote non-discrimination of LGBT people. In view of the above-mentioned lack of information about LGBT people and the significant discrimination to which they are exposed, ECRI considers that the authorities should take urgent measures to promote tolerance towards LGBT persons in all areas of everyday life, as well as to combat homophobia and transphobia.

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<sup>154</sup> Equal Rights Trust (2016): 72-73, 91.

<sup>155</sup> CPPEDAE, Decision no. 329/15 of 20 November 2015.

<sup>156</sup> Transgender Europe- TGEU (2017).

<sup>157</sup> GENDERDOC-M v. Moldova, no. 9106/06, 12 June 2012.

<sup>158</sup> CoE, Secretariat of the Committee of Ministers (2017).

<sup>159</sup> The first Draft law (no. 184) of 28 March 2016 introduces anti-homosexuality “propaganda” clauses under the Law on the Rights of the Child and the Code of Administrative Offenses. The second Draft law (no.86) of 24 March 2017 envisages amending the Law on Protection of Children from the Negative Impact of Information with a view to censor public dissemination of information about non-heterosexual relations/persons. See World Politics Review (2017); Human Rights Watch (2017); ILGA Europe (2017): 165. ECRI further notes that several similar regional ordinances, for example in Drochia in 2012, were adopted in recent years but have subsequently been repealed or struck down.

<sup>160</sup> Bayev and others v. Russia (nos.67667/09, 44092/12 and 56717/12), 20 June 2017, § 83.

113. ECRI recommends that the authorities draw up and adopt an action plan, either as a separate policy document or part of National Human Rights Action Plan (2018-2022), which should include the objectives of protecting LGBT persons against hate speech, violence and discrimination, raising awareness about their living conditions, promoting understanding of LGBT persons and making their right to equal treatment a reality.

## INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the authorities of the Republic of Moldova are the following:

- 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, ii) 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 iv) intensify their efforts to promote compliance with the recommendations of the CPPEDAE and the Ombudsman.
- ECRI recommends that the training activities for law enforcement officials and the judiciary on hate crime, including hate speech, are scaled up. Such training should cover racist and homo-/transphobic hate crime as well as racial profiling. ECRI also recommends that the authorities carry out an impact assessment to evaluate the training to establish to what extent it helps to identify hate crime effectively and to adjust it, if necessary.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.



## LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 2) ECRI reiterates its recommendation to Moldova to ratify Protocol No. 12 to the European Convention on Human Rights as soon as possible.
2. (§ 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 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.
3. (§ 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; iii) 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.
4. (§ 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 CPPEDAE) the right to initiate proceedings before the Constitutional Court, iii) grant the Ombudsman and the CPPEDAE 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.
5. (§ 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.
6. (§ 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.
7. (§ 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.
8. (§ 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.

9. (§ 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.
10. (§ 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.
11. (§ 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.
12. (§ 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.
13. (§ 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 the authorities implement confidence-building measures to enhance the relationship between the police and vulnerable groups, in particular the Roma and the LGBT community.
14. (§ 70) ECRI recommends that the training activities for law enforcement officials and the judiciary on hate crime, including hate speech, are scaled up. Such training should cover racist and homo-/transphobic hate crime as well as racial profiling. ECRI also recommends that the authorities carry out an impact assessment to evaluate the training to establish to what extent it helps to identify hate crime effectively and to adjust it, if necessary.
15. (§ 78) ECRI recommends that the authorities ensure that the Action Plan in support of Roma population for 2016-2020 is accompanied by an evaluation of all integration projects implemented over recent years, on the basis of comprehensive equality data. The strategy should be revised systematically to include more targeted measures and success indicators to measure its impact and to redefine its parameters and goals where necessary. This should be done in close cooperation with local authorities as well as members of the Roma community and adequate funding should be allocated for the strategy to be effective.
16. (§ 80) ECRI recommends that the local authorities allocate sufficient funding to enable the recruitment of 48 Roma community mediators, as planned in the earlier Roma Action Plan, without any further delay.
17. (§ 90) ECRI recommends strengthening the integration of national minorities by taking measures in the education system so that pupils belonging to these

groups can gain full proficiency in the state language. These measures should also include adult education.

18. (§ 93) ECRI recommends that the authorities carry out a comprehensive evaluation of the National Strategy on Migration and Asylum for 2011-2020 and its accompanying action plans. On the basis of its findings, the authorities should develop objectives and targeted activities with time-frames, funding and success indicators which are supported with effective monitoring as well as a regular evaluation system.
19. (§ 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, ii) 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 iv) intensify their efforts to promote compliance with the recommendations of the CPPEDAE and the Ombudsman.
20. (§ 102) ECRI recommends that the authorities undertake research and collect data on LGBT persons in Moldova as well as on discrimination and intolerance against them.
21. (§ 106) ECRI recommends that the authorities develop legislation on gender recognition and gender reassignment in line with the Council of Europe guidelines.
22. (§ 113) ECRI recommends that the authorities draw up and adopt an action plan, either as a separate policy document or part of National Human Rights Action Plan (2018-2022), which should include the objectives of protecting LGBT persons against hate speech, violence and discrimination, raising awareness about their living conditions, promoting understanding of LGBT persons and making their right to equal treatment a reality.





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