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Project “Strengthening access to justice through non-judicial redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries”

Disaggregated data collection on hate crime, hate speech and discrimination in the Republic of Moldova: recommendations and situational analysis

This document has been produced as part of the project co-funded by the European Union and the Council of Europe “Strengthening access to justice through non-judiciary redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries in the framework of the Partnership for Good Governance II. The views expressed herein can in no way be taken to reflect the official opinion of either party.

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List of abbreviations

AC – Audiovisual Council

CoE – Council of Europe

CEC – Central Electoral Commission

CPEDEE – Council on the Prevention and Elimination of Discrimination and Ensuring Equality
Draft law no. 301 - Draft law on amending several laws related to hate crime and hate speech, voted in the first reading by the Parliament on 8 December 2016, pending

Law on equality – Law no. 121 on ensuring equality of 25 May 2012

NGO - Non-governmental organization

Ombudsoffice - Peoples' Advocate Office (Ombudsman)

The Council of Europe project - The Project on strengthening the access to justice for victims of discrimination, hate crime and hate speech in Eastern Partnership countries, part of the Partnership for Good Governance for Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus, co-funded by the European Union and implemented by the Council of Europe

SCM – Superior Council of Magistracy

ECRI – European Commission against Racism and Intolerance

LGBT - Lesbian, Gay, Bisexual, Transsexual

OSCE - Organization for Security and Cooperation in Europe

Introduction to this report

The project “Strengthening access to justice through non-judicial redress mechanisms for victims of discrimination, hate crime and hate speech in Eastern Partnership countries” is part of the Partnership for Good Governance Programme.¹ Funded by the EU and implemented by the Council of Europe, the programme aims to strengthen governance in the Eastern Partnership region.

Among its objectives, the project has a priority focus on researching, analysing and improving national data collection systems relating to hate crime, hate speech and discrimination, in particular in the Republic of Moldova, Armenia and Ukraine. The purpose of this report is to present the national situation in the Republic of Moldova and to make practical recommendations for improvement, for the consideration of national stakeholders.

This document is comprised of two main parts.

Part one is the Recommendations Report, which draws on the Situational Analysis (see part two), relevant reports by the European Commission Against Racial Intolerance (ECRI), and other data, to propose steps that the relevant authorities of the Republic of Moldova can take to improve data collection on hate crime, hate speech and discrimination, in line with international standards and good practice.

Part two is the Situational Analysis which presents a detailed picture of the current national situation, based on a review of national data, and on interviews with key stakeholders.

Both reports propose complementary recommendations that, in combination, aim to support national stakeholders to:

- have a shared understanding of the strengths and limitations of the current system
- agree shared priority actions for improvement in national systems
- agree how the Council of Europe, within the mandate of the project, is best able to assist stakeholders in achieving their identified priorities.

The recommendations presented in the Recommendations Report build on the findings and recommendations set out in the Situational Analysis. The connections between the two reports are highlighted in the Recommendations Report, where relevant. As a general rule, national stakeholders should provide feedback based on recommendations set out in the Recommendations Report.

¹ See <https://pjp-eu.coe.int/en/web/pgg2/home>

PART ONE: Hate crime, hate speech and discrimination data collection in the Republic of Moldova – recommendations for improvement and for adopting a joint approach

Executive summary and overview of the Republic of Moldova’s current recording and data collection system on hate crime, hate speech and discrimination

Compiled and produced within the framework of the Council of Europe regional co-operation project “Strengthening access to justice for victims of discrimination, hate crime and hate speech”, this report draws on international norms and standards, practice and research, to make recommendations on improving Republic of Moldova’s recording and data collection systems on discrimination, hate crime and hate speech. This report aims to support the Republic of Moldova to move to the next level. It reframes the current approach to be more aligned with international norms and standards relating to the concepts of hate crime, hate speech and discrimination and draws on good practice to suggest practical steps to improve existing and to consider new ways of recording and data collection. The report will be shared with key stakeholders and revised in response to their feedback.

It is not currently possible to record the full breadth of hate crimes, hate speech and discrimination in the Republic of Moldova. Different data is collected using different systems, methods and concepts. This means that it is difficult to track cases across the system and key information about victims needs and evidence that is central to the application of relevant laws is missed or “falls between the cracks”.² Apart from the impressive work of the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (CPEDEE) to make the problem of discrimination visible and to raise awareness about their work to address it, there is very limited information about these harms in the public domain.

There are several positive aspects to efforts to monitor hate crime, hate speech and discrimination by various actors in the Republic of Moldova. These include: the work of the CPEDEE, including their regular attitudes surveys and transparency in publishing data; the proposed changes to the criminal code that will bring the Republic of Moldova in line with international standards and provide a strong basis for effective recording and data collection monitoring; and, the openness of the Moldovan authorities to support from intergovernmental organisations and agencies through training and other capacity-building activities. Many of the important building blocks are there, however the success of this report’s hate crime recommendations relies on the successful implementation of the new amendments to the criminal code.

The report sets out a framework of principles on which to develop the Republic of Moldova’s efforts. Briefly, they highlight the need for any recording and data collection system to be

² See the Situational Analysis Report and Appendix 1 of this document for information about current gaps in Moldova’s hate crime recording and data collection system.

victim focused, transparent, inclusive, comprehensive and in line with international norms and standards. Second, the Republic of Moldova's current relevant law is mapped according to established international concepts (including from ECRI, OSCE-ODIHR, FRA, European Commission, etc) of 'hate crime', 'hate speech' and 'discrimination' to support the outcome that the data that is produced by the system is organised according to international norms and standards (see Annex One).

Recommendations touch on each area, with a different emphasis. As explained in the Situational Analysis, 'The most pressing needs refer to prioritizing the data collection, improving existing data bases and developing new methodologies to ensure efficient processing and disaggregation of data.'

Hate crime recommendations focus on the need to set up a cross government working group to implement a shared approach to recording and data collection, with a focus on relevant training. Concrete proposals are offered on practical ways to monitor the diverse range of protected characteristics contained in the national law, while avoiding an onerous and unworkable burden on the police and other agencies.

Recommendations on discrimination focus on setting up the right referral process from the courts, police and Ombudsoffice to the CPEDEE, which would then play the leading role in the area of reporting, recording and data collection.

Recommendations on hate speech focus on coordinating the range of actors involved and helping them navigate the quite complex system of criminal, administrative and discrimination provisions that relate to hate speech, with some kind of agreement on related roles and responsibilities, and to start to design and develop a data collection mechanism.

This report should be read in conjunction with the 'Situational analysis on discrimination, hate crime and hate speech disaggregated data collection in the Republic of Moldova', which constitutes Part II of this document.

Methodology

PART I of this report is based on a close reading of the 'Situational Analysis', notes from needs analysis meeting held in Chisinau in 2019 and relevant ECRI reports on the Republic of Moldova. Many other international norms and standards, practice examples and national reports are drawn upon and listed in the reference section.

This report also incorporates comments from the Council of Europe and representatives of national authorities.

Six principles for hate crime, hate speech and discrimination recording and data collection systems

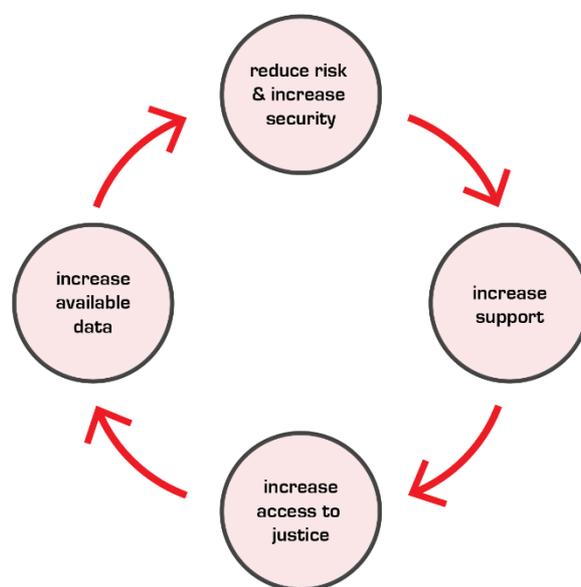
When considering hate crime, hate speech and discrimination recording systems, it can be easy to get lost in the technical details. It is therefore recommended that relevant and useful guiding principles are adopted by stakeholders.

Recording and data collection systems should:

1. have a victim focus;
2. take a comprehensive approach: be connected to other key elements of a comprehensive approach to understanding and addressing hate crime, hate speech and discrimination;
3. seek international alignment: be aligned with international norms and standards;
4. be transparent: produce accurate data that is easily accessible to the public;
5. reflect an understanding of prevalence and context: be implemented in the context of a commitment to understand the 'dark figure' of the phenomena;
6. be implemented in the context of a strong commitment to cooperation across criminal justice agencies, relevant government ministries, with relevant civil society organisations and academics with relevant expertise;

Figure one: a victim and outcome-focused approach to recording and data collection³

A victim and outcome-focused framework for improving recording and increasing reporting



**FACING
FACTS**

³ This image is from the Facing all the Facts project (Created by Jonathan Brennan, Perry, 2019)

Principle 1: A victim focus

As set out in figure one, hate crime, discrimination and hate speech recording and data collection systems should contribute to the following outcomes for victims and affected communities:

- a reduction in risk of occurrence and seriousness of re-victimisation, and/or social breakdown escalation;
- an increase in support from public authorities;
- an increase in access to justice and the effective application of relevant laws;
- an increase in reporting by victims and communities.⁴

Within this principle should be the commitment to avoid unnecessary bureaucratic burdens on operation police and prosecution staff. As far as possible, these recording systems should be integrated into existing systems.

Principle 2: taking a comprehensive approach

Effective recording and data collection systems are one part of a comprehensive approach to addressing hate crimes, hate speech and discrimination.⁵ High quality training, investigation and prosecution guidelines, guidelines on handling discrimination cases and an inclusive legal and policy framework supporting by sustainable funding are each equally important pieces of the puzzle.

Principle 3: seek international alignment

Hate crime, hate speech and discrimination recording and data collection, training, policy and law are supported by a relatively comprehensive international framework of norms and standards. National law, policy and training should be aligned with this framework as far as possible.⁶ Specifically, the concepts of hate crime, hate speech and discrimination should be clearly delineated and data collected and reported separately. At the practical level, this ensures that the resulting data is more easily submitted to regular requests from intergovernmental organisations (see ODIHR annual hate crime reporting requirements for example) and that the correct application of the law is effectively operationalised in investigation, prosecution and other legal approaches.⁷

Principle 4: seek transparency

The general public and affected communities are key stakeholders in efforts to understand and address hate crime, hate speech and discrimination in the Republic of Moldova. It is essential that data on the nature and impact of these harms, as well as information about the

⁴ Perry, J. (2020), Facing all the Facts European Report

⁵ See Hate Crime Data Collection and Monitoring Mechanisms: A practical guide, (2014), OSCE, <https://www.osce.org/odihr/datacollectionguide?download=true>

⁶ See bibliography for references on key norms and standards

⁷ See for example Hate Crime Laws, A Practical Guide, ODIHR (2009), which builds on the OSCE Ministerial Council Decision 9/09 to define hate crimes as 'criminal offences committed with a bias motivation' (as distinct from hate speech and discrimination) and the recent Guidance Note, European Commission (2018), which defines the separate concepts of hate crime and hate speech and recommends these are adopted at the national level to support the effective application of relevant law and procedure.

steps that the authorities are taking to address them, including training and guidelines, are easily available and accessible.⁸

Principle 5: understanding prevalence and context

Evidence suggests that only a small percentage of hate crimes and incidents of discrimination and hate speech are reported to and recorded by the authorities.⁹ Various actions can be taken to understand the ‘dark figure’ or the actual prevalence of hate crime and discrimination including organising national surveys and reviewing data collected by relevant civil society organisations.¹⁰

Principle 6: commitment to cooperation

The success of a joint approach is predicated on a commitment to cooperation across criminal justice agencies, ombudsman’s offices, NHRIs, government ministries and with relevant civil society organisations. For example, an effective police recording system will be severely limited if there is no connection with prosecution and judicial approaches. Likewise, failing to cooperate with civil society organisations that are expert in hate crime, hate speech and/or discrimination, and in supporting victims with their practical and legal needs, will result in a lack of knowledge and information about the prevalence and impact of unreported hate crime, hate speech and discrimination.¹¹ Such cooperation is more likely to succeed if it is underpinned by cross-government protocols and frameworks with clearly set out roles and responsibilities.¹²

Securing a joint data collection system in line with European standards and best practices

This section turns to the Republic of Moldova and looks at how to secure a successful joint data collection system¹³. Achieving this goal relies on speaking a *common language* and sharing a joint *approach* on hate crime, hate speech and discrimination across the Republic

⁸ See FRA Opinion, ‘Collecting and publishing disaggregated hate crime data’, which states, ‘As FRA’s reports repeatedly highlight, the collection of detailed and disaggregated data on hate crime – at minimum, by bias motivation and by type of crime – is necessary to monitor the effectiveness of the police response to the phenomenon, and to prepare effective and targeted policies. Publication and dissemination of, and easy access to, the data all help to assure victims and communities that hate crime is taken seriously and sends a message to the public that hate crime is monitored, addressed and not tolerated.’, FRA (2018), p. 11; see also OSCE/ODIHR’s Key Observation for Moldova for 2017: ‘ODIHR observes that the law enforcement agencies of Moldova have not recorded the bias motivations of hate crimes.’ ; <http://hatecrime.osce.org/moldova>; See also ODIHR’s publication, Hate Crime Data collection and Monitoring Mechanisms, A practical guide (2014) p. 43. See also relevant ECRI GPRs and OSCE Ministerial Commitments.

⁹ See FRA (2018)

¹⁰ See victimization surveys, including EU-MIDIS I and EU-MIDIS II; see also FRA Opinion, ‘Designing and carrying out crime victimisation surveys that include hate crime-specific questions’ in which FRA states, ‘Designing crime victimisation surveys that include hate crime-specific questions would allow authorities to shed light on the ‘dark figure’ of crime – that is, the number of crimes that are not reported to the police – and to understand victim experiences, trends and emerging issues.’, p. 12, FRA (2018); see also ODIHR’s recommendations 20-24, which detail how victimization surveys can be carried out and what they should cover, in ‘Hate Crime Data Collection and Monitoring Mechanisms: A practical guide’, (2014), pp. 33-39.

¹¹ Also see ECRI GPR No 15 on “Combating Hate Speech”¹¹ recommends to state authorities to support the monitoring of hate speech by civil society, equality bodies and national human rights institutions and promote cooperation in undertaking this task between them and public authorities.

¹² See FRA (2018) on cooperating with civil society, and ODIHR (2014) on setting up cross government frameworks. . In this context ‘relevant civil society organisations’ includes those organisations that have a track record in robust and transparent recording and data collection on hate crime/hate speech and/or discrimination.

¹³ It is recommended to read appendix one for a comprehensive review of current law and recording practice in Moldova in the context of international norms and standards.

of Moldova's criminal justice, civil and administrative systems. Several specific steps need to be taken to get to this position.

The policy and technical framework that the Republic of Moldova adopts to record and collect data on hate crime, hate speech and discrimination should be fully aligned with international concepts of 'hate crime', 'hate speech' and 'discrimination'. In line with Principle Three above, 'securing alignment', Appendix 1 maps the Republic of Moldova's current legal framework against international concepts. Using this approach will facilitate the sharing of information with international agencies and clarify stakeholders' role in successfully implementing a joint hate crime, hate speech and discrimination recording and monitoring framework at the national level. It is important to note that the proposed changes to the criminal code will greatly improve the alignment with international norms and standards on hate crime.

Recommendation 1: adopt the framework set out in Appendix 1 as the national 'map' of hate crime, hate speech and discrimination provisions

The report is then organised according to the three, internationally aligned concepts of hate crime, hate speech and discrimination. In order to 'operationalise' this new framework, and allow effective cooperation across the system, each section proposes shared definitions of hate crime, hate speech and discrimination to be adopted by the relevant agencies with responsibility to record and collect data on these phenomena, followed by practical recommendations on the type, form and timing of coordination.

Hate crime recording and disaggregated data collection

The Republic of Moldova's current hate crime framework protects a limited number of characteristics, excluding sexual orientation, disability and gender. Its 'bias threshold' (how 'hate'/'bias' is defined) is quite high, requiring proof of 'hatred'. These two factors potentially exclude common examples of hate crime. However, draft amendments to the Criminal Code¹⁴ lower the threshold required to prove 'hate crimes' and take a much more inclusive approach to protected characteristics, and thus should form the basis of a comprehensive and inclusive monitoring definition of hate crime. This is discussed further below under the section 'adopting a joint definition of hate crime'.

In another positive development, giving potential institutional support to the implementation of the recommendations proposed in this paper, the Parliament of the Republic of Moldova recently approved a National Human Rights Action Plan for 2018 - 2022, which includes a number of measures to address hate crimes, including bringing the disaggregated data on hate crimes in line with international recommendations.

Adopting a joint definition of hate crime

Adopting and implementing a joint definition of hate crime for monitoring purposes is one of the most significant steps that can be taken to generate reliable data and, more importantly, to ensure access to justice, safety and security for victims. Being 'on the same page' across the police, prosecution service and courts doesn't just ensure higher quality data, but also

¹⁴ Reviewed by ODIHR in 2016

that vital evidence that a crime might be a hate crime and information about victims' safety and support needs is passed from one agency to another. Ultimately this approach allows the highest quality, most detailed evidence to be presented to the court for its consideration.

Of course, it is important to remember that effective training, leadership and joint working with relevant civil society organisations are all essential to ensure that this vital information is actually acted upon.

As explained in the Situational Analysis, the draft Criminal Code of the Republic of Moldova proposes an inclusive and comprehensive 'notion of prejudice reasons', which apply to the criminal and contravention (misdemeanour) codes. Stakeholders should consider whether it is possible to use the proposed definition as an informal monitoring definition while the criminal code progress through the legislative process. It is important to emphasise that the proposed definition is for monitoring purposes, not as a comprehensive basis for crime classification. The purpose is to be able to follow potential hate crimes as they are processed across the reporting, investigation, prosecution and sentencing stages.

Recommendation 2: the following joint definition of 'hate crime' should be adopted by the relevant agencies:

'Any crime in the Criminal Code of the Republic of Moldova that is committed based on

"Preconceived ideas of the perpetrator, based on grounds of race, colour, ethnic, national or social origin, citizenship, sex, gender, language, religion or religious beliefs, political opinions, disability, sexual orientation, gender identity, health status, age and marital status, regardless of whether the deeds refers to the person who possesses such protected characteristics, to his or her goods or to the persons who is associated with these characteristics, unconcerned if this association is a real one or perceived as real."

This definition also incorporates offences motivated 'in whole or in part' by intolerance/bias/prejudice etc. and based on 'actual or perceived' membership of a protected group.¹⁵

The next step is to 'operationalise' this definition in the work of the police, prosecutions service and the courts. Specific monitoring definitions are proposed below.¹⁶

Recommendation 3 for the police and relevant ministries: adopt the following definition of potential hate crime for recording purposes,

Any offence perceived by the victim or any other person to be committed due to preconceived ideas of the perpetrator in whole or in part, against actual or perceived:

¹⁵ See Hate Crime Laws: a practical guide, ODIHR (2009) and European Commission, 2018; see also any national guidelines, including draft guidelines prepared by the prosecutor's office.

¹⁶ It is also recommended that the police record sub criminal hate incidents, in other words, any incident that is due to 'intolerance towards' the listed protected characteristics but that does not reach the threshold of a criminal offence. This approach has the following benefits: it allows the authorities, and the police in particular to monitor patterns before they escalate in seriousness, it also allows closer cooperation with relevant civil society groups that are also monitoring such incidents. This point is referred to again in Part IV.

race, color, ethnic, national or social origin, citizenship, sex, gender, language, religion or religious beliefs, political opinions, disability, sexual orientation, gender identity, health status, age and marital status, regardless of whether the deeds refers to the person who possesses such protected characteristics, to his or her goods or to the persons who is associated with these characteristics,

must be recorded as a 'potential hate crime'.

Commentary: This definition is based on and takes into account ECRI's General Policy Recommendation 11 to incorporate the perception of the victim and any other person into the recording of hate incidents. In order to ensure equality and consistency, the definition proposed in this paper extends beyond 'race' to all protected characteristics. Further, the term 'potential hate crime' is introduced to allow for the fact that most police services are reluctant to automatically record a crime as a 'hate crime' based on the perception of the victim/any other person alone.¹⁷

This approach recognises the centrality of a perception-based approach, is aligned with ECRI's GPR No. 11 and allows for flexibility at the national level.

However, this is an important discussion point for stakeholders. It is recommended that relevant stakeholders should discuss and agree which of the three options presented under recommendations 10 below should be adopted.

Recommendation 4 for the police and relevant ministries: stakeholders should decide on the following options for police-recorded hate crime.

Option one: full adoption of ECRI General Policy Recommendation No. 11¹⁸ to record all crimes perceived by the victim or any other person to be due to due to preconceived ideas of the perpetrator in whole or in part, against actual or perceived race, colour, ethnic, national or social origin, citizenship, sex, gender, language, religion or religious beliefs, political opinions, disability, sexual orientation, gender identity, health status, age and marital status, regardless of whether the deeds refers to the person who possesses such protected characteristics, to his or her goods or to the persons who is associated with these characteristics as a hate crime.

Option two: adoption of '**potential hate crime**' definition at least for the first stage of police recording, to be confirmed upon review by the relevant department or agency. This would also include offences where the victim or investigator perceived it to be motivated by intolerance.

Option three: do not take a victim-focused approach and record based on police-perception only. Require the recording of victim and witness perception as a bias indicator.

¹⁷ The United Kingdom is currently the only country in the world that has fully adopted a perception-based policy for hate crime recording.

¹⁸ [ECRI General Policy Recommendation N°11 on combating racism and racial discrimination in policing](#), Recommendation No. 14

Whatever definition is adopted, all recorded 'hate crimes' should trigger existing guidelines for the investigation of hate crime cases and passed onto the prosecution service as a hate crime. If the incident is confirmed to be a hate crime by the reviewing body, then it should be included in crime statistics under that classification.

It is important to note that whichever option is adopted, evidence of victim perception alone is not sufficient for a hate crime **prosecution** to be taken forward, and normal rules of evidence apply. As a result, current prosecutor guidelines should be reviewed to ensure that they clearly specify the range of bias indicators that, taken together, can serve as evidence that a crime is committed due to the preconceived ideas of the perpetrator based on the listed protected characteristics. It is always for the courts to decide if the relevant hate crime provision applies on a case by case basis.

Recommendation 5 for the prosecution service

Any offence that reaches the evidential test for prosecution and was committed due to preconceived ideas of the perpetrator in whole or in part, against actual or perceived

race, colour, ethnic, national or social origin, citizenship, sex, gender, language, religion or religious beliefs, political opinions, disability, sexual orientation, gender identity, health status, age and marital status, regardless of whether the deeds refers to the person who possesses such protected characteristics, to his or her goods or to the persons who is associated with these characteristics,

must be recorded as a 'hate crime prosecution'.

It is recommended that the prosecutor's office to also record the number of cases received from investigators marked as 'Potential Hate Crimes' as this could provide useful comparative data for executives to consider the gap between victims perception and those cases with tangible evidence to proceed to a court.

The data for 'Hate Crime Prosecutions' should be provided by the National Point of Contact of OSCE, to International Governmental Organisations such as the Organisation for Security and Cooperation in Europe.

Recommendation 6 for the courts

Any offence where it has been proven that it was committed due to preconceived ideas of the perpetrator in whole or in part, against actual or perceived:

race, color, ethnic, national or social origin, citizenship, sex, gender, language, religion or religious beliefs, political opinions, disability, sexual orientation, gender identity, health status, age and marital status, regardless of whether the deeds refers to the person who possesses such protected characteristics, to his or her goods or to the persons who is associated with these characteristics,

must be recorded as a 'sentenced hate crime'.

These definitions, alongside the mapping in Appendix 1, provide a conceptual framework to allow cases to be traced across the criminal justice process and incorporated into existing and planned electronic crime recording systems. The following section considers the practical steps that should be taken to implement a joint approach.

Implementing a joint definition of hate crime¹⁹

There are a number of issues to consider when deciding how to implement a joint definition of hate crime, which are set out below. They are then followed by a proposed step by step framework bringing together the actions for each stakeholder.

Disaggregation

International norms and standards guide States to ensure that hate crime data can be disaggregated by bias motivation and crime types.^{20,21} The high number of protected grounds covered in the draft criminal code challenges the effective implementation of a revised hate crime recording and data collection system. The table below suggests the creation of a smaller number of meta categories.

The basis for disaggregation could be as follows:

By crime type: any criminal offence in the Criminal Code of the Republic of Moldova and any specified offence in table one annex one. These could be further grouped under more general crime categories, including homicide, serious assault, property damage, etc.²²

By bias motivation: all bias motivations set out in the table below.

Recommendation 7 for all stakeholders: introduce the following meta categories to simplify the application of hate crime monitoring definitions.

Category	Characteristics included and definition, where available.
'Race'	race, colour, ethnic, national origin or social origin (however, 'social origin could go under "other"), citizenship, language
Sex	(includes gender as male or female but excludes Transgender which is recorded separately)
sexual orientation	Lesbian, gay, bisexual, heterosexual
gender identity	Transgender people

¹⁹ This section takes into account recommendations from the baseline study and situational analysis commissioned by the Council of Europe in preparation for this project to identify the steps that need to be taken to implement this approach. It should be read in conjunction with those reports.

²⁰ See relevant OSCE Ministerial Council Decisions, ECRI GPRs, and FRA (2018)

²¹ Crime types should mirror existing categories used to distinguish crimes particularly identifying levels of violence homicide etc.

²² In determining crime categories, stakeholders should follow established crime categories already established in the Republic of Moldova's general crime recording system.

Age	Children, adults, older people
'religion or religious beliefs'	Christians (all denominations, including Jehovah's witnesses), Jewish people, Muslims, etc. This should be 'universal' protecting the religious views of all including no faith/ atheism.
political opinions	Definition and/or examples needed
disability	'any physical or mental impairment', can also include protected characteristic of health status
Marital status	Definition and/or examples needed in a hate crime context
other discriminatory ground	Definition and/or examples needed

It is further recommended that the National Point of Contact to the OSCE agrees with the Office of Democratic Institutions and Human Rights which meta-categories should be reported as part of the Republic of Moldova's annual data submission for the OSCE-ODIHR's annual hate crime reporting cycle, and which excluded categories should be recorded nationally but not submitted to the OSCE.

It is also recommended that there is a new inter-agency working group involving relevant institutions (mentioned in Recommendation 13 below) in the field of data collection on discrimination, hate speech and hate crimes. This working group should be appointed with the purpose of harmonising the different methodologies and practice of data collection, on discrimination, hate speech and hate crimes. This working group should define its mandate and working methods through a democratic process between the represented institutions. This group could then agree with the National Statistics Office, the adoption of a 'Memorandum of Understanding' to agree consistent reporting schedules from relevant state actors and the agreed timing and method of publication of the data to provide transparency. For example, stakeholders might seek to ensure annual publication of data for the general public, and more regular data for state officials in order to inform operational planning and to measure evidence of patterns of hate crime and incidents at the earliest stages.

Prioritising reporting, recording and data collection

It is important to note that national hate crime recording and data collection policies should seek to protect everyone from targeted abuse free from hierarchy or preferential treatment. It is equally vital, however, that authorities have the information to enable them to protect the most vulnerable sections of society that face discrimination, hate speech and hate crimes, and that policies encourage proactive efforts to prioritise prominent hostilities at any time whether they be long or short-term hostilities against any group. The CPEDEE has conducted two surveys into attitudes towards minority groups in the Republic of Moldova. As explained in the situational analysis, the 2015 and 2018 surveys showed, 'a high degree of intolerance was identified towards LGBT, persons living with HIV, Roma, detainees and Muslims.'

Recommendation 8 for all stakeholders: data gathered by the CPEDEE and reviewed in the Situational Analysis strongly suggests that the authorities of the Republic of Moldova should currently prioritise improvements to the recording of specific types of hate crime, including LGBT, Roma, Muslims and people with disabilities.

Table one: current and proposed hate crime recording and data collection process and roles and responsibilities

This table sets out the current approach to hate crime recording and data and brings together recommendations in this section to propose an amended framework, including roles and responsibilities. It can be used as a basis for recording and data collection guidelines and shared recording systems. It aims to serve as a basis for discussion across stakeholders who should consider the extent to which the proposed approach can be incorporated into current and proposed crime recording processes and procedures (see principle one).

Step of the case recording and disaggregated data collection	Gaps
POLICE	
<p>Step 1 The incident is recorded by the police on the general basis of the criminal law.</p>	<p>Step 1 There is no common definition or operational definitions of hate crimes and no obligation to record complaints as hate crime incidents, even when there is strong evidence in this respect.</p>
<p>Step 2 To record a hate crime, the police office has to enter the data in the statistical spreadsheet no. 1.0. For this, at the pt. 15 of the spreadsheet, the officer has to mention the indicator no. 44, which, according to the interdepartmental order n. 121/254/286-0/95 of 18 July 2008 “On the unified statistics on crimes, of criminal cases and of people who committed a crime” represents the aggravating circumstance “by social, national, racial or religious hatred”.</p>	<p>Step 2 The disaggregation criteria are very limited. Statistical spreadsheet offers data only regarding the specific article of the criminal code and aggravating circumstance “by social, national, racial or religious hatred”.</p>
<p>Step 3 Police officer sends the spreadsheet to the statistical department, which enters the information on the common database, called “The register of criminological information”.</p>	<p>Step 3 The database does not allow to disaggregate recorded cases by the protected grounds or other criteria.</p>
<p>Step 4 The Service of Technological Information of the Ministry of Internal Affairs reviews</p>	<p>Step 4 The Service of Technological Information of the Ministry of Internal Affairs does not</p>

and collects data from spreadsheet completed by police and generates statistics using “The register of criminological information”.	flag or mark distinctly the hate crime incidents, thus they are treated as ordinary cases.
PROSECUTION OFFICE	
Step 5 Prosecutors register cases according to the criminal law, using a general procedural form, which does not allow to disaggregate the hate crimes data.	Step 5 Prosecution office do not have a mechanism of hate crime data disaggregation. Incidents recorded as hate crimes are examined as regular cases.
Step 6 Prosecutors decide to apply or not aggravating circumstances “by social, national, racial or religious hatred” when sending the case to the courts. The hate crime data is not specifically disaggregated and should be extracted manually.	Step 6 There are no uniform practices on applying hate crimes aggravating circumstances.
COURTS	
Step 7 The Courts register the cases according to general criminal proceedings. There is no specific spreadsheet form hate crimes.	Step 7 The Courts do not have a mechanism of hate crime data disaggregation. Hate crimes are examined as regular cases.
Step 8 The Courts issue judgements on the hate crime cases but no specific data is collected in this respect. If needed, the information has to be extracted manually.	Step 8 The lack of a special hate crime data disaggregation mechanism makes impossible to collect and generalize judicial statistics in this respect.
Step 9 The Courts summarize the data on the basis of initial evidence, in accordance with the “Instruction regarding secretarial work in the courts” and send each trimester statistical reports to Agency for the Administration of the Courts, which collects, verifies and generalizes all the information.	Step 9
Step 10 Superior Council of Magistracy and the Ministry of Justice publish statistical reports every 6 and 12 months on the activity of the first level courts and courts of appeal. These reports don’t provide any hate crimes disaggregated data.	Step 10 Statistical reports provided by the Superior Council of Magistracy offer general data on criminal offences, grouped by categories of rights. Thus, it is impossible even to ascertain the number of criminal offences related to hate crimes.

Recommendation 9, for all stakeholders: Current and proposed recording and reporting forms used by the police, prosecutors and courts should reflect the above operational definitions and bias motivation categories, which should be extracted, if needed, at the data collection stage.

There are two main technical purposes for flagging hate crimes across the system in line with a clear definition.

1. To ensure that investigators are able to flag cases as hate crimes as soon as possible, to increase the chance of unmasking bias motive during the investigation and, to ensure that evidence and victim needs to be highlighted as early as possible when transferring to the prosecution stage;
2. To ensure that performance management information and statistics that are created by these flags and other data sets are as complete and comparable as possible. In other words, it is possible to trace a case from the investigation to prosecution to sentencing stages and pinpoint weaknesses in the system.

The ‘nomenclature’ guidance that regulates the categories of all case files should be revised to allow for the police to record the necessary hate crime flag and bias indicators at the time a report is made to them, a template report could also be created and added to the police report for both case handling and statistical purposes.

Creating the connections to allow the sharing of data as set out above is also dependent on the current crime recording system in the Republic of Moldova, which should be amended to allow the creation of a (potential) hate crime flag that can be shared across the prosecution and sentencing stages and that allows the ‘register of criminological information’ to produce police disaggregated statistics on hate crime. The authorities of the Republic of Moldova should make the consideration of the flag mandatory in both the initial statement taking by the police as well as at the statistical stage in order to increase the chance that bias indicators and victims needs are considered and addressed *and* to increase the quality of their statistics.²³ It should also be possible to flag more than one bias motive. In the absence of a shared electronic system, the transfer of the ‘flag’ between the investigation and prosecution stages might need to take place manually between specialist units in the two agencies.²⁴ In addition, the prosecutor’s office and courts service will need to create a statistical module to allow the production of hate crime prosecution and sentencing statistics according to the definitions set out above.

What this means is that at the time of receiving a report of a potential hate crime, the police should be able to capture the following information from the reporter.

²³ This practice is currently in place in Ireland, Spain, Sweden and the United Kingdom, and elsewhere.

²⁴ For example, in the Republic of Georgia the Human Rights Unit in the Ministry of Internal Affairs (police) refers flagged cases of hate crime to the Human Rights Unit in the Prosecutors Office.

- the type of base or ordinary criminal offence based on the criminal code of the Republic of Moldova (e.g. offences against the life and health of the person, offences against freedom, honour and dignity, etc.)
- the bias motivation/ 'intolerance ground', specifically defined in the recording forms (referring to the above 'meta' categories)
- a brief description about what happened
- the specific bias indicators, including the perception of the victim or any other person.
- risk indicators and necessary action
- victim needs, including whether they have been or need to be referred to support
- the connection between the victim/witness and alleged perpetrator,
- location of crime
- age, and other related data
- the police should then be able to assess whether the incident is a potential hate crime and capture this in their report using a hate crime 'flag'.

The statistical system should be able to capture the hate crime flag and key information recorded by the police in their report, including the disaggregated crime type and bias motive and other data deemed necessary by national stakeholders.

The police system should be able to transfer the 'flag' and relevant information to the prosecution stage and the prosecution stage should be able to receive this information.

It is important that, where possible, the recording systems are embedded into existing recording processes that are designed to trigger consideration of recording and create the least possible bureaucratic demands on operational staff. The table below presents the information that is currently recording and collected and suggests specific improvements based on the criteria listed above.

Statistical and monitoring departments within the police, prosecution service and the courts should be able to extract information that supports an understanding of the prevalence and impact of hate crime and the effectiveness of responses to it. More precisely this includes:

- The number of reported crimes that are flagged as hate crimes
- The number of investigations flagged as hate crimes
- The number of prosecutions flagged as hate crime prosecutions
- The number of court outcomes flagged as hate crime sentences
- The reasons for why hate crime investigations and/or prosecutions did not progress (e.g. victim drop out, acquittal, etc).
- The number of hate crimes, hate crime prosecutions and hate crime sentences broken down by bias motivation and crime type

Stakeholders could also consider introducing the practice of regular word searches within the text or descriptive sections of police records, based on key search terms related to hate crimes as a way to identify potential hate crimes for statistical purposes. This approach can help implement new systems, however, as it is done retrospectively it is less useful for case handling purposes.

Recommendation 10 for all stakeholders: develop guidance on recording, reviewing and compiling information on hate crimes, including:

- specific examples of hate crimes related to all protected characteristic set out above co-developed with relevant civil society organisations. Focusing on the concepts of ‘by association’, ‘mistaken perception’, ‘mixed motive’ and ‘multiple biases’. This will help ensure that the police and prosecutors are clear about what type of cases can be considered within the definition and increases the accuracy of recording and the chance that the courts will accurately apply relevant provisions.
- future discussions with Ministries and Prosecutors should agree whether monitoring should include all categories or whether specific ‘monitored’ categories that have the greatest impact on communities, should be prioritised for monitoring, in line with recommendation thirteen above. For example:
 - Evidence suggests that crimes based on intolerance or bias towards LGBT, Roma and Muslim communities and people with disabilities. At a minimum there should be a particular focus on developing comprehensive case examples of and bias indicator sets relating to these groups.
- clearly designated responsibilities at each level (see table two below, which sets out the current and proposed recording and monitoring framework).
- a list of bias indicators²⁵ that must be identified by any party to identify and record hate crimes, and that can be used as evidence to prove that a crime was committed ‘due to prejudiced reasons towards’ any protected characteristic, based on existing case law, where available;²⁶

²⁵ Bias indicators are objective facts, circumstances or patterns connected to a criminal act that, alone or in conjunction with other indicators, suggest that the offender’s actions were motivated in whole or in part by bias, prejudice or hostility. For example, if a perpetrator uses racial slurs while attacking a member of a racial minority, this could indicate a bias motive and be sufficient for the responding officer to classify a crime as a likely hate crime. By the same token, the desecration of a cemetery or an attack on a gay pride parade may be bias indicators of anti-religious or anti-LGBT motivation (p. 15, Hate Crime Data Collection and Monitoring Mechanisms: A practical Guide, ODIHR, 2014).

²⁶ See also FRA (2018)

- specific definition of the term ‘hate crime’, ‘hate crime prosecution’, ‘hate crime sentence’ to be incorporated into relevant guidance, guidelines and training;²⁷
- In developing recording and data collection guidelines, current examples of good practice can be drawn upon:

‘Hate Crime Data Collection Guidelines and Training Manual’, prepared by the Law Enforcement Support Section and the Crime Statistics Management Unit of the US Federal Bureau of Investigation.²⁸ This document sets out proposed roles and responsibilities for all law enforcement agencies in the US on hate crime recording and data collection, It includes specific examples of each type of monitored hate crime to support law enforcement to identify the diverse range of hate crimes covered by legislation and proposed a ‘two tier’ review system. Frontline law enforcement are responsible for identifying potential hate crimes and crime management personnel are responsible for reviewing and confirming or revising the initial classification.²⁹

The United Kingdom’s College of Policing guidance for the police explains hate crime recording policy, which takes a perception-based approach, in line with ECRI’s policy recommendation 11. It also includes illustrative examples of all hate crimes covered by UK law to aid the police in identifying potential hate crimes.

Recommendation 11 for all stakeholders: consider available guidance and tools from FRA and OSCE/ODIHR’s joint workshops on hate crime recording and data recording. Consider requesting assistance from ODIHR’s INFAHCT programme which provides a detailed review of police hate crime recording and direct capacity-building with technical leads to set up flagging and recording systems.

Training

Recommendation 12 for all stakeholders: In line with the general principles set out above, training – including case studies - should be fully aligned with existing and planned police, prosecutors and judicial guidelines and policy.

Successful implementation of the hate crime recording system of the Republic of Moldova depends on having fully skilled police officers who are capable of identifying, recording and responding to each type of hate crime and having prosecutors and judges with the relevant skills and knowledge to do the same within their mandate.

Cross government cooperation

Recommendation 13 for all stakeholders: Set up an inter-agency working group to oversee the implementation of a joint approach to hate crime recording and data collection as well as other elements of a comprehensive approach to understanding and addressing hate crime.

²⁷ Take into account current approach recommended in PAHCT and in ODIHR’s Hate Crime Laws, a Practical Guide (2009).

²⁸ <https://ucr.fbi.gov/hate-crime-data-collection-guidelines-and-training-manual.pdf>

²⁹ <https://www.college.police.uk/What-we-do/Support/Equality/Documents/Hate-Crime-Operational-Guidance.pdf>

It is recommended that the group is formalised, with membership from all relevant government agencies or departments dealing with any aspect of hate crimes, as well as the CPEDEE and Ombudsman's Office and civil society representatives.³⁰

In agreeing the work and composition of the group, it is recommended that stakeholders review a recently established working group and inter-agency agreement in Greece.³¹

The following points of the agreement can be incorporated into the approach of the Republic of Moldova.

- The agreed definition of hate crime is included in the agreement (Article 1)
- All stakeholders are named in the agreement, including civil society representatives in the form of a national network of NGOs (Article 2)
- The agreement covers many elements of a comprehensive approach to understanding and addressing hate crime, including recording and data collection.
- Specific commitments on improving recording and data collection are made by all signatories (Article 3)
- Commitments to publication and victimization surveys on hate crime are included (see recommendations 18 and 19 below)
- Roles and responsibilities on hate crime recording and data collection are specified (Articles 4, 5, 6, 9, 10, 11, 12)
- Responsibility for sharing information and data, organizing meetings, agendas and meeting costs are specified (Articles 13, 14)

Stakeholders should also consider nominating one body to lead on organising meetings and agendas. Perhaps the CPEDEE would be a good starting point. For example, in Spain, the national human rights institution, OBERAXE plays this function. Stakeholders might also consider agreeing a rotating chair for the group. This means that stakeholders would take turns in chairing the meetings and working with the coordinator on the agenda and any follow up. This ensures that accountability is shared and political leadership is engaged across government departments and agencies.

To address these areas we would further recommend that the Inter-agency Working Group should establish a number of, possibly time-limited, working sub-groups to develop specific areas of policy on hate speech and discrimination as examined below.

Recommendation 14 for all stakeholders: consider the need and usefulness of a country visit to a relevant context.

When considering the form and structure of a national working group and inter-agency agreement, stakeholders should consider learning from other contexts. For example, a country visit to Georgia or Ukraine, countries that are also at a relatively early stage in improving responses to hate crime could be considered. Colleagues can share lessons learned and good practice in setting up new and comprehensive systems that are in line with international standards and norms.³²

³⁰ Based on the baseline and situational analysis reports, it is recommended that The recently established Greece protocol can be drawn as a reference - <https://www.osce.org/odihr/402260?download=true>

³¹ <https://www.osce.org/odihr/402260>

³² Moldovan colleagues can also consider liaising with counterparts in Spain who have also set up successful hate crime recording and data collection systems in recent years.

Cooperation with relevant civil society organisations

Recommendation 15 for all stakeholders: seek and implement opportunities for effective cooperation with civil society organisations that monitor and record hate crimes.

Recent research found that civil society data is and should be understood as an integral part of any national hate crime recording and data collection system.³³ This has been given effect at the national level in *Identoba and others v Georgia* when the European Court of Human Rights held that the Georgian authorities should have been aware of the threat posed to LGBT+ communities based on available civil society data. As a result, those civil society organisations that record and monitor hate crime based on clear, transparent and robust methodologies should be treated as equal partners to the police, prosecution service and judiciary in the efforts of the Republic of Moldova to understand and address hate crime, discrimination and hate speech. Stakeholders should consider ways to deepen cooperation in the area of hate crime recording and data collection. In addition to the benefit of accessing civil society data (in accordance with relevant protections for victim data and confidentiality) this cooperation can increase the quality and depth of relationships, which, in turn can increase the chance that victims will remain engaged in the criminal justice process and develop confidence in the authorities. It is also necessary to work closely with relevant civil society organisations to review, develop and adopt specific awareness-raising and victim-outreach strategies that also address evidenced barriers to reporting including poor police responses and lengthy delays in investigations.³⁴

However, this approach requires resources and the commitment to develop the capacity of civil society organisations that are currently not able to conduct monitoring and victim support to a sufficiently high standard.

The EU Fundamental Rights Agency identifies four types of cooperation with civil society, which are built on by the recommendations in this report:

- exchanging relevant data and information;
- working together to uncover the 'dark' figure of hate crime;
- setting up working groups;
- and co-developing guidelines on, for example, recognising key bias indicators.³⁵

Other considerations

Stakeholders will need to acknowledge that a measure of successful implementation will be a significant increase in recorded hate crimes. It takes leadership to welcome this development as an indicator of improvements in recording by the police and other authorities and an increase in confidence of victims and communities to report them. Adopting this approach should be part of a wider strategy to improve transparency, including regularly publishing data and information about the steps that the authorities are taking to understand and address the problem. This issue should be acknowledged and fully discussed as early as possible.³⁶

³³ Perry, J. (2019)

³⁴ See also opinions from FRA (2018) in and specific section on cooperation with civil society, p17 and p. 27.

See Hate Crime Data Collection and Monitoring Mechanisms: A practical guide, (2014), OSCE, <https://www.osce.org/odihr/datacollectionguide?download=true>; see also ECRI GPR No. 11 in relation to the police, 'To establish frameworks for dialogue and co-operation between the police and members of minority groups'.

³⁵ See FRA, 2018.

³⁶ Draw on the work of the UK in this regard. This can involve reviewing examples of press releases from senior leaders explicitly welcoming increases in recorded hate crime.

Hate speech recording and disaggregated data collection

Recent reports by ECRI and the situational analysis prepared for this report have found that hate speech in the Republic of Moldova is regulated by different laws and procedures, each setting out a slightly different definition, none of which is fully compliant with ECRI GPR No 15.³⁷ Data on hate speech is limited and entirely uncoordinated across agencies and bodies with responsibilities, including law enforcement, the courts, CPEDEE, the Audio-Visual Council, the Press Council and the Central Election Commission, and CSOs. In addition, there are very few prosecuted cases of hate speech under Article 346 and few cases handled by the Audiovisual Council.^{38,39}

According to ECRI (2018) NGOs are the most active in hate speech monitoring. The report 'Hate Speech and Incitement to Discrimination in the public space and media in Moldova'⁴⁰ exemplifies NGO monitoring, awareness-raising and advocacy. The CPEDEE records and addresses incidents of incitement to discrimination, registering 78 complaints between 2013-2019.⁴¹

As is the case in many countries, the evidence that does exist suggests that hate speech is on the rise in the Republic of Moldova. For example, a recent analysis suggests an 83% increase in incidents of hate speech from 2018 to 2019, with significant proliferation through sharing across internet platforms and users.⁴² At the same time, evidence gathered by ECRI and others suggests inadequate responses to hate speech by the authorities, especially during high risk election periods.⁴³

ECRI GPR 15 and other international norms and standards⁴⁴ commit states to develop reliable tools to measure the extent of hate speech and the harm it causes, 'with a view to discouraging and preventing its use and to reducing and remedying the harm caused'. Specific steps include working across criminal justice agencies, equality bodies and civil society to gather and publish 'appropriately disaggregated data'.

Effectively implementing this recommendation requires several steps and the commitment of many actors.

Recommendation 16 for law enforcement, including the cyber-crime unit, prosecution services, the courts, CPEDEE, the Ombudsman's Office, the audio-visual council, the Central Election Commission, and relevant CSOs to consider and agree specific steps forward in recording and monitoring hate speech in the Republic of Moldova.

This includes:

³⁷ See appendix one table two for a full mapping of the Republic of Moldova's hate speech legal framework.

³⁸ See ECRI (2018) and the Situational Analysis

³⁹ Between 2003-2019 only 23 cases were registered under Article 346

⁴⁰ Sliusarenco (2019), see also report by Genderdoc-M (2016)

⁴¹ See situation analysis for further detail

⁴² Sliusarenco, D. (2019)

⁴³ ECRI (2018)

⁴⁴ For EU standards, see for example European Commission (2016), Code of Conduct on countering illegal hate speech

- **Definitions and roles:** Adopt a broad approach to defining hate speech, clearly delineating criminal hate speech, non-crime hate speech incidents and other harmful, non-criminal hate speech.⁴⁵
 - o Criminal hate speech defined by article 346 of the Criminal Code of the Republic of Moldova should be recorded separately by police in line with hate crime recording and data collection procedures set out in the hate crime section of this report, allowing for disaggregation by bias motivation.
 - o Hate speech that falls outside of article 346, but within the definition of hate speech proposed in the revision of the criminal code should be recorded by police as a hate incident⁴⁶
 - o Hate speech that falls outside of article 346 but within the definition of hate speech proposed by ECRI GPR 15 should be recorded by the police as a hate incident.⁴⁷
 - o Hate, or harmful speech that breaches social media platforms' community standards should be recorded as hate incidents (usually by CSOs in the first instance) and referred to the relevant social media company (see below).
 - o The recording and data collection of Hate Speech or other harmful speech that breaches discrimination law should be led by CPEDEE
 - o The recording and data collection of Hate Speech or other harmful speech that breaches the audio-visual code should be led by the audio-visual council
 - o The recording and data collection of Hate Speech or other harmful speech during elections should be led by the Central Election Commission
 - o It is important that a broad, yet specific approach is taken to defining the non-criminal harmful speech that is to be monitored, including against which groups. It is recommended that these incidents are defined as 'non-criminal hate speech incidents'. It is also recommended that stakeholders carefully review national and international standards, as well as national monitoring practice to agree a clear, inclusive and specific monitoring definition of harmful speech. Stakeholders could consider the application of concepts and definitions that have already been applied in hate speech monitoring, in the

⁴⁵ See ECRI GPR No. 15 in full, which defines the key elements of the definition; this is also aligned with the definition set out in 'Guidance on the Framework Decision' prepared for the High Level Group on Racism and Xenophobia, published by the European Commission, 2018.

⁴⁶ It is important to note that the current Article 346 has been assessed as both vague and non-inclusive by the situational analysis and elsewhere. The draft Criminal Code proposes a more specific and inclusive hate speech offence, "Inciting to violent actions on the grounds of prejudice", which will mean any "Deliberate actions to public exhortations, the dissemination of information or other forms of informing the public, including through the media, in written form, drawing or image, or through a computer system, aimed at inciting to hatred, violence or discrimination, based on prejudice reasons". Appointing the police as the lead in recording such incidents under its hate incident recording system would be aligned with the likely future role in policing the revised hate speech offence.

⁴⁷ Hate speech ... entails the use of one or more particular forms of expression - namely, the advocacy, promotion or incitement, or the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression - that is based on a non-exhaustive list of personal characteristics or status that includes "race", colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation.'

Republic of Moldova for example, in the situational analysis (Part II of this report).

- **Coordination and data sharing:** due to the variety of hate speech, both criminal and non-criminal, and the number of agencies that are responsible, it is important that agencies and organisations work to establish definitions and referral protocols and share data for prevention and response purposes, while ensuring the protection of personal data. For example, where the police receive a report of harmful speech that falls within the code of audio visual services or law for ensuring equality, there should be a clear process to record it as a hate incident and to refer the incident to the appropriate body, whether the CEPEDEE or the broadcast regulator. CSOs conducting monitoring should also have clear referral procedures and lines of communication. It should also be clear how to record and refer instances of breaches of social media platforms' community standards. Due to the high volume of hate speech and the numerous stakeholders, it is recommended that regular meetings are held, within the structures outline in the above section.
- **Work with social media companies:** much of the harmful speech online does not qualify as a criminal act, yet might breach social media companies' community standards. Alternatively, the speech might be criminal, yet can only be removed by social media companies. The relevant government ministries should seek to explore being appointed 'trusted flaggers' by, for example Google (You Tube) and develop and support the capacity of CSOs to play this role. In setting up these structures, government ministries should draw on the EU Code of Conduct on countering illegal hate speech and related practice.⁴⁸
- **Capacity building-** law enforcement and prosecutors should receive training on investigating and prosecuting criminal hate speech. All stakeholder should receive training on agreed definitions or hate speech and non-crime hate speech incidents their application in terms of recording, monitoring, data collection and responses.
- **Prioritising** - If there is a need to prioritise the monitoring of specific forms of hate speech, the situational analysis suggests that hate speech disproportionately affects LGBT communities, women, Roma communities, linguistic minorities and people with disabilities.

It is vital to note that work to improve hate speech recording and data collection takes place in a broader context of leadership in terms of politicians refusing to engage in hate speech as well as consistently challenging and countering the problem, and a broader strategy to understand and counter hate speech, including education and awareness raising.⁴⁹

⁴⁸ European Commission (2016)

⁴⁹ See the No Hate Speech movement resources for many relevant tools.

Recording and disaggregation of data on discrimination

As set out in appendix one, table three, the anti-discrimination framework of the Republic of Moldova is comprised of a mix of criminal and civil offences.

As explained in the Situational Analysis, article 10 of the Law on ensuring equality, confers duties and powers relating to identifying and responding to discrimination on the CPEDEE, Public Authorities and the Courts. The CPEDEE plays a central role in recording and monitoring instances of non-criminal discrimination and is legally bound to collect information on the nature and trends of discrimination at the national level. In addition, the CPEDEE is a quasi-judicial body, and accepts and rules on individual claims of discrimination. Therefore, the body can report on the prevalence of discrimination and on its recorded complaints and issued decisions

The CPEDEE can be considered an example of good practice regionally and in the context of this project overall. It fulfils and uses its powers comprehensively and with initiative. For example, its national perception surveys, published in 2015 and 2018 show the challenges but also the development of national attitudes towards minority groups over time in the Republic of Moldova. While negative attitudes towards LGBT people, people living with HIV, detainees, persons with mental and intellectual disabilities and Muslims are the most negative, they slightly improved between the two surveys suggesting positive, albeit, slow progress.

Since 2013, CPEDEE has comprehensively and transparently published annual reports of its activity, including disaggregated data on complaints, examined cases and issued decisions. Its website also allows relatively detailed searches of its case law database by the general public. Interestingly, the number of recorded cases has significantly increased between 2013 and 2018 from 44 to 247 cases.⁵⁰ This suggests that the organisation has improved its visibility and effectiveness in relation to identifying, recording and dealing with cases. It is important to note that cases can be directly reported to the courts, in which case the CPEDEE will not necessarily be made aware of the case. This point is further discussed in the recommendations below. Neither the Ombudsman’s office, nor the courts publish relevant disaggregated information on discrimination issues.

Table two: step by step process by which CPEDEE records cases and collects data.

CPEDEE	
Step of the case recording and disaggregated data collection	Gaps
Step 1 The discrimination complaint is recorded by the CPEDEE, in accordance with the Law on ensuring equality provisions.	Step 1 no gaps identified
Step 2 Data entered onto spreadsheet by the responsible employee. The data is entered manually into an excel document, which is the main data base of disaggregated data.	Step 2 No gaps identified

⁵⁰ For a detailed breakdown of these cases, see the Situation Analysis and www.egalitate.md

<p>Step 3</p> <p>The case is examined by the CPEDEE as a quasi-judicial body and a decision is issued.</p>	<p>Step 3</p> <p>No gaps identified</p>
<p>Step 4</p> <p>The data base is updated with information relating to the decision, after the case is examined by the CPEDEE.</p>	<p>Step 4</p> <p>No gaps identified</p>
<p>Step 5</p> <p>Disaggregated data is uploaded on the online data base, on the web page of the Council.</p>	<p>Step 5</p> <p>The online database is updated by manually introducing disaggregated data from the main data base (the excel spreadsheet). This can lead to the duplication of the work and delays in updating online database.</p> <p>A unique database, connected automatically to the web page of the Council would improve the mechanism of disaggregated data collection.</p>
<p>Step 6</p> <p>When a complaint refers to hate crimes or is in the competency of other authorities, CPEDEE refers the case to the relevant institution.</p>	<p>Step 6</p> <p>The data regarding referred cases is not disaggregated and should be extracted manually.</p> <p>This process should be underpinned by an inter-institutional protocol between CPEDEE, law enforcement and other relevant agencies.</p>
The Courts	
<p>Step 7</p> <p>a) In case when one of the parts of the process before CPEDEE is appealing its decision, the case will be examined before the Courts, in the special administrative proceedings. The data regarding these proceedings is collected by the CPEDEE and summarized in the annual or special reports.</p> <p>b) Individuals can submit a discrimination complaint directly to the courts. In this case, there is no disaggregated data collected.</p>	<p>Step 7</p> <p>The Courts examine discrimination cases as common civil cases, which do not allow to record and collect specific data.</p> <p>The Courts do not collect statistical information that would allow the extraction of disaggregated data on discrimination matters. This should be developed.</p> <p>A specific protocol between the CPEDEE and the Courts should be developed to ensure that the courts are alerted to potential discrimination cases and record them as such and where the courts inform the CPEDEE where cases of discrimination are directly referred to the courts.</p>
<p>Step 8</p>	<p>Step 8</p>

<p>At the end of the year, CPEDEE summarizes and analyzes the data in their annual report. The report is published on the web page of the Council. Some of the reports are translated into Russian and English language.</p>	
<p>Step 9 CPEDEE presents in the Parliament their general reports on the situation in the field of preventing and combating discrimination.</p>	<p>Step 9 The reports are presented to the parliamentary commissions and not in the plenum of the parliament, the fact that may undermine the importance of the presented conclusions and recommendations.</p>

Recommendation 17 to all relevant stakeholders, including the CPEDEE, Ombudsperson's, Police, Courts and relevant CSOs. It is recommended that stakeholders consider whether the legal definition of discrimination set out in Articles 2 and 7 of the Law 121/2012 on ensuring equality should be the basis of a shared and comprehensive definition of discrimination:

“any difference, exclusion, restriction or preference in the rights and freedoms of a person or a group of persons, as well as the support of the discriminatory behaviour based on the real or assumed criteria, stipulated by the present law, including race, colour, nationality, ethnic origin, religion or belief, sex, age, disability, opinion, political affiliation or any other similar ground, in the political, economic, social, cultural fields and other fields of life”. Article 7 of the law expressly stipulates that „prohibition of discrimination on grounds of sexual orientation shall be enforced in the field of employment and recruitment”.

It is recommended that the definition ensures that incidents of discrimination on the grounds of sexual orientation relating to all acts of discrimination are recorded and monitored and that it allows monitoring of the following discriminatory acts, even if they are not currently covered by Moldovan law, in line with the applicable ECRI General Policy Recommendations,

- Acts of segregation, discrimination by association, and announced intention to discriminate, as recommended in ECRI's GPR No. 7, §6.
- Harassment, including sexual harassment, related to one of the enumerated grounds, as recommended in ECRI's GPR No. 7, §15.

Recommendation 18 to the CPEDEE and the courts: jointly clarify the current process for recording and monitoring cases of discrimination and identify actions for improvement.

As set out in detail in the above table, there are two main ways that discrimination cases are registered and addressed:

1. The case is directly referred to and dealt with by the CPEDEE. Data is recorded, analysed

and published according to its comprehensive procedures described in this section. The CPEDEE's existing process could be improved by developing a dedicated database, connected automatically to the web page of the Council to replace the manual spreadsheet system, which would reduce the risk of errors.

In addition, the process of referral for incidents that fall outside the competence of the CPEDEE and within the competence of another agency, for example the police in the case of hate crime or a non-crime hate incident, should be underpinned by an inter-institutional protocol between CPEDEE, law enforcement and other relevant agencies.⁵¹

2. The case is either directly lodged with the court (not the CPEDEE) or progresses to the courts as part of the appeal process of a CPEDEE decision. Data on court outcomes should be captured and published.

A specific protocol between the CPEDEE and the Courts should be developed to ensure that the courts are alerted to potential discrimination cases and record them as such and where the courts inform the CPEDEE where cases of discrimination are directly referred to the courts.⁵²

Each body should agree to record cases with a discriminatory element (within the meaning of Recommendation 22 above) using a shared method. For example, a simple template with basic information on the case and the grounds of alleged discrimination could be completed by each party and collated by court staff at the time the case is registered for submission to an identified department in the relevant court for data collection purposes.

Stakeholders should consider introducing a simple yes/no question, within existing court registration procedures and processes, on whether a case involves potential discrimination. If a claim of discrimination is an element of the case, the recording template should be completed and submitted to the relevant court body for data collection purposes. If not, no further action need be taken.

For discrimination cases laid before the court reviewing officials should identify those that include an allegation of discrimination. Where such a case is noted a Discrimination Case Questionnaire should be commenced and appended to the file. Stakeholders could agree that cases referred by the CPEDEE can be automatically be flagged as discrimination cases.

This agreement could be reflected in a memorandum of understanding between the CPEDEE and the relevant court authorities.

It is also recommended that relevant court staff are trained by the CPEDEE to identify potential discrimination cases.

The relevant lawyers' association should also agree to flag discrimination cases and alert the CPEDEE on the basis of a memorandum of understanding.

⁵¹ The relevant institutions could draw on good practice from Italy between the Ministry of Interior and the equality body in this regard (OSCAD and UNAR)

⁵² Stakeholders could draw on the work of the Supreme Court of Georgia in this regard, which has set up a dedicated database for potential discrimination cases.

Hate incidents, administrative offences and other

Sub-criminal hate-motivated incidents that do not reach the threshold of a criminal offence can still cause significant harm and should be monitored by the authorities. These incidents could include cases of discrimination, which are the remit of the CPEDEE, cases of non-criminal hate speech, which could be the remit of the CPEDEE, the Audio-visual council or for the police for intelligence and crime prevention purposes. As such, recording and data collection procedures also require a carefully coordinated, inter-institutional approach.

Recommendation 19: the inter-agency group (see above) should establish a working sub-group to develop an agreement to record and monitor sub-criminal hate incidents according to the following definition:

“any **incident** that is due to prejudice towards the listed protected characteristics but that does not reach the threshold of a criminal offence.

This approach allows the authorities, and the police in particular, to monitor incidents that have a high impact on victims and affected communities and address them before they escalate in seriousness. It also allows closer cooperation with relevant civil society groups that are also monitoring such incidents.

The inter-agency group should also develop policy that defines the relationship between hate speech and non-crime hate incidents, specifically to recommend on whether all non-crime hate speech reports should be de-facto recorded as non-crime hate incidents or be reported as a sub-category.

This would involve adding a category of ‘hate incident’ to police and other agency recording methods. It would also involve regular review of the data to identify patterns, trends and outcomes, which could be done within the framework of the proposed inter-agency working group.

Specific recommendations for the Office of the Ombudsman

Recommendation 20: focus on capacity building of Ombudsman’s Office

As explained in the Situational Analysis, the Office of the Ombudsman does not currently collect disaggregated data on hate crime, hate speech or discrimination and is in the process of developing a new system entitled INTRANET. It is recommended that specific and targeted capacity building is undertaken with the Office, drawing on international good practice, also in conjunction with the CPEDEE.

Appendix 1. Relevant law and information about recording and data collection practices in the Republic of Moldova in the context of international norms and standards

Many national legal frameworks contain some discrepancy and conflation across the hate crime, hate speech and discrimination concepts. As set out in the main report, systems and tools to record and monitor these harms are patched together using different, incompatible and often manual systems. Evidence suggests that offences where aggravated sentencing provisions apply, such as Article 77 of the Criminal Code of Moldova are rarely identified, applied and captured across the system.

In order to address these issues, the main report recommends specific principles are followed, shared monitoring definitions of hate crime, hate speech and discrimination are adopted and used to improve outcomes for victims and to produce disaggregated data.

To assist in understanding how the recording and data collection system of the Republic of Moldova can be better aligned with international norms and standards, and shared definitions adopted at the national level, the tables below map the Republic of Moldova's legal provisions against internationally agreed definitions⁵³. This should help the Republic of Moldova's legal framework to better integrate with international conceptual definitions. The main document builds on this and proposes specific definitions for the Republic of Moldova and the various agencies, institutions, organisations and government ministries.

The main recommendations document sets out in detail how the Republic of Moldova can set up and implement a joint hate crime, hate speech and discrimination recording and data collection system by agreeing joint definitions, guidelines and training, shaped by overarching principles. This appendix sets out relevant provisions in the criminal code of the Republic of Moldova, as well as relevant administrative and civil code provisions according to internationally agreed definitions of the hate crime, hate speech and discrimination concepts. The fit is awkward in places, splitting single criminal code provisions and there is room for discussion across stakeholders on the best approach. For the first draft, the aim is to illustrate how legal provisions might be organised in the Republic of Moldova's proposed recording and data collection system in a way that meets international norms and standards.

⁵³ Also see Baseline Study and Situational Analysis reports prepared for this project, along with the Criminal Code of the Republic of Moldova.

Table one: Integrating the Criminal Code of the Republic of Moldova with the internationally agreed definition of hate crime

Hate crime defined as, <i>A criminal act committed with a bias motivation (list of crime types and protected characteristics)</i>	Comments
<p>Article 77. Aggravating Circumstances ⁵⁴ (1) When determining punishment, the following shall be considered as aggravating circumstances: [...] (d) the commission of a crime due to social, national, racial, or religious hatred; [...] (2) If the circumstances mentioned in par. (1) are also set forth in the corresponding articles of the Special Part of the this Code as evidence of these criminal components, they may not be concurrently considered as aggravating circumstances. <i>[Art.77 amended by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009]</i></p>	<p>This is a general sentencing provision.</p> <p>The threshold of ‘hatred’ is high</p> <p>Several important categories are missing, including sexual orientation, disability, gender</p>

⁵⁴ The report only reflects the current legislative framework (June 2020).

<p>Article 145. Deliberate Murder (1) The murder of a person shall be punished by imprisonment for 10 to 15 years. (2) Murder [...] (l) committed from motives of social, national, racial, or religious hatred; [...] shall be punished by imprisonment for 15 to 20 years or by life imprisonment. <i>[Art.145 amended by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009]</i></p>	
<p>Article 151. Intentional Severe Bodily Injury or Damage to Health (1) Intentional severe bodily injury or life-threatening damage to health or that caused the loss of sight, hearing, speech or another organ, or the cessation of its functioning, mental disease or some other form of health damage accompanied by the permanent loss of at least one-third of the capacity to work or resulting in a miscarriage or an incurable disfiguration of the face and/or adjacent areas shall be punished by imprisonment for 5 to 10 years. (2) The same action committed: [...] (i) from motives of social, national, racial or religious hatred; [...] shall be punished by imprisonment for 10 to 12 years. <i>[Par. 3 art.151 excluded by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009]</i> (4) The actions set forth in par. (1) or (2) that cause the death of the victim shall be punished by imprisonment for 8 to 15 years. <i>[Art.151 amended by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009]</i></p>	

<p>Article 152. Intentional Less Severe Bodily Injury or Damage to Health</p> <p>(1) Intentional less severe bodily injury or damage to health that are not life threatening and did not cause the consequences specified in art. 151, which, however, are followed by a prolonged health disorder or a significant and permanent loss of less than one-third of the capacity to work shall be punished by community service for 200 to 240 hours or by imprisonment for up to 5 years.</p> <p>(2) The same action committed: [...]</p> <p>(j) from motives of social, national, racial or religious hatred; [...] shall be punished by imprisonment for 5 to 7 years.</p> <p><i>[Art.152 amended by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009] [Art.152 amended by Law No. 184-XVI dated 29.06.2006, in force as of 11.08.2006] [Art.153 excluded by Law No. 292-XVI dated 21.12.2007, in force as of 08.02.2008] [Art.154 excluded by Law No. 292-XVI dated 21.12.2007, in force as of 08.02.2008] [Art.154 amended by Law No. 184-XVI dated 29.06.2006, in force as of 11.08.2006] [Art.154 amended by Law No. 211-XV dated 29.05.03, in force as of 12.06.03]</i></p>	
<p>Article 197. Deliberate Destruction or Damaging of Goods</p> <p>(1) Deliberate destruction or damaging of goods, provided that such actions cause damage on a large scale, shall be punished by a fine of up to 1000 conventional units or by community service for 240 hours.</p> <p>(2) The same actions: [...]</p> <p>b) committed out of social, national, racial, or religious hatred; [...] shall be punished by imprisonment for up to 6 years.</p> <p><i>[Art.197 amended by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009] [Art.197 amended by Law No. 184-XVI dated 29.06.2006, in force as of 11.08.2006] [Art.197 completed by Law No. 211-XV dated 29.05.03, in force as of 12.06.03]</i></p>	

<p><i>12.06.03] [Art.198 excluded by Law No. 292-XVI din 21.12.2007, in force as of 08.02.2008] [Art.198 amended by Law No. 184-XVI dated 29.06.2006, in force as of 11.08.2006] [Art.198 amended by Law No. 211-XV dated 29.05.03, in force as of 12.06.03]</i></p>	
<p>Article 222. Profanation of Graves and monuments</p> <p>(1) Profanation by any means of a grave, a monument, a funeral urn or a corpse and the appropriation of objects inside or on a grave shall be punished by a fine in the amount of 200 to 500 conventional units or by community service for 180 to 240 hours or by imprisonment for up to 1 year.</p> <p>(2) The same actions committed: [...]</p> <p>(b) because of social, national, racial or religious hatred, shall be punished by a fine in the amount of 750 to 900 conventional units or by community service for 200 to 240 hours or by imprisonment for up to 3 years.</p>	

Table two: Hate speech

Monitoring definition of hate speech defined as:	Comments/ recommendations
<p>Hate speech ... entails the use of one or more particular forms of expression - namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression - that is based on a non-exhaustive list of personal characteristics or status that includes "race", colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation.</p>	<p>There are several approaches to defining hate speech in Moldovan Law including in the audio-visual code and Article 346 (below). In addition, Article 346 has been revised and improved in the draft criminal code. Approaches to defining and recording criminal and non criminal hate speech are discussed in the body of the report.</p>
Legal provisions	

<p>Law no. 64/2010 On the freedom of expression</p> <p>"hate speech is any form of expression that causes, propagates, advocates or justifies racial hatred, xenophobia, anti-semitism or other forms of intolerance-based hatred".⁵⁵</p>	
<p>Code of Audiovisual Media Services, n. 174 from 8.11.2018</p> <p>"hate speech is a message that propagates, incites, promotes or justifies racial hatred, xenophobia, antisemitism or other forms of hatred based on gender, racial or ethnic origin, nationality, religion or belief, disability or sexual orientation."</p> <p>Article 11: (see definition above) in audiovisual products, meanwhile article 84 (9) establishes fines of 40 000 lei (about 2 000 Euro) to 70 000 lei (about 3 500 Euro). In case of repeated violation, the fine amount might be between 70 000 lei and 100 000 lei (about 5 000 Euro). In case of repeated violations, the Audiovisual Council might withdraw the retransmission authorization or even the license of the provider of audiovisual products.⁵⁶</p>	
<p>The law on ensuring Equality, includes incitement to discrimination</p> <p>"incitement to discrimination - any behaviour by which a person applies pressure or displays intentional conduct for the purpose of discriminating against a third person on the basis of the criteria stipulated in this law". CPEDEE uses this definition to also cover in its practice hate speech related cases.</p>	<p>This is also relevant to the discrimination section.</p>

⁵⁵ Law no. 64 on Freedom of Expression of 23 April 2010.

⁵⁶ The Code of Audiovisual Media Services no. 174 of 08 November 2018, art. 11 para. (2)

<p>Law on ensuring equal opportunities for men and women no. 5/2006 regulates sexist language, which is defined as "expressions and addresses that present the woman and the man in a humiliating, degrading and violent manner, offending their dignity" - and looks like a specific form of hate speech, on the grounds of sex.</p>	<p>Questions about whether this provision is used?</p>
<p>Article 346 from the Criminal Code regulates intentional actions aimed at incitement to enmity, differentiation and discord, based on nationality, ethnicity, race and religion, which are "deliberate actions, public calls, including through either printed or electronic media, aimed at inciting national, racial or religious hostility or discord, the humiliation of national honor and dignity, direct or indirect limitation of rights or offering direct or indirect advantages to citizens by virtue of their national, ethnic, racial or religious affiliation."</p>	<p>While this provision would be described as a hate crime provision by national authorities, it falls within the hate speech concept in terms of the international framework. It is also a mixed hate speech and discrimination provision. According to the situational analysis, 'The rule is unclear and restrictive. Expressions "the humiliation of national honor and dignity" and "direct or indirect limitation of rights or offering direct or indirect advantages" are abstract, especially given the lack of their practical understanding. Moreover, the term "discord" is unclear. It is not explained by international law and standards and cannot be sufficiently predictable for the purpose of criminal law. Thus, article 346 cannot meet the current needs, and in particular, it cannot provide protection for most of the groups affected by hate speech, because of the limitation of the protected characteristics: national, ethnic, racial and religious affiliation [add this to the introduction overview of gaps in national legislative framework (see also ECRI) report] According to the situational analysis, the proposed criminal code provisions modify Article 346 to "Inciting to violent actions on the grounds of prejudice", which will mean any "Deliberate actions to public exhortations, the dissemination of information or other forms of informing the public, including through the media, in written form, drawing or image, or through a computer system, aimed at inciting to hatred, violence or</p>

	discrimination, based on prejudice reasons”.
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Table three: Discrimination

Monitoring definition of discrimination (adapted from ECRI GPR No. 6 to cover all forms of discrimination): "discrimination" shall mean any differential treatment based on the grounds set out in civil legislation (See below), which has no objective and reasonable justification”	Comments/ recommendations
<p>Law 121/2012 on ensuring equality, article 2</p> <p>Defines discrimination as “any difference, exclusion, restriction or preference in the rights and freedoms of a person or a group of persons, as well as the support of the discriminatory behaviour based on the real or assumed criteria, stipulated by the present law” Criteria include, ‘race, colour, nationality, ethnic origin, religion or belief, sex, age, disability, opinion, political affiliation or any other similar ground, in the political, economic, social, cultural fields and other fields of life.</p> <p>Article 7 of the law expressly stipulates that „prohibition of discrimination on grounds of sexual orientation shall be enforced in the field of employment and recruitment”.</p>	<p>This is a comprehensive provision, however, protection on the grounds of ‘sexual orientation’ appears to be limited to employment and recruitment⁵⁷</p>
<p>Article 16 of the Constitution: "all citizens are equal before the law and public authorities regardless of race, nationality, ethnic origin, language, religion, sex, political affiliation, financial position or social origin". The list of protected grounds provided by the Constitution is exhaustive, which limits the applicability of the guarantee to a few social groups.⁵⁸</p>	
<p>Article 32 (3) of the Constitution establishes that “the law shall forbid and prosecute all actions aimed at denying and slandering of the State and people, instigation to sedition, war of aggression, national, racial or religious hatred, incitement to discrimination, territorial separatism, public</p>	<p>As stated in the situational analysis ‘The regulation is deficient because it combines concepts that are different in essence: a) aggressive manifestations expressed against the state</p>

⁵⁷ From the situational analysis: race, color, nationality, ethnic origin, religion or belief, sex, age, disability, opinion, political affiliation or any other similar ground, in the political, economic, social, cultural fields and other fields of life. Article 7 of the law expressly stipulates that „prohibition of discrimination on grounds of sexual orientation shall be enforced in the field of employment and recruitment”.

⁵⁸ The Constitution of 29 July 1994, in force since 27 August 1994, article 16

<p>violence, or other manifestations encroaching upon the constitutional order”.</p>	<p>and its integrity; and b) intolerant manifestations expressed against different groups of people.’</p>
<p>article 8 of the Labor Code prohibits discrimination in the employment area on grounds of sex, age, race, skin colour, ethnicity, religion, political affiliation, social origin, residence, disability, HIV/AIDS infection, affiliation or trade union activity, and on other grounds not related to the employee’s professional skills.⁵⁹</p>	
<p>2012 Law on Ensuring Equality and establishment of the Council for prevention and elimination of discrimination and ensuring equality (CPEDEE), set up the premises for a new, wide and efficient anti-discrimination mechanism.</p>	<p>This appears to be a relatively effective body.</p>
<p>The Law on ensuring equality operates with the notion of incitement to discrimination, which is defined as "any behavior by which a person applies pressure or displays intentional conduct for the purpose of discriminating against a third person on the basis of the criteria stipulated in this law". CPEDEE uses this definition to also cover in its practice hate speech related cases.</p>	<p>According to the situational analysis there is a gap: although CPEDEE strongly relies on international standards when applying it, the definition of incitement to discrimination does not refer to the "perceived" link between a person and a protected criterion, or to the intention to discriminate, to incite to discrimination and support someone to discriminate.</p>
<p>Article 176 of the Criminal Code regulates offences regarding violations of citizens’ equality”, which is “any distinction, exclusion, restriction or preference in rights and freedoms of a person or a group of people, any support for discriminatory behaviour in political, economic, social, cultural and other spheres of life on the grounds of race, nationality, ethnicity, language, religion or beliefs, sex, age, disability, opinion, political affiliation, and on any other criterion, which: a) was committed by an official, b) caused considerable damages, c) committed by placing discriminatory messages and symbols in public places, d) committed on the basis of two or more grounds, e) committed by two or more persons”. The same actions committed by means of mass media, or which caused by</p>	<p>As stated in the situational analysis, ‘Even though this provision could cover a wide range of actions motivated by discriminatory reasons, in practice it is almost inapplicable, because of complicated wording and unclear subjects and circumstances of the offence.’</p> <p>This provision includes hate crime elements ‘ causing death’; also hate speech</p>

⁵⁹ Labour Code of 28 March 2003, Art. 8 para. (1).

<p>imprudence the death or suicide of the victim, are considered aggravating circumstances.</p>	<p>provisions, 'committed by placing discriminatory messages and symbols in public places (could also cover graffiti). Recommendation about case handling/guidelines on the use of these provisions?</p> <p>This is a discrimination and hate speech provision – mixed. There might be some scope for sharing approaches with Ukraine, which also has this provision and has worked with ODHIR on innovative ways to use this provision to effectively prosecute hate crime cases that are not covered by aggravating circumstances provisions.</p>
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**PART TWO: Situational analysis on discrimination, hate crime and hate
speech disaggregated data collection in the Republic of Moldova**

Introduction to situational analysis

This report analyses national disaggregated data collection mechanisms regarding discrimination, hate crimes and hate speech in the Republic of Moldova. It also evaluates national legal framework and practices in these fields, through international norms, standards, good practices and research. The main aim of the report is to make useful and practical recommendations, adapted to the national context, that could serve as a helpful ground for development of the further stages of intervention and improvement of the existing status quo. This report was drafted after a thorough analysis of existing data and consultations with the relevant stakeholders, dealing with the report topics.

The Republic of Moldova has made important progress to develop a national anti-discrimination legal framework, which is in line with international law and standards. The adoption of 2012 Law on Ensuring Equality and establishment of CPEDEE, set up the premises for a new, wide and efficient anti-discrimination mechanism. Even though CPEDEE collects a large amount of disaggregated data, it remains the only state institution to provide this type of information, neither the Ombudsman's office, nor the courts are publishing any relevant disaggregated information on discrimination issues.

Even though the prohibition of hate speech is regulated by a series of different laws, as the Law no. 64/2010 On the freedom of expression, The Code of Audiovisual Media Services and additionally by the Law on ensuring equality, which refers to incitement to discrimination, still there is almost no data collected in this regard. Hate crimes are poorly regulated by the Criminal Code, mainly article 346, which refers to intentional actions aimed at incitement to enmity, differentiation and discord, based on nationality, ethnicity, race and religion. Also, article 77 of the Criminal Code establishes the aggravating circumstance of hate based on social status, nationality, race and religion.

This report brings up a general analysis of the national legislation compliance with international standards. It shows that there is no general approach to the data collection process, procedures vary from institution to institution, which makes them highly inefficient. Also, the analysis points out that the national legal framework on hate speech and hate crimes doesn't respect international law and standards. The report also offers an image of the available disaggregated information and mechanism of data collection. It shows that CPEDEE's practices of data recording and collection on discrimination cases is in line with international standards, while the other key institutions, such as the Audiovisual Council, Prosecution and Courts fail to provide relevant statistical information, therefore then the National Bureau of Statistics cannot offer the needed disaggregated data.

The report provides also a step by step analysis of the data recording and collection for discrimination, hate speech and hate crimes. The most pressing needs refer to prioritizing the data collection, improving existing databases and developing new methodologies to ensure efficient processing and disaggregation of data.

The report also points out the main gaps identified during a close analysis of the legal framework and practices and, through consultations with the representatives of the most relevant stakeholders, it includes their views on how the situation can be improved and where the intervention for the Council of Europe project would be needed.

Finally, this report makes a series of recommendations for improving the specific legislative framework on hate speech and hate crimes, the activity and competencies of the relevant stakeholders and the practical approaches to optimize the disaggregated data collection mechanisms.

Methodology

This report is based on the analysis of the existing legal framework and research regarding discrimination, hate speech and hate crimes, relevant practices on disaggregated data collection and international standards. Also, this report is based on information collected from stakeholders, which are responsible in their activity for dealing with discrimination, hate speech and hate crimes or data collection in this regard.

The analysis of the legal framework / practices was made based on the following documents:

- Law 121/2010 on ensuring equality
- Law 64/2010 on freedom of expression
- The Code of Audiovisual Media Services
- Contravention Code of the Republic of Moldova
- Criminal Code of the Republic of Moldova
- Electoral Code of the Republic of Moldova
- Annual and thematic reports of the Council for prevention and elimination of discrimination and ensuring equality, Ombudsman's Office and Audiovisual Council
- Studies on Equality Perceptions and Attitudes in the Republic of Moldova
- National baseline study for assessing the national non-discrimination mechanisms
- Other relevant studies and documents, which offer research and statistical data related to discrimination, hate speech and hate crimes
- International studies and reports of the relevant human rights bodies, such as the European Commission against Racism and Intolerance of the Council of Europe, OSCE, UN bodies and other.

For this purpose, a series of requests were sent to the following authorities: Council for prevention and elimination of discrimination and ensuring equality, the Office of the Ombudsman, the Audiovisual Council, the Central Electoral Commission, the National Bureau of Statistics, the Supreme Court of Justice, the Superior Council of Magistracy, the Ministry of Justice, the Ministry of Internal Affairs, the General Police Inspectorate and the General Prosecution Office.

Information required referred to available data on discrimination, hate speech and hate crimes, procedures of incidents and complaints recording, surveys conducted and other relevant information. Additionally, semi-structured interviews were conducted with representatives of these stakeholders, to cover the following issues:

- Current procedures for recording hate motivated incidents
- Categories of data disaggregation
- Methodologies used for discrimination, hate speech and hate crimes data recording
- The level of collaboration between different stakeholders
- Transparency and data available to public
- Gaps and needs for improving the procedures and mechanisms of disaggregated data collection.

All the information gathered during this research, was compiled and analyzed in the light of international standards and recommendations made by relevant international human rights protection bodies.

Legislative framework

The general principles of equality are set in the article 16 of the Constitution, which provides that "all citizens are equal before the law and public authorities regardless of race, nationality, ethnic origin, language, religion, sex, political affiliation, financial position or social origin". The list of protected grounds provided by the Constitution is exhaustive, which limits the applicability of the guarantee to a few social groups.⁶⁰

Article 32 (3) of the Constitution establishes that "the law shall forbid and prosecute all actions aimed at denying and slandering of the State and people, instigation to sedition, war of aggression, national, racial or religious hatred, incitement to discrimination, territorial separatism, public violence, or other manifestations encroaching upon the constitutional order". The regulation is deficient because it combines concepts that are different in essence: a) aggressive manifestations expressed against the state and its integrity; and b) intolerant manifestations expressed against different groups of people.

Discrimination

The law 121/2012 on ensuring equality⁶¹ is *lex speciales* in anti-discrimination field and establishes an institutional framework to prevent discrimination and ensure equality and regulates the liability for acts of discrimination as well. The law sets out in article 2 the definition of discrimination, which is "any difference, exclusion, restriction or preference in the rights and freedoms of a person or a group of persons, as well as the support of the discriminatory behavior based on the real or assumed criteria, stipulated by the present law". The Law on ensuring equality prohibits discrimination on the following grounds: race, color, nationality, ethnic origin, religion or belief, sex, age, disability, opinion, political affiliation or any other similar ground, in the political, economic, social, cultural fields and other fields of life. Article 7 of the law expressly stipulates that „prohibition of discrimination on grounds of sexual orientation shall be enforced in the field of employment and recruitment”.

In addition to the law on equality, article 8 of the Labor Code prohibits discrimination in the employment area on grounds of sex, age, race, skin color, ethnicity, religion, political affiliation, social origin, residence, disability, HIV/AIDS infection, affiliation or trade union activity, and on other grounds not related to the employee’s professional skills.⁶²

The law on equal opportunities between women and men⁶³ is *lex speciales* in relation to the promotion of gender equality in the Republic of Moldova. The law offers definitions of gender discrimination, sexual harassment and sexist speech. The law also establishes the prohibition of sexist advertising.

A series of other legislative provisions offers non-discrimination guarantees. For example, the Law on the social inclusion of persons with disabilities⁶⁴ regulates the rights of persons with disabilities, in order to ensure their full social inclusion and guaranteeing their participation in all spheres of life without discrimination. The law on the rights of persons belonging to national minorities and the legal status of their organizations prohibits any discrimination on the grounds of belonging to a national minority. Non-discrimination provisions are inserted in civil and criminal procedural laws, law on public procurement and other.

⁶⁰ The Constitution of 29 July 1994, in force since 27 August 1994, article 16

⁶¹ Law no. 121 on ensuring equality of 25 May 2012.

⁶² Labour Code of 28 March 2003, Art. 8 para. (1).

⁶³ Law no. 5 on ensuring equal opportunities for women and men of 9 February 2006.

⁶⁴ Law no. 60 on the Social Inclusion of Persons with Disabilities of 30 March 2012.

Hate speech

Hate speech is regulated by different laws and legal provisions, each of them setting out a slightly different definition. The Law on freedom of expression stipulates a definition which is in fact a mixture of the concepts offered by the UN treaties and the notions proposed by the Council of Europe, and says that "hate speech is any form of expression that causes, propagates, advocates or justifies racial hatred, xenophobia, anti-semitism or other forms of intolerance-based hatred".⁶⁵ This definition is incomplete, it doesn't correspond to international standards set out by ECRI general policy recommendation no. 15, nor does it provide clarity in what the hate speech means. The definition is rather permissive than restrictive, due to the phrases "any form of expression" and "other forms of intolerance-based hatred". Even so, given the lack of additional regulations and a supportive legal framework, complemented by insufficient understanding of the hate speech phenomenon in the Republic of Moldova, the definition is vague and does not meet the practical needs of legal categorization and sanctioning. The definition also has a limited list of protected characteristics.

Another definition of hate speech is established by the Code of Audiovisual Media Services, adopted recently in 2018 and setting out that "hate speech is a message that propagates, incites, promotes or justifies racial hatred, xenophobia, anti-semitism or other forms of hatred based on gender, racial or ethnic origin, nationality, religion or belief, disability or sexual orientation." Article 11 of the Code expressly prohibits the use of hate speech in audiovisual products, meanwhile article 84 (9) establishes fines of 40 000 lei (about 2 000 Euro) to 70 000 lei (about 3 500 Euro). In case of a repeated violation, the fine amount might be between 70 000 lei and 100 000 lei (about 5 000 Euro). In case of repeated violations, the Audiovisual Council might withdraw the retransmission authorization or even the license of the provider of audiovisual products.⁶⁶

The Law on ensuring equality operates with the notion of incitement to discrimination, which is defined as "any behaviour by which a person applies pressure or displays intentional conduct for the purpose of discriminating against a third person on the basis of the criteria stipulated in this law". CPEDEE uses this definition to also cover in its practice hate speech related cases. Even though CPEDEE strongly relates to international standards when applying it, the definition of incitement to discrimination does not refer to the "perceived" link between a person and a protected criterion, or to the intention to discriminate, to incite to discrimination and support someone to discriminate.

The Law on ensuring equal opportunities for men and women no. 5/2006 regulates sexist language, which is defined as "expressions and addresses that present the woman and the man in a humiliating, degrading and violent manner, offending their dignity" - and looks like a specific form of hate speech, on the grounds of sex.

Hate crimes

National legislation does not operate with notions of hate crimes. Criminal and misdemeanour law establishes certain types of offences that could be motivated by hatred or discriminatory reasons. Victims of any deeds, allegedly motivated by hate, can submit

⁶⁵ Law no. 64 on Freedom of Expression of 23 April 2010.

⁶⁶ The Code of Audiovisual Media Services no. 174 of 08 November 2018, art. 11 para. (2)

complaints to the police and/or the prosecution office, which are the main law enforcement bodies.

The Criminal Code⁶⁷ establishes substantive offences and penalty enhancements. Thus, article 176 of the Criminal Code regulates offences regarding violations of citizens' equality", which is "any distinction, exclusion, restriction or preference in rights and freedoms of a person or a group of people, any support for discriminatory behaviour in political, economic, social, cultural and other spheres of life on the grounds of race, nationality, ethnicity, language, religion or beliefs, sex, age, disability, opinion, political affiliation, and on any other criterion, which: a) was committed by an official, b) caused considerable damages, c) committed by placing discriminatory messages and symbols in public places, d) committed on the basis of two or more grounds, e) committed by two or more persons". The same actions committed by means of mass media, or which caused by imprudence the death or suicide of the victim, are considered aggravating circumstances. Even though these provisions could cover a wide range of actions motivated by discriminatory reasons, in practice it is almost inapplicable, because of complicated wording and unclear subjects and circumstances of the offence.

Another substantive offence motivated by hatred is established by article 346 of the Criminal Code. It regulates intentional actions aimed at incitement to enmity, differentiation and discord, based on nationality, ethnicity, race and religion, which are "deliberate actions, public calls, including through either printed or electronic media, aimed at inciting national, racial or religious hostility or discord, the humiliation of national honour and dignity, direct or indirect limitation of rights or offering direct or indirect advantages to citizens by virtue of their national, ethnic, racial or religious affiliation."

The rule is unclear and restrictive. Expressions "the humiliation of national honour and dignity" and "direct or indirect limitation of rights or offering direct or indirect advantages" are abstract, especially given the lack of their practical understanding. Moreover, the term "discord" is unclear. It is not explained by international law and standards and cannot be sufficiently predictable for the purpose of criminal law. Thus, article 346 cannot meet the current needs, and in particular, it cannot provide protection for most of the groups affected by hate speech, because of the limitation of the protected characteristics: national, ethnic, racial and religious affiliation.

Penalty enhancements are provided by article 77 (1) (d) of Criminal Code, which establishes "aggravating circumstances". It stipulates the motivation of criminal offences by social, national, racial or religious hatred. A number of provisions in the Criminal Code expressly contain social, national, racial or religious motivation as an aggravating circumstance for the crime. These are: premeditated murder (Article 145), intentional infliction of serious bodily injury or other serious bodily harm (Article 151), intentional infliction of medium bodily injury or other medium bodily harm (Article 152), deliberate destruction or damage to property (Article 197) and desecration of graves and monuments (Article 222). None of the existing laws or other normative regulations provide an operational definition for hate crimes.

In 2015, the Ministry of Justice developed amendments to a number of provisions of the Criminal Code and Contravention Code, pertaining to certain offences committed with bias motivation. These were the draft laws no. 277 and 301. The draft amendments broaden the scope of general sentence-enhancing provisions in the Criminal and Contravention Codes, while also providing enhanced penalties under a variety of offences when committed with a

⁶⁷ Criminal Code No. 985 of 18 April 2002

bias motivation. This approach is much welcomed and largely corresponds to good practice in this field at the regional and international levels. It is particularly positive that additional protected characteristics have been included beyond the limited “social national, racial or religious” grounds currently mentioned in the Criminal Code.⁶⁸

The draft amendments establish the notion of bias (prejudice) reasons, which will be common for the criminal and contravention code and is regarded to uniform the notions of incidents motivated by hate. The draft law establishes that bias reasons are:

“Preconceived ideas of the perpetrator, based on grounds of race, colour, ethnic, national or social origin, citizenship, sex, gender, language, religion or religious beliefs, political opinions, disability, sexual orientation, gender identity, health status, age and marital status, regardless of whether the deeds refers to the person who possesses such protected characteristics, to his or her goods or to the persons who is associated with these characteristics, unconcerned if this association is a real one or perceived as real.”

The draft amendments substitute the old aggravating circumstances of “social national, racial or religious hatred” with “bias reasons”. This will allow to clearly define the bias reasons and also to increase the number of offences that could be motivated by bias reasons.

The draft amendments also revise the substantive offence on hate crimes, provided by article 346 of the Criminal Code. The name of the offence will be modified to: “Inciting to violent actions on the grounds of prejudice”, which will mean any “Deliberate actions to public exhortations, the dissemination of information or other forms of informing the public, including through the media, in written form, drawing or image, or through a computer system, aimed at inciting to hatred, violence or discrimination, based on prejudice reasons”. The draft law no. 277 was merged with draft law no.301 in 2017, and had been revised several times, now being pending before the parliament.

⁶⁸ See for more information opinions of OSCE regarding draft amendments to the Moldovan criminal and contravention codes relating to bias-motivated offences at the following link: <https://bit.ly/2DPI3zK>

Available data on discrimination, hate speech and hate crimes at the national level

Discrimination

According to the article 10 of the Law on ensuring equality, the subjects with attributions of preventing and combating discrimination are: a) CPEDEE, b) Public Authorities, c) Courts.

CPEDEE plays a central role in recording and monitoring instances of non-criminal discrimination. One of competencies of the Council expressly provided by art.12 (1), e) of the Law the on ensuring equality, is the collection of information on dimensions, condition and the trends of the phenomenon of discrimination at national level. Beside the monitoring responsibilities, CPEDEE is a quasi-judicial body, meaning that it accepts and examines individual claims of discrimination. Thus, it provides important information regarding prevalence of discrimination and factual data regarding recorded complaints and issued decisions.

Even though there is no national victimization survey in the Republic of Moldova carried out by public authorities⁶⁹, CPEDEE periodically conducts national perception studies. The first study on equality perceptions and attitudes was published in 2015 and measures the attitudes and perceptions of the population to different persons and vulnerable and marginalized groups, aiming to assess the social distance expressed by the respondents to the representatives of the vulnerable and marginalized groups and to point out the stereotypes existing in the society.⁷⁰ This study explored on the level of intolerance manifested towards different social groups, measured via the Social Distance Index (SDI). The average social distance index in Moldova turned out to be 2.8.

Figure 1

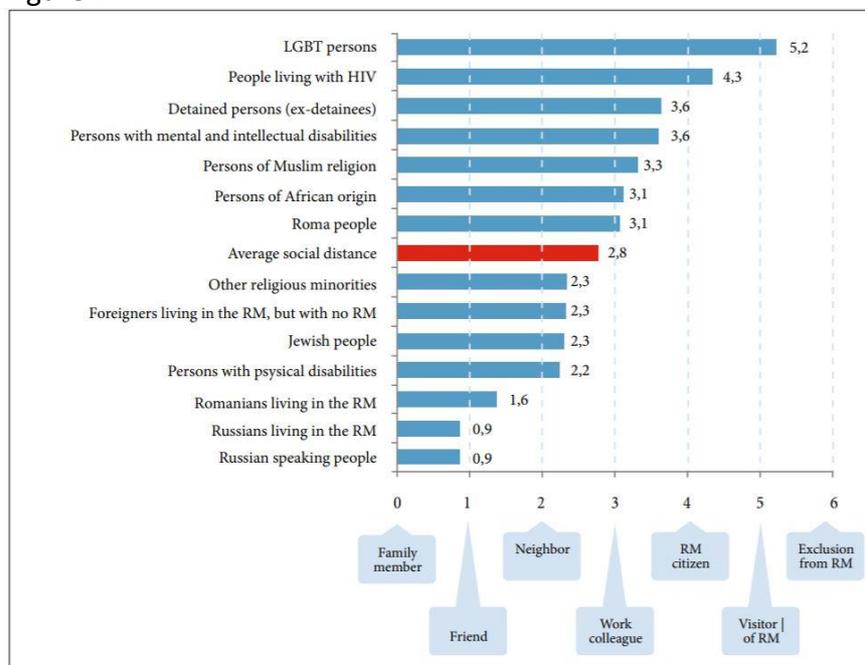


Figure 3. Social Distance Index

⁶⁹ The Soros Foundation carried out in 2010 a sociological study "Nivelul de victimizare a populației în Republica Moldova", Chișinău, 2010

⁷⁰ CPEDEE study on equality perceptions and attitudes in the Republic of Moldova, 2015

LGBT persons, those living with HIV, detainees, persons with mental and intellectual disabilities and Muslims had the highest social distance, meaning the highest level of intolerance in the society. At the opposite pole, Romanians, Russians and Russian speaking persons had the lowest social distance.

A new national study on equality perceptions and attitudes was published in 2018.⁷¹ It explored similar issues and measured again the Social Distance Index (SDI), for the year 2018. It revealed a slight improve of the average social distance, from 2.8 in 2015 to 2.4 in 2018. Still, a high degree of intolerance was identified towards LGBT, persons living with HIV, Roma, detainees and Muslims.

Additionally, CPEDEE periodically conducts studies on specific issues or regarding various affected groups, such as discriminatory tendencies in the employment announcements,⁷² attitudes of the population towards elderly people⁷³ and inclusive education in Moldova⁷⁴.

Besides studies on perceptions and attitudes, CPEDEE publishes specific data regarding recorded complaints, examined cases and issued decisions. This information is available online on the webpage of the Council, www.egalitate.md, in the case-law data base.

A more detailed information is presented in CPEDEE's annual reports of activity, also published on their webpage. In 2013 a first report of activity was published and contained information regarding the advocacy work done by the Council, legal expertise provided for various legal provisions and also the cases considered. In 2013 the Council received 44 complaints, of which 34 were accepted for consideration. During the reporting period the Council issued 12 decisions relating to 14 complaints. The Council members initiated 3 cases ex-officio. Of those 12 decisions issued, 5 addressed access to goods and services issue, 3 to access to justice, 2 to access to education, 1 to discrimination at workplace and 1 to hate speech. Regarding the grounds of discrimination, 4 cases refereed to disability, 4 to language, 2 to opinion, 2 to sex and 1 to sex and HIV status. It is important to mention that the Council started to work de facto in October 2013, meaning that all the above-mentioned information refers to the period October-December 2013.⁷⁵

During the following years, CPEDEE regularly produced this type of reports, which contain disaggregated data regarding recorded complaints and their status, types of decision ruled, breakdown of cases by area of discrimination, grounds of discrimination identified by the Council's decisions, administrative offences established by the Council, the implementation of Council's recommendations and other categories.

The most recent report, published in 2018, shows a high increase of the recorded complaints.⁷⁶ During the year, CPEDEE received 247 complaints and started one *ex officio* case. It issued 213 decisions and offered 30 advisory opinions on cases examined in courts. 64% of the complainants were men and 36% women, while 82% of them came from an urban area and 18% from rural. 151 complaints were addressed in the Romanian language, 96 in Russian and 1 in English. The Council issued 84 decisions of finding discrimination, 34 of not finding and 93 were declared inadmissible. By the field of discrimination, the decisions were assigned as follows: 31% regarded employment, 31% regarded access to justice, 25% regarded access

⁷¹ [CPEDEE study on equality perceptions and attitudes in the Republic of Moldova, 2018](#)

⁷² [CPEDEE study on discriminatory tendencies in the employment announcements, 2017](#)

⁷³ [CPEDEE study on attitudes of the population towards elderly people, 2018](#)

⁷⁴ [Study on inclusive education in Europe and in the Republic of Moldova: reasonable accommodation, access to education and non-discrimination, 2018](#)

⁷⁵ [CPEDEE, Report on the activity carried out in 2013](#)

⁷⁶ [CPEDEE General report on the situation in the field of prevention and combating discrimination in the Republic of Moldova, 2018](#)

to goods and services and 4% each for access to education and human dignity. In the respect of grounds of discrimination, the data shows the following:

- Language - 30,95%
- Disability/Health - 17,86%
- Retirement status - 15,48%
- Sex/maternity - 10,71%
- Religious beliefs and confessions - 4,76%
- Political affiliation - 4,76%
- Age - 3,57%
- Ethnicity - 2,38%
- Syndical activity - 2,38%
- Procedural status -1,19%
- Domicile - 1,19%
- Opinion - 1,19%
- Other – 3.57%

The Council issued 109 recommendations, of which 38 were implemented, 35 were in process of implementation, 21 unimplemented and 15 were appealed in court.

As it can be observed, the Council offers various disaggregated data, covering the most important categories. It shows recorded complaints, issued decisions, grounds and fields of discrimination and the status of implementation. All the information is made public on the Council's website, ensuring a high level of transparency. Additionally, the public can use the case-law data base on the website, to manually navigate and search for relevant information.⁷⁷ The disaggregation criteria are as follows: a) document type (decisions or opinions), b) year when it was issued, c) discrimination form, d) protected grounds, e) area of discrimination, f) type of decision (establishment, non-establishment, inadmissibility, other). The database also offers the option of search by key words and case numbers.

Unfortunately, the database does not allow to access information regarding the status of the issued recommendations.

The People's Advocate (Ombudsman) has large prerogatives in the national human rights system, including the monitoring of the human rights violations, receiving individual complaints and providing support for the victims, prerogatives which are not limited to certain rights, areas or fields. Despite this, the Ombudsoffice does not collect or produce any disaggregated data regarding discrimination, hate speech and hate crimes. According to the information provided for this report,⁷⁸ despite the existence of a complaint recording system since 2000, it does not allow the disaggregation of the information for the matters of discrimination, hate speech and hate crimes.

The Ombudsoffice also doesn't conduct or produce any reports or studies specifically on the topics of discrimination, hate speech and hate crimes. Still, the study on the perceptions of human rights in the Republic of Moldova⁷⁹ contains a separate chapter regarding equality and non-discrimination, which mainly refers to gender equality. It shortly explores the perception data regarding the equality between men and women, discrimination of women in different social contexts, equality of chances between men and women and opinions on discrimination of women.

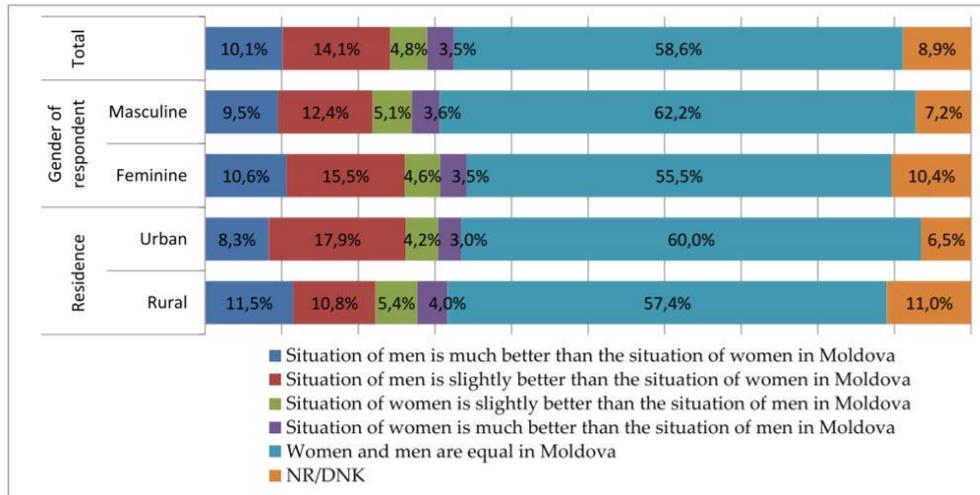
Figure 2

⁷⁷ CPEDEE case-law database, available at: <https://egalitate.md/en/decisions-opinions/>

⁷⁸ Letter of the People's Advocate from 13 November 2019.

⁷⁹ The People's Advocate Office, Study on human rights perceptions in the Republic of Moldova, 2016

Figure 39. Opinions regarding the equality between men and women



The study on the perceptions of human rights in the Republic of Moldova conducted in 2018,⁸⁰ contains similar data and does not analyze in depth the issues of discrimination, hate speech and hate crimes.

The Judiciary system, which includes all 20 courts and the Superior Council of the Magistracy, but also the Agency for the Administration of the Courts uses the so called “Judicial Informational System”, which is a unique database, which all the mentioned entities can access with different access rights. The Judicial Informational System is composed by 4 parts. One of them is the Integrated File Management Programme, which includes the module on statistics, the module for performance measurement and the module BI (Business Intelligence). The latest version, 5.0, has been used by all courts starting from August 2019. The Supreme Court of Justice uses its own data management system.

The Ministry of Justice publishes statistical reports regarding the activity of courts, which include activities related to the criminal code, the civil code, the administrative code and certain special procedures.⁸¹ The Ministry of Justice is the institution which gives the needed data to the National Bureau of Statistics for the analysis of the data from the court system. Nevertheless, none of these collected data refers to equality, discrimination of hate speech. According to the information provided for this report,⁸² by the decision of 26 December 2012, the Superior Council of Magistracy was assigned with the competency to collect and generalize the judicial statistics, using some of the models of statistical reporting of the Ministry of Justice. As a result, on the web page of the Superior Council of Magistracy – www.csm.md was developed a database, named Judicial Statistic. It contains reports published every 6 and 12 months on the activity of the national courts and courts of appeal. Reports are generally categorized based on the type of procedural law: Civil, Criminal and Contravention. Further, each category contains data regarding special proceedings and matters. For example, the Civil law contains reports on administrative procedures, economic and commercial cases, insolvency and special procedures.

Each of these reports contains standard disaggregation criteria, such as the type of legal matter, the number of cases recorded, the number of cases examined, the type of the issued

⁸⁰ The People’s Advocate Office, Study on human rights perceptions in the Republic of Moldova, 2018

⁸¹ See, for example, the website of the Ministry of Justice www.Justice.gov.md, under the category “Studii și analize”

⁸² Letter of Superior Council of Magistracy from 07 November 2019.

decisions, the period of examination and others.⁸³ In civil cases, the type of legal issues refers for example to divorces, employment, property, adoption and other. In total it contains about 65 different categories of matters, but none of them refers to discrimination or hate speech. Moreover, there is not even a category that would generally refer to equality or freedom of expression. Thus, the Superior Council of Magistracy as the main body assigned with the competency to collect and generalize the judicial statistics, does not collect any disaggregated data regarding discrimination and hate speech.

Hate speech

There is no law to expressly regulate a comprehensive mechanism of addressing the issue of hate speech. As mentioned previously in the present report, hate speech is regulated by different laws, lacking clarity and uniformity. It should be therefore considered that in comparison with discrimination, there is no special body to address hate speech cases and to collect special disaggregated data. Some public institutions have competencies to examine hate speech related situations and by these means to collect data. These are the CPEDEE, the Ombudsoffice, the Police, the Courts and the Audiovisual Council.

Note: This refers to the civil aspect of hate speech, the criminal aspect will be analysed in the following subchapter, regarding hate crimes.

The CPEDEE examines cases of instigation to discrimination, which should be regarded as a specific form of hate speech. In its annual report for 2017,⁸⁴ the Council published disaggregated data on the instigation to discrimination cases examined in the period 2013-2017. In this interval, CPEDEE issued 25 decisions of finding instigation to discrimination as follows: 2013: 1 case, 2014: 5 cases, 2015: 4 cases, 2016: 5 cases, 2017: 10 cases. The data disaggregated on the grounds of discrimination shows that in 46%, instigation to discrimination was motivated by grounds of ethnicity, in 27% by sex/gender and in 9% each, by age, disability and sexual orientation.

According to the information provided for this report,⁸⁵ in the period 2013-2019, CPEDEE registered 78 complaints of instigation to discrimination. Of these, the Council issued 41 decisions of finding discrimination. Additionally, in 2017 – 2018 the Council issued 31 advisory opinions on advertising materials and noted that in 21 cases it contained sexist manifestations.

The CPEDEE didn't conduct any specific research or studies on the matter of hate speech until now.

The Ombudsoffice can provide individual support in the matters of hate speech, but, as mentioned previously, it doesn't collect any specific data in this respect.

The Audiovisual Council is doing an ongoing monitoring of the audiovisual providers and has the ability to sanction cases of hate speech in their products. In 2017 – 2018, the Audiovisual Council examined 8 complaints (four per each year) regarding discriminatory and hate

⁸³ Superior Council of Magistracy, Statistical report about the activity of the courts regarding the trial of civil cases for the period of first 6 months in 2019

⁸⁴ CPEDEE General report on the situation in the field of prevention and combating discrimination in the Republic of Moldova, 2017

⁸⁵ Letter of CPEDEE from 28 October 2019

speech, out of which in three cases it applied public warnings and five complaints were rejected.⁸⁶

In its 2018 report on Moldova, ECRI was noted with disappointment that the Council had examined only four complaints between 2014 and 2017 regarding hate speech and recommended the authorities to encourage the Council to take firm action in all cases on hate speech and impose appropriate sanctions, whenever necessary.⁸⁷

According to the information provided for this report,⁸⁸ the data regarding the hate speech identified in audiovisual products is included in the monitoring reports of the Audiovisual Council, published on its webpage: <http://www.audiovizual.md/>. The reports published refer to different monitoring periods, such as electoral campaigns⁸⁹ or specific issues, for example: rights of the children,⁹⁰ monitoring of the advertising or monitoring of specific TV channels. There are no summarizing or statistical reports. To identify cases of hate speech in audiovisual products, all reports have to be analysed manually, as there is no data base to allow the navigation and search, based on disaggregated criteria.

The Police have the competency to investigate misdemeanours that address to some extent the issue of hate speech. The Contravention (Misdemeanour) Code⁹¹ doesn't operate with a notion of hate speech as such, but it regulates actions that contains some elements of hate speech. Article 54, para. 2 prohibits confessional intolerance manifested by acts that impede the free exercise of a religious cult or by acts of propagation of religious hatred. Article 365³, para. 3, prohibits introducing emblems, flags, banners or other materials containing symbols, images or texts with obscene, discriminatory, fascist or extremist content or disseminating it through any means in sports halls, on sports grounds or stadiums.

According to the information provided for this report,⁹² the General Police Inspectorate do not collect disaggregated data on hate speech related misdemeanours. Also, given the fact that their current database does not allow to disaggregate misdemeanours by paragraph, it cannot be analysed the amount of cases sanctioned according to article 54, para. 2 and 365³, para. 3 of the Contravention Code.

The Judiciary, despite its central role in examining hate speech cases, doesn't collect any disaggregated data in this respect, as already mentioned previously in this report.⁹³

Beside efforts made by public authorities, courts, national human rights institutions and law enforcement bodies to address hate speech, the input of civil society organizations should be also considered. In their reports and studies, the Information Center "Genderdoc-M"⁹⁴ analyse hate speech against LGBT community from a different angle, such as the intolerance towards LGBT in the media, examples of individual complaints and cases litigated before the courts.⁹⁵

Figure 3.

⁸⁶ Council of Europe's Baseline study for assessing the national non-discrimination mechanisms in the Republic of Moldova, 2019, pg.12.

⁸⁷ [ECRI Report on the Republic of Moldova \(fifth monitoring cycle\), 20 June 2018](#)

⁸⁸ Letter of Audiovisual Council from 05 November 2019

⁸⁹ [Audiovisual Council report regarding the monitoring of electoral campaign in the period 21 October – 03 November 2019](#)

⁹⁰ [Audiovisual Council report on the monitoring of observance of the rights of the children in audiovisual products, 2018](#)

⁹¹ [Contravention Code no. 218 of 24 October 2008](#)

⁹² Letter of General Police Inspectorate from 5 November 2019

⁹³ Letter of Superior Council of Magistracy from 07 November 2019

⁹⁴ Information Center "Genderdoc-M" – an NGO actively promoting LGBT (lesbians, gay, bisexual and transgender people) community rights in Moldova. <https://www.gdm.md/en/content/about-us>

⁹⁵ Information Center "Genderdoc-M", 2016, Tackling the roots of hate against LGBT people in Moldova

Comparative table: materials referencing LGBT people in the Moldovan press and online media:³⁶

	Positive	Negative	Neutral	Total
2008	43	162 (69%)	30	235
2009	32	40 (51%)	7	79
2010	152	163 (41%)	84	399
2011	298	249 (38%)	105	652
2016	40	96 (14%)	571	707
2017 (4 months)	4	27 (16%)	139	170

According to the monitoring made by Genderdoc-M, the yearly number of articles referring to LGBT people nearly tripled over the past decade, and the share of clearly negative articles declined from 70% in 2008 to around 15% in 2016-17.

The Promo-LEX Association⁹⁶ has conducted, since 2017, a wide research on hate speech and incitement to discrimination in the media and in the public space in the Republic of Moldova. The research is based on a monitoring process, which is conducted every year, covering up to six months and most of the media and online space, as well as the most important public events. The monitoring is made by trained monitors with expertise on hate speech and discrimination issues. The data is analysed by experts and structured in detailed reports. These reports present a large variety of disaggregated data, such as: the number of identified cases, public resonance (views and shares), sex and age of the authors, sex and age of the victims, the context of manifestation (political, religious and other), protected grounds, affected groups, politicians and political parties which used hate speech and which were affected by it, dynamics of hate speech, media which used hate speech and other.

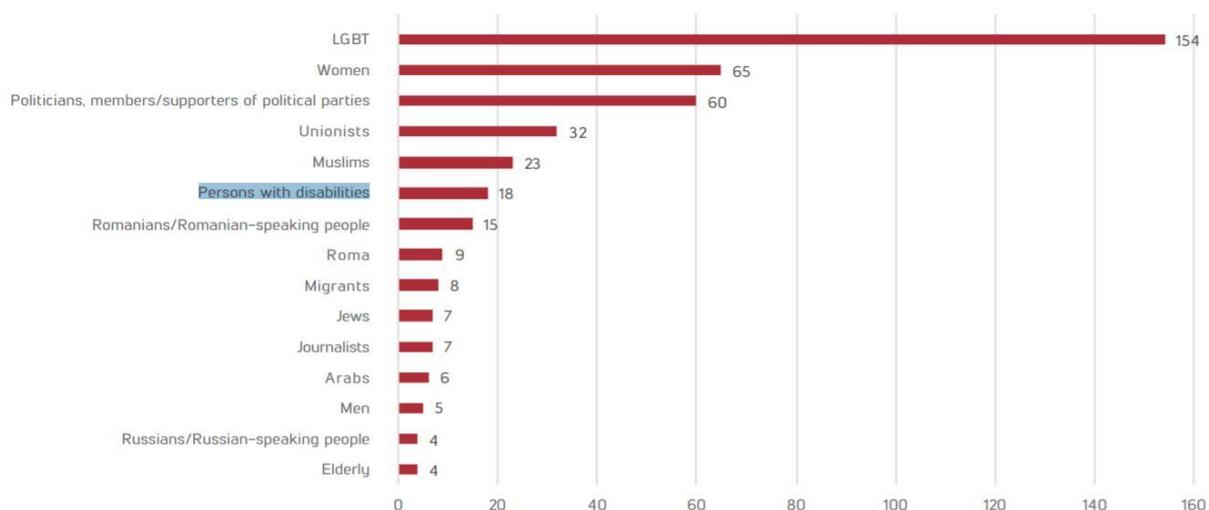
In the Promo-LEX report of 2018⁹⁷ were identified 368 cases of hate speech, representing an average of two new cases of hate speech every day. The authors of hate speech were in the vast majority of cases men, with a ratio of 88% (men) to 12% (women). Most frequently, hate speech was used by people aged between 35 and 50 years, followed by those over 50 years. Young people up to 35 years of age used it the least of all. Hate speech was mostly used in the political (42%) and religious (40%) context. The public resonance of the cases identified on online platforms was alarming – they gathered over 3 million views and over 60 thousand shares in total. The most affected groups were LGBT, Women, Politicians, members/supporters of political parties, Unionists, Muslims, Persons with disabilities and other.

Figure 4

⁹⁶ Promo-LEX Association is a non-governmental organization that aims to advance democracy in the Republic of Moldova, including in the Transnistrian region, by promoting and defending human rights, monitoring the democratic processes, and strengthening civil society. <https://promolex.md/misiune/?lang=en>

⁹⁷ Promo-LEX Association, 2018, Hate speech and incitement to discrimination in the public space and media in the Republic of Moldova

Fig. 6. Distribution by affected groups



Similar findings were presented in the Promo-LEX report of July 2019, which covered the first 3 months of the year, including the monitoring of national parliamentary electoral campaign. In comparison with the report of 2019, Promo-LEX identified a growth of hate speech cases by 83%, with an average of 3.5 new cases every day.⁹⁸

Hate crimes

The only state authorities to investigate and collect data on hate crimes are the Police, the Ministry of Internal Affairs and Courts.

The General Police Inspectorate presented, for the purpose of this report, updated data regarding recorded cases of hate crimes in the period of 2003 (when a new Criminal Code entered into force) – 2019. According to the information provided,⁹⁹ the police is only collecting general data, in terms of number of cases registered each year, according to the criminal offences regulated by the Criminal Code. Thus, in the period 2003-2019 were registered 59 offences, which fall into the definition of hate crimes:

- Article 346, Deliberate actions aimed at inciting national, racial, or religious hostility or discord - 23 criminal cases.
- Article 176, Violation of the citizens' equality in rights - 22 criminal cases.
- Article 145, Para.2 letter I), Murder motivated by social, national, racial, or religious hatred – 1 case
- Article 151, Para.2 letter i), Serious intentional injury to bodily integrity or health motivated by social, national, racial, or religious hatred – 3 cases
- Article 152, Para.2 letter j), Medium intentional injury to bodily integrity or health motivated by social, national, racial, or religious hatred – 1 cases
- Article 222. Para.2 letter b), Desecration of graves and monuments motivated by social, national, racial, or religious hatred – 9 cases

Of this, 38 cases were sent to prosecution office and only 8 cases reached the courts. The General Police Inspectorate do not hold the information regarding the final judgement of the courts.

⁹⁸ Promo-LEX Association, 2019, Hate speech and incitement to discrimination in the public space and media in the Republic of Moldova

⁹⁹ Letter of General Police Inspectorate from 5 November 2019

The Prosecution office doesn't collect any disaggregated data on hate crimes. According to the information provided for this report¹⁰⁰, the prosecution office doesn't have any database that is collecting this type of data and it relies on the information collected by the General Police Inspectorate, which was provided above.

The courts also don't provide any disaggregated data on hate crimes. Despite the fact that the Superior Council of Magistracy and the Ministry of Justice collect and generalize the judicial statistics, their reports don't include any relevant information on hate crimes. Recorded cases are disaggregated by articles of the Criminal Code and categories of rights affected. Thus, for example article 176 (Violation of the citizens' equality in rights) is assigned to the category "Offenses against political, labour and other constitutional rights of citizens" which include articles from 176 to 185 of the Criminal Code and the data is produced collectively for this category, which makes it impossible to analyse the information regarding article 176 independently. The same situation is valid for article 346 (Deliberate actions aimed at inciting national, racial, or religious hostility or discord), which is assigned to the category "Offenses against public authorities and a state security" and includes articles from 337 to 363 of the Criminal Code.¹⁰¹ There are no statistics on criminal offences disaggregated by paragraph of the article of the Criminal Code, which makes it impossible to analyse the enhancement penalties motivated by social, national, racial, or religious hatred.

According to the information provided for this report, neither police, nor prosecution office are not conducting a victimization survey or any research/studies on the matters of hate crimes. The only analysis worth to mention in this respect, is the publication realized by the Nondiscrimination Coalition and Ombudsoffice in 2016, which contains an overview presentation of hate crimes in the Republic of Moldova and s guide for investigating offences motivated by hatred.¹⁰² According to this, the available data on hate crimes is the following:

Figure 5

Article	Year	Registered by the police							Sent to Court						
		2010	2011	2012	2013	2014	2015	2016	2010	2011	2012	2013	2014	2015	2016
176		5	1	0	0	6	2	0	0	0	0	0	1	0	0
346		0	1	5	4	5	1	0	0	0	0	0	0	0	0
145 (2), l		0	0	2	0	0	0	2	0	0	0	0	0	0	0
151, (2), i		0	0	1	0	0	0	0	0	0	1	0	0	0	0
151, (2), j		0	0	1	0	0	0	0	0	0	0	0	0	0	0
197, (2), b		2	2	1	0	1	3	2	0	1	0	0	0	0	0
222, (2), b		1	1	2	2	0	3	0	0	0	0	1	0	0	0
Total		56							4						

¹⁰⁰ Letter of General Prosecution Office from 11 November 2019

¹⁰¹ https://csm.md/files/Statistica/2018/12_luni/RS_l-ma_instanta_penale12.pdf

¹⁰² Nondiscrimination Coalition, 2016, Criminalistics presentation of the hate crimes. A guide to investigation of the offences motivated by hatred

The Organization for Security and Co-operation in Europe (OSCE) collects general data regarding recorded hate crimes in the Republic of Moldova. This information is gathered from the national authorities and civil society reports. According to OSCE, in 2009 the Police recorded 2 cases of hate crimes, 3 in 2012, 4 in 2013, 1 in 2014, 0 in 2015, 5 in 2016, 17 in 2017 and 10 in 2018 (for the other years the information is not available). Of this, 16 cases were prosecuted and 57 were sentenced. The disparity between the cases prosecuted and sentenced is not explained.¹⁰³

¹⁰³ See the official OSCE/ODIHR webpage dedicate to hate crimes reporting in Moldova, available at: <http://hatecrime.osce.org/moldova?year=2009>

The current recording and data collection framework for discrimination, hate speech and hate crime, including roles and responsibilities

Discrimination

The only institution which provides consistent and constant disaggregated data on discrimination cases, as mentioned previously, is the Council for prevention and elimination of discrimination and ensuring equality. Given this fact, the following step by step analysis of the recording and data collection framework in the discrimination area will focus on the practices of the CPEDEE and further procedures.

Figure 6

CPEDEE	
Step of the case recording and disaggregated data collection	Gaps
<p>Step 1</p> <p>The discrimination complaint is recorded by the CPEDEE, in accordance with the Law on the activity of the Council for preventing and eliminating discrimination and ensuring equality.</p>	Step 1
<p>Step 2</p> <p>Data entered onto spreadsheet by the responsible employee. The data is entered manually into an excel document, which is the main database of disaggregated data.</p>	Step 2
<p>Step 3</p> <p>The case is examined by the CPEDEE as a quasi-judicial body and a decision is issued.</p>	Step 3
<p>Step 4</p> <p>The database is updated with relevant information, after the case is examined by the CPEDEE.</p>	Step 4
<p>Step 5</p> <p>Disaggregated data is uploaded on the online database, on the web page of the Council.</p>	<p>Step 5</p> <p>The online database is updated by manually introducing disaggregated data from the main database (the excel spreadsheet). This can lead to the duplication of the work and delays in updating online database. A unique database, connected automatically to the web page of the Council, would improve the mechanism of disaggregated data collection.</p>
<p>Step 6</p> <p>When a complaint refers to hate crimes or is in the competency of other authorities,</p>	Step 6

CPEDEE refers the case to the relevant institution.	The data regarding refereed cases is not disaggregated and should be extracted manually.
The Courts	
<p>Step 7</p> <p>c) In case when one of the parts of the process before CPEDEE is appealing its decision, the case will be examined before the Courts, in the special administrative proceedings. The data regarding these proceedings is collected by the CPEDEE and summarized in the annual or special reports.</p> <p>d) Individuals can submit a discrimination complaint directly to the courts. In this case, there is no disaggregated data collected.</p>	<p>Step 7</p> <p>The Courts examine discrimination cases as common civil cases, which do not allow to record and collect specific data. The Courts do not collect statistical information that would allow to extract disaggregated data on discrimination matters.</p>
<p>Step 8</p> <p>At the end of the year, CPEDEE summarizes and analyzes the data in their annual report. The report is published on the website of the Council. Some of the reports are translated into Russian and English.</p>	<p>Step 8</p>
<p>Step 9</p> <p>CPEDEE presents in the Parliament their general reports on the situation in the field of preventing and combating discrimination.</p>	<p>Step 9</p> <p>The reports are presented to the parliamentary commissions and not in the plenum of the parliament, the fact that may undermine the importance of the presented conclusions and recommendations.</p>

There are no specific instructions or guidelines on discrimination reporting and recording, beside the general competencies and framework established by the Law on ensuring equality and Law regarding the activity of the Council for prevention and eliminating discrimination and ensuring equality.

Law No 121 on ensuring equality sets out that one of the most important tasks of the entities responsible for preventing and combating discrimination and ensuring equality is to contribute to promoting the principle of non-discrimination. Thus, according to Article 16 of the Law, CPEDEE regularly conducts trainings and educational activities for public authorities, law enforcement bodies and civil society. For example, in 2015 the Council members and the civil servants of the administrative office were involved as trainers in around 70 training activities with the participation of over 1700 people. Training activities have been organised for judges, prosecutors, civil servants from the central and local public authorities, representatives of the civil society, and the media, both at central and regional level.¹⁰⁴

¹⁰⁴ CPEDEE General report on the situation in the field of prevention and combating discrimination in the Republic of Moldova, 2015, pg. 34

Educational activities are conducted regularly, every year, and aim to contribute to promoting the principle of non-discrimination.

Hate speech

The legal framework on hate speech does not provide a specific and clear mechanism for examination of complaints and data recording, as it is in case of discrimination. Different authorities have competencies to address this issue, but most of these competencies are limited.

CPEDEE has the prerogative to examine specific forms of hate speech, which are limited to the behaviours and expressions that incite to discrimination. When a complaint was recorded and examined by the CPEDEE, the procedures exemplified in the Figure 6 are applicable.

Hate speech incidents, manifested in audio-visual products should be recorded and examined by the Audiovisual Council, in accordance with article 11 (2) of the Code of audio-visual media service, which prohibits hate speech, meaning “a message that propagates, incites, promotes or justifies racial hatred, xenophobia, anti-semitism or other forms of hatred based on gender, racial or ethnic origin, nationality, religion or belief, disability or sexual orientation”.

The Audiovisual Council can start the examination of a case based on a complaint, or *ex officio*, by a member of the Council. The case is registered in a general registry, which does not allow the disaggregation of the information specifically for hate speech cases. The case is examined by the Council and finalizes with a decision of finding or not finding an infringement. In both cases the decision can be appealed in the Courts in a special administrative procedure. There is no disaggregated data collected regarding these procedures or the case itself. If needed, all the information should be extracted manually. The decisions are made public on the website of the Audiovisual Council - www.audiovizual.md, in a pdf format, but without a search engine or a specific database in this regard.

The Audiovisual Council is also conducting monitoring activities. Similarly to the decisions on individual complaints, the results of the monitoring are published on the website of the Audiovisual Council, in a pdf format, without a search engine or a specific database in this regard. The reports themselves are structured on the basis of a general methodology¹⁰⁵ of monitoring the broadcasters, including disaggregated data regarding media coverage, the tone of the transmission, qualitative analysis of the content and many others. Among other criteria, the methodology includes specific pillars on monitoring sexist advertising and gender equality, but the reports rarely consider these aspects. According to the information provided for this report,¹⁰⁶ the current data collection mechanism does not allow to support a common database, that would allow to disaggregate the collected information. This should be extracted from the specific decisions or reports published by the Audiovisual Council.

According to the information provided for this report by the Police, the present statistical database of the Ministry of Internal Affairs does not allow to disaggregate misdemeanours by paragraph, so we cannot analyse the data and proceedings on hate speech related cases regarding articles 54, para. 2 and 365³, para. 3 of the Contravention Code, mentioned in the previous chapters.

Hate crimes

Figure 7.

¹⁰⁵ Audiovisual Council, Decision No. 29/180 of 09 November 2018 regarding the approval of the Methodology for monitoring the broadcasters under the jurisdiction of the Republic of Moldova

¹⁰⁶ Interview with the representatives of the Audiovisual Council of 13 November 2019

Step of the case recording and disaggregated data collection	Gaps
POLICE	
<p>Step 1 The incident is recorded by the police on the general basis of the criminal law.</p>	<p>Step 1 There is no common definition or operational definition of hate crimes and no obligation to record complaints as hate crime incidents, even when there is strong evidence in this respect.</p>
<p>Step 2 To record a hate crime, the police officer has to enter the data in the statistical spreadsheet no. 1.0. For this, at the pt. 15 of the spreadsheet, the officer has to mention the indicator no. 44, which, according to the <i>“Classifier of the codes used when entering the information in the central database”</i> represents the aggravating circumstance “by social, national, racial or religious hatred”.</p>	<p>Step 2 The disaggregation criteria are very limited. Statistical spreadsheet offers data only regarding the specific article of the criminal code and aggravating circumstance “by social, national, racial or religious hatred”.</p>
<p>Step 3 The police officer sends the spreadsheet to the statistical department, which enters the information on the common database, called “The register of criminological information”.</p>	<p>Step 3 The database does not allow to disaggregate recorded cases by the protected grounds or other criteria.</p>
<p>Step 4 The Service of Technological Information of the Ministry of Internal Affairs reviews and collects data from spreadsheet completed by police and generates statistics using “The register of criminological information”.</p>	<p>Step 4 The Service of Technological Information of the Ministry of Internal Affairs does not flag or mark distinctly the hate crime incidents, thus they are treated as ordinary cases.</p>
PROSECUTION OFFICE	
<p>Step 5 Prosecutors register cases according to the criminal law, using a general procedural form, which does not allow to disaggregate the hate crimes data.</p>	<p>Step 5 Prosecution office do not have a mechanism of hate crime data disaggregation. Incidents recorded as hate crimes are examined as regular cases.</p>
<p>Step 6 Prosecutors decide to apply or not aggravating circumstances “by social, national, racial or religious hatred” when sending the case to the courts. The hate crime data is not specifically disaggregated and should be extracted manually.</p>	<p>Step 6 There are no uniform practices on applying hate crimes aggravating circumstances.</p>
COURTS	
<p>Step 7</p>	<p>Step 7</p>

The Courts register the cases according to general criminal proceedings. There is no specific spreadsheet form hate crimes.	The Courts do not have a mechanism of hate crime data disaggregation. Hate crimes are examined as regular cases.
Step 8 The Courts issue judgements on the hate crime cases but no specific data is collected in this respect. If needed, the information has to be extracted manually.	Step 8 The lack of a special hate crime data disaggregation mechanism makes it impossible to collect and generalize judicial statistics in this respect.
Step 9 The Courts summarize the data on the basis of initial evidence, in accordance with the “Instruction regarding secretarial work in the courts” and send each trimester statistical reports to the Agency for the Administration of the Courts, which collects, verifies and generalizes all the information.	Step 9
Step 10 The Superior Council of Magistracy and the Ministry of Justice publish statistical reports every 6 and 12 months on the activity of the first level courts and courts of appeal. These reports don’t provide any hate crimes disaggregated data.	Step 10 Statistical reports provided by the Superior Council of Magistracy offer general data on criminal offences, grouped by categories of rights. Thus, it is impossible even to ascertain the number of criminal offences related to hate crimes.

The Ministry of Internal Affairs conducts periodically trainings and seminars for police staff on discrimination, hate speech and hate crimes. Most of them are organized at the initiative of various NGOs and international organizations, such as OSCE, UN and the Council of Europe. The Police do not have institutionalized educational programs related to hate speech and hate crimes.

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 organizations, such as the OSCE and the OHCHR. Seminars and training for police have also been organized by the OSCE to effectively identify and investigate bias-motivated crimes.¹⁰⁷

¹⁰⁷ ECRI Report on the Republic of Moldova (fifth monitoring cycle), 20 June 2018, pt. 69

Discussion and analysis

Discrimination and hate speech

CPEDEE

At the moment, CPEDEE is the main body at the national level, which carries out most of the activities for the prevention and elimination of discrimination. As already showed in previous chapters, the Council's practices correspond to international standards on discrimination data recording and collection. The disaggregated data produced by the Council offers all the needed information for the analysis and intervention, for a more efficient approach to the prevention of discrimination. The only gaps identified in the practices of data recording and collection of the Council refers to the doubling of the efforts in the process of disaggregation for main database (the excel spreadsheet) and online database and the lack of disaggregated data regarding advisory opinions, which the Council is entitled to provide to the Courts. A need identified during the interview with the representatives of the Council is the lack of possibilities to systematically identify the age of the participants in the individual cases, which leads to the difficulty to assess the needs and priorities regarding potential interventions in this respect.

At the legislative and institutional level, the legal framework also mostly corresponds to the international law and standards. Still, there are gaps and needs, and resolving them could improve the legal framework. These are:

- The legislation does not consistently include all grounds for discrimination, such as national origin, citizenship, sexual orientation and gender identity.
- The legislation does not include all forms of discrimination, such as announced intention to discriminate, instructing another to discriminate and aiding another to discriminate, as recommended by ECRI for civil and administrative legislation.

The legislative and institutional framework regarding hate speech rises more issues and gaps. These are:

- The legislative framework establishes different hate speech definitions, which makes difficult to efficiently sanction it. Thus, a need to revise national legislation to streamline the notion of hate speech in line with international standards. In particular, review:
 - a) the notion of hate speech from the Law on freedom of expression;
 - b) the notion of incitement to discrimination of the Law on ensuring equality to include the declared intention to discriminate, encouraging or aiding another person to discriminate;
 - c) the notion of sexist language in the Law on ensuring equal chances for women and men to include the link between prejudice and sex/gender;
 - d) notion of hate speech in the Code of audiovisual media services, to include all grounds of discrimination and a wider spectrum of forms of intolerance.
- Hate speech is not expressly prohibited by the contravention law, which falls behind.
- There is no special comprehensive strategy for preventing and combating hate speech.

- There are no regular awareness raising campaigns on preventing and combating hate speech.

Opportunities

- To improve the CPEDEE data collection mechanism, in order to create a single data base, that will combine the main spreadsheet and the online platform.
- To update the data base so it can collect information on advisory opinions provided by CPEDEE to the Courts.
- To support raising awareness campaigns for on hate speech issues.

THE OFFICE OF OMBUDSMAN

The Ombudsoffice doesn't collect at the moment any disaggregated data on discrimination, hate speech and hate crimes. The representatives of the Ombudsoffice communicated to the author of this study that a new data collection system is being developed at the moment of this research. The system is called INTRANET and could offer disaggregated data, including on individual complaints regarding discrimination, hate speech and hate crimes.

To do this, the Ombudsoffice needs support by the means of expertise, methodology and good practices regarding discrimination, hate speech and hate crimes data collection, which at the moment is not available.

Opportunities

- Representatives of the Ombudsoffice mentioned that a priority would be support in adapting the data collection methodology, using the best international practices.
- Representatives of the Ombudsoffice mentioned that would be relevant study visits or experience exchange visits in the countries that have the best practices in discrimination, hate speech and hate crimes data collection.
- Representatives of the Ombudsoffice mentioned that educational activities (trainings, seminars, workshops) would be needed for the staff.

AUDIOVISUAL COUNCIL

The Audiovisual Council¹⁰⁸ is an autonomous public authority, independent from other entities and responsible for the implementation of the Code of Audiovisual Services. At the moment, the Audiovisual Council has the most powerful competencies to sanction hate speech. Still, the Council have small capacities to effectively investigate cases related to hate speech.

According to the representatives of the Council, there is no clear understanding of the notion of hate speech, how to precisely identify it and differentiate it from other forms of free speech. Capacity building activities are needed.

Another issue identified by the representatives of the Council is the high flow of employees. All the monitoring is made by 6 people with uncompetitive salaries, and an enormous volume of work, thus, every few months the Council has to employ new personnel.

A pressing need mentioned, is the development of special instructions, guidelines and methodology. The existing methodology does not address specifically the matters of hate speech, thus, it is not understood by the personnel and it is in most cases ignored. A methodology based on best international practices is needed.

Opportunities

¹⁰⁸ More details about the Audiovisual Coordinating Council are available at <http://www.audiovizual.md/>.

- Representatives of Audiovisual Council mentioned that a priority would be support in adapting the data collection methodology, using the best international practices.
- Representatives of the Audiovisual Council mentioned that would be relevant a study visit, or experience exchange visits in the countries that have the best practices in hate speech data collection.
- Representatives of the Audiovisual Council mentioned that educational activities (trainings, seminars, workshops) would be needed for the staff.
- Representatives of the Audiovisual Council mentioned that special instructions and guidelines on hate speech are needed.

CENTRAL ELECTORAL COMMISSION

According to the information provided for this report,¹⁰⁹ the Central Electoral Commission does not collect any disaggregated data on discrimination and hate speech. According to the Promo-LEX Association,¹¹⁰ hate speech escalades in electoral campaigns, while remaining almost absolutely unsanctioned. That confirms the need to regulate hate speech in electoral processes.

Opportunities

- Initiate the establishment of a mechanism of hate speech data collection in electoral processes.
- Initiate the amendment of the Electoral Code to introduce penalties for hate speech in electoral processes.

Hate speech and hate crimes

POLICE

Police, as one of the main law enforcement bodies, has significant competencies to record and collect data regarding misdemeanours and criminal offences. As already mentioned in the previous chapters, the Republic of Moldova has poor legislative regulations on hate speech and hate crimes.

The lack of a clearly defined notion of hate crimes is one of the main obstacles in ensuring qualitative data collection. The first structural barrier in the process of generalizing statistics is the definition established by the law. Given the fact that the Criminal Code does not adequately define hate crimes and has a limited list of grounds, which do not include criteria as colour, national or ethnic origin, language, citizenship, disability, sexual orientation, gender and other, the data collection is limited to two specific offences of the criminal code: a) Article 346, Deliberate actions aimed at inciting national, racial, or religious hostility or discord and b) Article 176, Violation of the citizens' equality in rights.

Even though the General Police Inspectorate collects some disaggregated data regarding these offences, the limited list of grounds cannot offer sufficient information. According to the representatives of the Information Technology Service of the Ministry of Internal Affairs, the database used by them is highly competitive and could provide a wide spectrum of data. It now offers disaggregated data by article and paragraph of the Criminal Code, including information for aggravating circumstances motivated by hatred. It doesn't disaggregate bias

¹⁰⁹ Letter of the Central Electoral Commission from 07 November 2019

¹¹⁰ Promo-LEX Association, 2019, Hate speech and incitement to discrimination in the public space and media in the Republic of Moldova, pg. 11

grounds at the moment, because there is no instruction/decision to do it. In case there was a decision to disaggregate the bias grounds, the database is ready to do it.

All the information about the incident recorder is collected according to an “interdepartmental order of the recording of offenses of the criminal cases and of the persons who committed the offenses”. There is no special spreadsheet or category for hate crimes. The information about hate crimes is recorded at the category no. 017, which is common for all criminal offences, and do not contain any references specific for hate crimes.

The situation is different for misdemeanours. The Information Technology Service of the Ministry of Internal Affairs has different databases for criminal and contravention (misdemeanour) offences. The contravention database is not as performant as the criminal one. It cannot generate special data by the paragraphs of the articles of the Contravention Code. As it was already analysed in the previous chapters, there is no special offence for hate speech or bias motivated misdemeanours, but there are specific paragraphs of some general misdemeanours (for ex. article 54, para. 2 and 365³, para. 3). There is also no aggravating circumstance on the bias grounds. Thus, at the moment it is impossible to analyse the performance of the police in regard to hate speech or bias motivated misdemeanours.

According to the representatives of the Information Technology Service, prosecutors and judges have the possibility to access the statistical database of the Police. For this, the prosecution offices and courts need to connect to the system and obtain accounts. Some prosecution offices did connect, the rest of them didn't. The courts also didn't connect to the system, they prefer to require the information, if needed, by ordinary requests.

The Police do not produce any reports or studies on hate crimes. According to the representatives of the General Police Inspectorate, this wasn't regarded as necessary until now.

Opportunities

- Support the optimization of the Information Technology Service criminal database, in order to include special categories related to hate crimes (a special flagging of the offence, a category for hate crime victims and a category for disaggregation of the grounds motivated by hatred)
- Support the optimization of the Information Technology Service contravention database, to allow the disaggregation of misdemeanours by article and paragraph.
- Support the Ministry of Internal Affairs and the General Police Inspectorate to publish statistical data and conduct reports on hate crimes.

GENERAL PROSECUTION OFFICE

Beside the legislative gaps mentioned in the previous chapters, the main issue regarding the prosecution of the hate crimes is the lack of mechanisms to collect data. According to the information provided for this report, prosecution offices do not collect any data on hate crimes. Also, there is no database that would allow the disaggregation of the information in this regard. Prosecution relies on the data collected by the Ministry of Internal Affairs, which was mentioned in the previous chapter.

As a result of the lack of disaggregated data, the General Prosecution Office does not publish any statistical data and does not conduct any studies or reports related to hate crimes.

At the moment of the drafting of the present report, the Prosecution Office is developing and piloting de E-File system. This will ensure different levels of secure access to data and will allow prosecutors to manage criminal records more efficiently and generate accurate

statistics and reports, by automating internal procedures and processes.¹¹¹ The E-File system of the Prosecution Office is not connected or shared with Police and Courts.

Updating and optimizing the E-File system with relevant instructions for hate crimes data collection is now opportune. In this respect, uniform instructions/guidelines should be adopted for Prosecution, as well as for the Police and the Courts. This will allow an efficient and harmonised approach for hate crimes data disaggregation.

THE JUDICIARY SYSTEM

The judiciary system consists of different bodies and entities, with different attributions and competencies. As already mentioned in the previous chapters, the Ministry of Justice and the Superior Council of Magistracy are the authorities invested with competencies of collect and generalize judicial statistics.

Similarly to the Prosecution Office, the Superior Council of Magistracy does not provide any statistical data for hate crimes, nor for hate speech or discrimination. Due to existing instructions of statistical evidence, the courts do not collect data on these matters.

At the moment of the drafting of the present report, the Agency for the Administration of the Courts, in partnership with the programme for transparent justice of USAID is assisting a pilot number of courts in testing the system “Electronic Statistical Reporting Module (ESRM)” in order to have complete data. The ESRM will allow to disaggregate the data by articles and paragraphs, which means that the Council will be able to provide general data on recorded cases related to hate crimes. In order to do this, it will be necessary that the categories of cases adopted by the Superior Council of the Magistracy to distinguish articles and paragraphs, which is not currently the case.

The E-File system of the courts is different than the E-File system of the prosecution. They are not connected. Updating and optimizing the E-File system with relevant instructions for hate crimes data collection is now opportune. In this respect, it is necessary to adjust the types of causes by harmonising the list of types of cases. At the same time, the system used by the Prosecutor must be recorded in order to be well used.

Not last, uniform instructions/guidelines should be adopted for Courts, as well as for the Police and the Prosecution. This will allow an efficient and consonant approach for hate crimes data disaggregation.

NATIONAL BUREAU OF STATISTICS

The National Bureau of Statistics (NBS) is the main central authority in the field of statistics, invested with the competency of collecting, processing and generalizing statistics. The NBS publishes some population related data, which is usually disaggregated by gender, age, areas (rural/urban) and so on. No specific discrimination related data is published, with several exceptions for specific issues. One example are gender statistics, which measure gender inequalities and contains 25 tables with statistical data disaggregated by sex. These are grouped into 4 sub-compartments according to the basic strategic objectives of the National Program of Gender Equality, namely: a) women's economic empowerment, b) education and training of women during lifetime, c) women's participation in decision-making process, d) women's health.¹¹²

¹¹¹ <http://www.procuratura.md/md/newslst/1211/1/7170/>

¹¹² National Bureau of Statistics, Gender Statistics, available at: <https://statistica.gov.md/category.php?l=ro&idc=264>

Another example is a study of 2011, regarding violence against women in the Republic of Moldova.¹¹³ This was a single study, which aimed to offer comprehensive information on violence against women in the Republic of Moldova, identifying the root causes, estimating the prevalence of different forms of violence, establishing the frequency and severity of violent acts, as well as determining the impact and consequences of this phenomenon on victims' physical and mental health.

In the interview for this report, the representatives of the NBS mentioned that the Bureau does not collect individually the data in the justice or human rights fields. Those are provided by the relevant institutions and law enforcement bodies, mainly the Ministry of Internal Affairs. The only data collected by the NBS refers to statistics related to contraventions. The only regular data produced by NBS related to justice are the "Justice and Crimes" statistics, of the Statbank database, which refers to 5 sub-compartments according to the basic strategic objectives: juvenile criminality, persons convicted and in detention, the justice system, road accidents and contraventions. None of these refers to hate crimes.¹¹⁴

According to the representatives of NBS, specific data on hate crimes was never collected because no one ever considered it necessary to do it. Even now, not everyone understands the need for this type of data. In the same time, NBS doesn't conduct a national victimization survey. Discussions still take place in this regard, but there is no clear notion whether a victimization survey will be implemented in the near future in the Republic of Moldova.

The National Bureau of Statistics, together with other agencies that produce statistics, is responsible for the data collection related to the implementation of the United Nations Sustainable Development Goals (SDG) of Agenda 2030, which they committed to implementing, including areas such as climate change, economic inequality, innovation, sustainable consumption, peace and justice.

In the period 2018 – 2019 there was a process of revision of sustainable development indication from 2016. In the framework of the SDG 10, Reducing inequality, there is an indicator related to "the percentage of population who communicated that in the last 12 months it felt discriminated or harassed on the basis of a prohibited ground in the context of international human rights law" (indicator 10.3.1 / 16.b.1). The responsible institution for the monitoring of this indicator was identified as the CPEDEE.

Opportunities

- Representatives of NBS mentioned that a priority would be support in creating the data collection methodology. For this, would be relevant to provide the best practices on the international level. Taking into account the role that the NBS has, we could identify the NBS as the main coordination for the national statistical system and it could consult relevant institutions in order to create and adjust data collection system.
- Representatives of the NBS mentioned that would be relevant activities for experience exchange in the countries that have the best practices.
- Representatives of the NBS mentioned that support will be needed for the development of the main policy documents that will provide the main framework and guidelines for the mechanism of hate speech and hate crimes data collection.

¹¹³ National Bureau of Statistics, *Violence against women in the family in Republic of Moldova, 2011*

¹¹⁴ National Bureau of Statistics, Justice and Crimes Statistics, available at: <https://statistica.gov.md/category.php?!=ro&idc=189&>

MINISTRY OF JUSTICE

The Ministry of Justice plays a key role in the establishment of an efficient disaggregated data collection mechanism for hate speech and hate crimes due to its competencies of legislative initiative. As analysed in the previous chapters, the Ministry of Justice developed a draft law to amend the existing framework related to criminal and misdemeanour offences, in compliance with international standards. The draft law is critical for the purpose of defining hate crimes, clarifying the most important definitions, widening the list of protected grounds, adjusting the aggravating circumstances, establishing specific misdemeanours for incidents motivated by hatred and other. The draft law was revised in partnership with civil society organizations and international partners and is considered to meet all conditions and standards for hate crimes laws.¹¹⁵

In September 2019 the Ministry sent the revised draft law to the Parliament, which is now responsible to finalize the adoption process.

In the matter of data collection, the Ministry publishes statistical data on the courts' activity, which is presented by the Agency for the Administration of the Courts.¹¹⁶ The Ministry also conducts studies related to the feasibility of ratification various international treaties.¹¹⁷ Still, the Ministry doesn't have a mandate to collect and process specific data on discrimination, hate speech and hate crimes. This should remain the competency of various specialized bodies and institutions.

¹¹⁵ See for more information opinions of OSCE regarding draft amendments to the Moldovan criminal and contravention codes relating to bias-motivated offences at the following link: <https://bit.ly/2DPI3zK>

¹¹⁶ See for example official webpage of the Ministry of Justice – www.Justice.gov.md, category: Judicial System, Studies and Analyses

¹¹⁷ See for example official webpage of the Ministry of Justice – www.Justice.gov.md, category: Human Rights, Studies

Recommendations

Discrimination

- The legislation should be amended to consistently include all grounds for discrimination, such as national origin, citizenship, sexual orientation and gender identity.
- The legislation should be amended to include all forms of discrimination, such as announced intention to discriminate, instructing another to discriminate and aiding another to discriminate, as recommended by ECRI for civil and administrative legislation.
- The CPEDEE data collection mechanism should be improved, in order to create a single data base, that will combine the main spreadsheet and the online platform.
- The CPEDEE database should be optimized so it can collect information on advisory opinions, conclusions and amicus curiae provided by CPEDEE to the Courts and offer disaggregated data on the website, regarding the recommendations made and the progress of the implementation.

Hate speech

- The legislative framework establishes different hate speech definitions, which makes it difficult to efficiently sanction it. National legislation should be revised, to streamline the notion of hate speech in line with international standards. In particular, review:
 - a. the notion of hate speech from the Law on freedom of expression;
 - b. the notion of incitement to discrimination of the Law on ensuring equality in order to include the declared intention to discriminate, encouraging or aiding another person to discriminate;
 - c. the notion of sexist language in the Law on ensuring equal chances for women and men to include the link between prejudice and sex/gender;
 - d. the notion of hate speech in the Code of audiovisual media services, to include all grounds of discrimination and a wider spectrum of form of intolerance.
- Hate speech should be expressly prohibited by the contravention law.
- A special comprehensive strategy for preventing and combating hate speech should be developed and data collection and publication on hate speech should be included in the comprehensive strategy for combating hate speech.
- Regular awareness raising campaigns on preventing and combating hate speech should be conducted.
- The Office of the Ombudsman should develop a data collection methodology on hate speech and hate crimes, using the best international practices.
- The staff of Ombudsoffice should be capacitated to address individual complaints on hate speech and hate crimes and collect disaggregated data in this respect.
- The Audiovisual Council should develop a data collection methodology, using the best international practices.
- The Audiovisual Council staff should be capacitated to address hate speech issues. For this would be relevant educational programs, study visits or experience exchange visits in the countries that have the best practices in hate speech data collection.
- The Audiovisual Council should develop instructions and guidelines on hate speech.

- The Central Electoral Commission should initiate the establishment of a mechanism of hate speech data collection in electoral processes.
- The Central Electoral Commission should initiate the amendment of the Electoral Code to introduce penalties for hate speech in electoral processes.

Hate crimes

- The Criminal and Contravention Code should be amended for the investigation and sanctioning of prejudice –motivated offenses and hate speech, including in the electoral context, in accordance with international standards. For this, the draft law no.301 should be adopted as soon as possible.
- Operational definitions for bias motivated offences should be adopted.
- The Information Technology Service database should be improved, in order to include special categories related to hate crimes (a special flagging of the offence, a category for hate crime victims and a category for disaggregation of the grounds motivated by hatred).
- The Information Technology Service contravention database should be improved, to allow the disaggregation of misdemeanours by articles and paragraphs.
- The Ministry of Internal Affairs and the General Police Inspectorate should publish statistical data and conduct reports on hate crimes.
- The prosecution E-File system should be improved to allow registering the bias motivation for hate crimes.
- The Prosecution should publish statistical data and conduct reports on hate crimes.
- Prosecutors should be capacitated by regular and institutionalized educational programs to address hate crimes. Exchange visit / experience sharing with a country with advanced and accessible system of data collection for hate crimes should be considered.
- The Courts information system should be improved to allow registering the discrimination, hate speech and bias motivation for hate crimes.
- The Courts should publish statistical data and conduct studies on hate crimes.
- Judges, judicial assistants and court staff should be capacitated by regular and institutionalized educational programs to address discrimination, hate speech and hate crimes. Exchange visits and experience sharing with a country with an advanced and accessible system of data collection for hate crimes should be considered.

Other

- The National Bureau of Statistics should develop a specific data collection methodology on discrimination, hate speech and hate crimes. For this, would be relevant to provide the best practices on the international level and exchanges of experience.
- The National Bureau of Statistics should be capacitated by educational and training programs. For this, it would be relevant to organise activities for experience exchange in the countries that have best practices.
- A policy on discrimination, hate speech and hate crimes data collection should be developed.