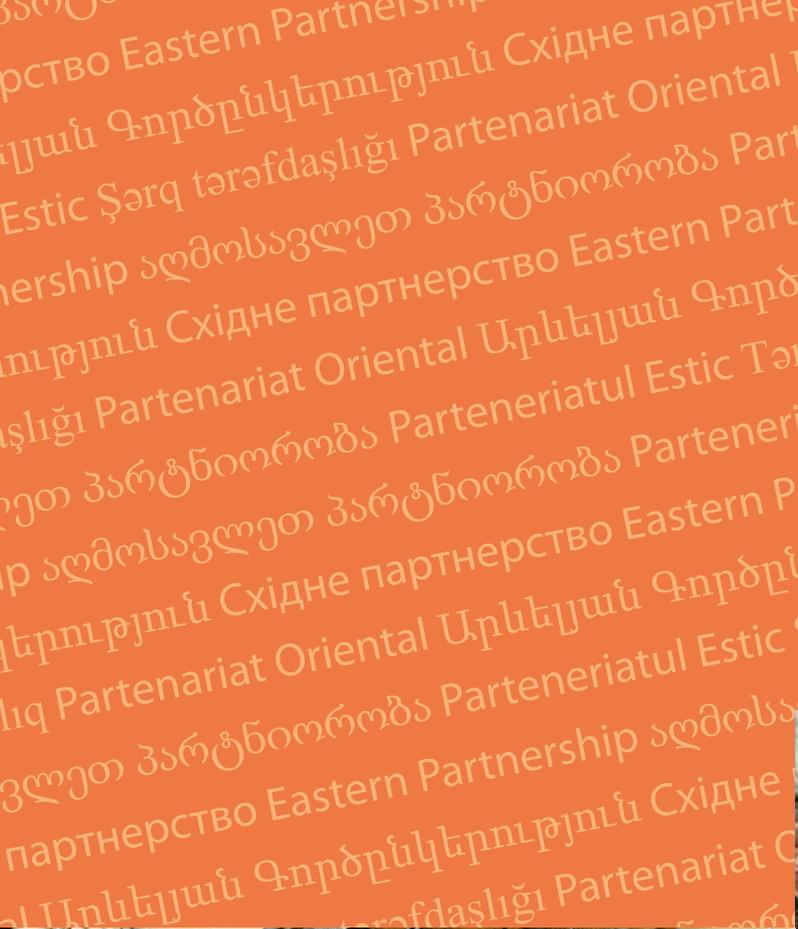


# BARRIERS, REMEDIES AND GOOD PRACTICES FOR WOMEN'S ACCESS TO JUSTICE IN THE REPUBLIC OF MOLDOVA



Prepared under the Programmatic Cooperation Framework Project  
“Improving Women’s Access to Justice in the five Eastern Partnership Countries”  
Armenia, Azerbaijan, Georgia, Republic of Moldova, and Ukraine

**Programmatic Cooperation Framework for  
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus**

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by the Council of Europe



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This national study, "Barriers, remedies and good practices for women's access to justice in the Republic of Moldova", has been prepared by Doina Ioana Străisteanu. The opinions expressed in this work are the responsibility of the author and do not necessarily reflect the official policy of the Council of Europe or the European Union. The information contained in this document is up to date as of February 2017.

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# GENERAL INTRODUCTION TO THE FIVE NATIONAL STUDIES

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Important efforts have been made to strengthen gender equality standards both at the level of the Council of Europe and within its member states. Four major treaties underpin the core Council of Europe gender equality standards. These are the “foundational” treaties: the European Convention on Human Rights and the European Social Charter (revised), and the two “new generation” treaties, the Convention on Action against Trafficking in Human Beings<sup>1</sup> and the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).<sup>2</sup> A number of recommendations of the Committee of Ministers on gender equality topics have been adopted since the 1970s.<sup>3</sup>

The first Council of Europe Gender Equality Strategy 2014-2017<sup>4</sup> provides the strategic framework for the implementation of these standards to bring member states closer to *de facto* gender equality. One of the five objectives of the Council of Europe Gender Equality Strategy is to work with member states towards guaranteeing equal access of women to justice. The Strategy establishes that action in this area seeks to: analyse national and international frameworks to gather data and identify the obstacles women encounter in gaining access to the national courts and to international justice; identify, collect and disseminate existing remedies and good practices to facilitate women’s access to justice; and make recommendations to improve the situation.

The regional project Improving Women’s Access to Justice in Five Eastern Partnership countries (Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine) contributes to the overall implementation of the Gender Equality Strategy and in particular the realisation of Objective 3 of the Strategy: guaranteeing equal access of women to justice. The project is funded by the Council of Europe/European Union Eastern Partnership Programmatic Cooperation Framework (PCF) 2015-2017,<sup>5</sup> and implemented by the Council of Europe Gender Equality Unit.

The main objectives of the project are to:

- ▶ identify and support the removal of obstacles to women’s access to justice;
- ▶ strengthen the capacity of Eastern Partnership countries to design measures to ensure that the justice chain is gender-responsive, including through the training of legal professionals.

While knowledge has increased, there are still systematic gaps in data collection concerning different aspects of women’s access to justice. In order to fill such gaps with respect to the beneficiary countries of the project, the Gender Equality Unit of the Council of Europe commissioned five national studies to map the barriers,

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1. Entered into force on 1 February 2008.

2. Entered into force on 1 August 2014.

3. See factsheet with the main Council of Europe standards on gender equality and women’s rights, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168058feef>, accessed 28 November 2016.

4. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680590174>, accessed 28 November 2016.

5. See <http://pjp-eu.coe.int/en/web/eap-pcf/home?desktop=true>, accessed 28 November 2016.

remedies and good practices for women's access to justice in Armenia, Azerbaijan, Georgia, the Republic of Moldova and Ukraine. The objectives of each of these studies were to provide:

- ▶ an analysis of the main obstacles to women's access to justice, both legal and procedural, as well as socio-economic and cultural;
- ▶ a set of recommendations for measures to improve women's access to justice in the respective countries, including examples of good practices, where they exist;
- ▶ background information for the subsequent organisation of training for legal professionals (judges, prosecutors, lawyers, and possibly law enforcement).
- ▶ The studies were carried out by five independent national experts who were asked to answer the following questions:
  - ▶ what are the gender gaps in access to justice in your country?
  - ▶ how responsive is the justice system to women's needs?
  - ▶ what can be done to improve the gender responsiveness of the justice system?

All five studies are structured around a similar set of themes and issues. The first part of each study addresses gender gaps in the access to justice, by analysing the legislative and policy frameworks as well as the implementation practices and mechanisms that affect women's access to justice. Socio-economic and cultural barriers to women's access to justice are also discussed in this first part. The second part of each study examines the gender responsiveness of the justice system in the respective country. The following issues are addressed in all five studies: women's access to courts; whether sex-disaggregated data on court applicants is available; gender stereotypes among legal professionals, especially the judiciary; and the availability of gender equality training in the initial and further education of legal professionals. The third part of each study presents the available remedies and good practices and formulates a set of recommendations. When relevant, and to the extent possible in the scope of addressing these general themes and issues, attention has been paid to obstacles affecting women from disadvantaged groups, such as women in rural areas; disabled women; elderly women; women from ethnic minorities; women victims of violence; lesbian, bisexual and transwomen; and women held in detention/prison.

Research for the five studies was mostly desk-based and the national consultants sampled as extensively as possible the existing sources available. In Armenia and Azerbaijan, the consultants conducted a limited number of interviews with lawyers and civil society advocates. In Georgia and the Republic of Moldova, the consultants also requested official data from a number of institutions. In Ukraine, the national consultant conducted a small survey among judges, based on a pre-defined questionnaire. The initial findings of the five studies were presented at the regional conference on Improving Women's Access to Justice in Five Eastern Partnership countries that took place on 5 and 6 November 2015 in Kvareli, Georgia. Feedback received from governmental officials, academic experts and civil society representatives at this conference was integrated in the studies. Furthermore, each consultant presented the findings of their country study to a national audience in the first months of 2016. Feedback from these validation meetings was also integrated in the final version of the studies.

The studies found that there are still significant gaps in women's access to justice, despite progress made especially in the adoption of laws and policies.

With respect to legal and policy frameworks, Eastern Partnership countries have made significant progress in passing legislation and adopting policies to advance gender equality. Guarantees of equality between women and men are included in the constitutions of each participating country, including most recently the Constitution of Armenia. All five countries have specific laws on gender equality, with Azerbaijan having adopted one in 2006, Armenia in 2011, Georgia in 2010, the Republic of Moldova in 2006, and Ukraine in 2005. Special anti-discrimination laws were adopted in Georgia in 2014, the Republic of Moldova in 2012 and Ukraine in 2012. There is no separate anti-discrimination law in Azerbaijan, though a special law on domestic violence was adopted in 2010. In addition, Georgia, the Republic of Moldova and Ukraine have all adopted specific legislation against domestic violence (in 2006, 2007 and 2001, respectively). Armenia, meanwhile, is preparing an anti-discrimination legislation and a law to prevent and combat domestic violence.

As of February 2017, three of the beneficiary countries, Georgia, the Republic of Moldova and Ukraine, have signed the Istanbul Convention with ratification pending. The other two countries have not yet signed the Istanbul Convention.

Despite the significant legislative progress, legal obstacles to women's access to justice persist. Specific barriers include *de jure* discrimination of women or gaps in the anti-discrimination legislative frameworks. The national

studies offer numerous examples of the discriminatory effects of protective labour legislation in each of the five countries. Further barriers have been observed in the area of labour law, such as unlawful dismissal of pregnant women or limitations on fathers' access to parental leave or the.

With respect to implementation practices and mechanisms, the studies found that while national laws uphold equality on the basis of sex, women rarely invoke these laws in court to protect their rights. The standards of proof and the legal mechanisms that are necessary to prove indirect discrimination are not well developed, while this is arguably the more prevalent manifestation of gender inequality. In all countries studied, gaps in access to justice for women victims of gender-based violence persist, in particular regarding non-criminalisation of all forms of violence against women; severe underreporting of crimes of violence against women; very few convictions of rape; and scarce or no state funding for support services for victims.

The studies also reveal a number of common socio-economic and cultural barriers to women's access to justice. A prominent obstacle is women's economic dependence on or economic inequality to men, which means they have less access to resources, often needed for legal proceedings. In addition to women's lower employment rates and significantly lower participation in the business sector, as either employees or entrepreneurs, there is a significant gender pay and revenue gap in all five countries. Secondly, patriarchal attitudes and beliefs persist about men's superiority to women and the naturalness of segregated gender roles that see women mainly as caregivers and men as breadwinners. The belief in men's superiority underpins the still-present practice of prenatal sex selection and selective forced abortions, addressed in the studies on Armenia, Azerbaijan, and Georgia, that results in skewed sex ratios in favour of men and represents a severe violation of women's rights. The same gender-biased attitudes also underlie the high social tolerance or even justification of domestic violence in the five countries. Thirdly, lack of access to information is a significant obstacle, especially among women from rural areas.

The studies provide ample evidence of the limited gender responsiveness of the justice systems in the five countries. There is very limited use of international standards in judicial decisions. In some of the countries, women are also significantly underrepresented in the judiciary. Gender stereotypes persist in the justice system and they are compounded by other stereotypes linked to age, ethnicity or social status. The national studies provide illustrations of such stereotypes, particularly affecting women confronted with gender-based violence.

The studies also present a number of good practices. In Armenia, an action plan to promote gender equality and gender balance in the judiciary was adopted by the judicial self-governance body (the Armenian Council of Court Chairpersons) in 2015. It includes measures such as the development of gender equality training materials and thematic training programmes. The equality bodies set up in Georgia and the Republic of Moldova offer potentially effective mechanisms to combat sex-based discrimination. Since 2013, the Public Defender's Office of Georgia has had a specific Gender Equality Department that monitors the implementation of gender-related legislation and policies, and studies complaints and individual cases of sex and gender-based violations of human rights. It also conducts public-awareness activities and training, collects data to monitor the effectiveness of protection mechanisms to prevent violence against women, and prepares annual reports. In Azerbaijan, the law takes into account the needs of rural women in respect of maternity leave. Women working in agriculture get more days of maternity leave: from 70 calendar days after birth up to 110 calendar days in cases of multiple births. In the Republic of Moldova, the Equality Council set up as an independent body under the anti-discrimination law in 2013 examines individual complaints, including cases of sex-based discrimination. It also analyses draft laws for compliance with anti-discrimination legislation and conducts awareness-raising activities on discrimination issues. The National Human Rights Action Plan of Ukraine, covering the period 2015-2020, offers a good practice example of a human rights policy that contains ample provisions on gender equality closely matching priority areas of the Council of Europe Gender Equality Strategy. A number of civil society initiatives, such as the online Virtual Legal Aid Service for women set up by the Women's Consortium of Ukraine, as well as the specialist support services provided by women's organisations to women victims of gender-based violence, show that civil society expertise is an important resource to improve women's access to justice.

Access to justice is central to the rule of law and integral to the enjoyment of human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. The requirement of equality, including gender equality, is at the centre of the scope, exercise and fulfilment of the right to justice. It is hoped that these five national studies will contribute to the further development of tools to improve women's access to justice. In particular, the information provided by the national studies will be used in the elaboration of a training manual for judges and prosecutors on ensuring access to justice for women, to be used by judicial training institutions in the five beneficiary countries of the project.



# REPUBLIC OF MOLDOVA

Report prepared by Doina Ioana Străisteanu

## 1. INTRODUCTION

This study is based on the understanding that access to justice is central to the rule of law and integral to the enjoyment of basic human rights. It is also an essential precondition to social inclusion and a critical element of a well-functioning democracy. Access to justice can be construed as the ability of people, including people from disadvantaged groups, to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards, without legal, procedural, socio-economic or cultural obstacles.

Access to justice “refers to the various elements leading to appropriate redress against the violation of a right”<sup>6</sup> In its recent General Recommendation 33 (2015) on women’s access to justice, the CEDAW Committee identifies “six interrelated and essential components” necessary to ensure women’s access to justice:

- ▶ justiciability, which refers to the “ability and empowerment of women to claim their rights as legal entitlements”;
- ▶ availability of courts;
- ▶ accessibility of all justice systems to women, “including those who face intersectional or compounded forms of discrimination”;
- ▶ good quality of justice, which includes the requirement that justice systems be gender-sensitive;
- ▶ provision of remedies;
- ▶ accountability.

Access to justice implies the right to an effective remedy, the right to equal access to courts, the right to a fair trial, the right to legal aid measures that improve access to courts, access to legal representation, as well as access to equality bodies and ombudsman institutions aimed at bridging the gap between the law and *de facto* enjoyment of rights by individuals.

The requirement of equality, including gender equality, is at the centre of the meaning, the exercise and the fulfilment of the right to justice. The Republic of Moldova has ratified numerous international and regional instruments guaranteeing access to justice. Among these are the Council of Europe treaties:<sup>7</sup> the European Convention on Human Rights; the Convention on Action against Trafficking in Human Beings; the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine;<sup>8</sup> the European Convention on the Compensation of Victims of Violent Crimes; the European Agreement on the Transmission of Applications for Legal Aid.

The Republic of Moldova has also ratified a number of United Nations instruments: CEDAW;<sup>9</sup> ICESCR and its Optional Protocol; the ICCPR; the United Nations Convention against Transnational Organized Crime; the Beijing Declaration and Platform for Action;<sup>10</sup> and the UN Declaration on the Elimination of Violence against Women.<sup>11</sup> As of February 2017, the Republic of Moldova has signed but not yet ratified the Istanbul Convention.

As part of the process of EU integration, the Republic of Moldova is also bound to reform its legislation in line with EU standards relevant to the access to justice for women, such as the EU Directive 2012/29/EU, establishing minimum standards on the rights, support and protection of victims of crime; EU Regulation No 606/2013 on mutual recognition of protection of victims in civil matters (which complements EU Directive 2012/29/EU); the Directive on the European protection order 2011/99/EU; and EU Directive 2004/80/EC relating to compensation for crime victims.

6. Parliamentary Assembly of the Council of Europe Resolution 2054 (2015) “Equality and non-discrimination in the access to justice”: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=21753&lang=en>, accessed 28 November 2016.

7. For an intersectional approach, see also the European Charter for Regional or Minority Languages (ETS No. 148) and the European Convention on the Legal Status of Migrant Workers (CETS No. 93).

8. It is also referred to as the Convention on Human Rights and Biomedicine; in particular see Article 14 on the non-selection of sex. The issue of prenatal sex selection is discussed in relation to coercion and psychological violence under Article 33 of the Istanbul Convention and by the Parliamentary Assembly Resolution 1829 (2011).

9. For an intersectional approach on discrimination against women also see, for example, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the International Convention for the Protection of All Persons from Enforced Disappearances.

10. Adopted in 1995, available at [www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf](http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf), accessed 28 November 2016.

11. Adopted in 1993, available at [www.un.org/documents/ga/res/48/a48r104.htm](http://www.un.org/documents/ga/res/48/a48r104.htm), accessed 28 November 2016.

This study highlights the extent to which the Republic of Moldova honours the assumed obligations to implement the standards on access to justice and the barriers that still exist, in particular for women. These barriers are legal and procedural as well as socio-economic and cultural. Numerous reports, opinions, decisions and judgments made public by various public and private entities have been analysed and presented herein. It is hoped that this study will strengthen the understanding of the proper measures that must be put in place to ensure that the justice chain is gender-responsive and that the legal professionals involved at different stages (judges, prosecutors, lawyers, law enforcement) are aware of the difficulties that women face in accessing justice because they are women. The research contained herein was conducted under in the framework of a project “Improving Women’s Access to Justice in the Eastern Partnership Countries” (2015-2017).<sup>12</sup> Similar studies have also been developed for Armenia, Azerbaijan, Georgia and Ukraine.

Moldovan legislation, as of today, has numerous instruments that prohibit discrimination. The first equality provision was, and remains, Article 16 of the Moldovan Constitution.<sup>13</sup> It guarantees equality to its citizens, before the law and public authorities, no matter what their race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin.<sup>14</sup> For many years, domestic legislation had incorporated the equality principle in various laws,<sup>15</sup> but had not drafted a specific law to provide definitions for discrimination and establish an enforcement mechanism.

This was the case until 2006, when the Moldovan Parliament passed Law No. 5/2006 on equality between women and men.<sup>16</sup> It was the first special law to provide definition for “sex”,<sup>17</sup> “gender”,<sup>18</sup> “sexual harassment”<sup>19</sup> and of course for “discrimination based on sex”.<sup>20</sup> It incorporated a broad and complex gender equality principle for many areas of life: in mass media (Article 8); employment and access to public office (Article 6); decision making in election and political parties (Article 7); equal access to employment (Article 9); equal access to economic and business activity (Article 12); equal access to education (Article 13); and equal access to health services (Article 14). This law, however, lacked a viable mechanism to secure the practical implementation of gender equality.

Six years later, the Moldovan Parliament passed Law No. 121/2012,<sup>21</sup> which entered into force on 1 January 2013. It defines nine different forms of discrimination<sup>22</sup> and each one of these can have sex or gender as its basis. The equality law has an open list of protected grounds, which makes it possible to extend protection against discrimination to cover other grounds as well (Coalition for Non-Discrimination 2014a: 63-6), such as gender identity. The law has three specific fields for protection against discrimination, in accordance with the European Directives in the field: employment (Article 7), education (Article 9) and access to goods and services (Article 8). To enforce the law, the Moldovan Parliament instituted the Moldovan Equality Council and appointed five members<sup>23</sup> to decide collegially on petitions, pending bills of law and raising awareness about

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12. The project is implemented under the Council of Europe and European Union Programmatic Cooperation Framework for the Eastern Partnership countries 2015-2017, and in part responds to the Council of Europe Gender Equality Strategy 2014-2017, in particular the strategy’s objective of “Guaranteeing equal access of women to justice”.

13. Adopted on 29 July 1994.

14. Article 16 of the Moldovan Constitution has a closed list of protected grounds and is applicable only to those with Moldovan citizenship.

15. Every piece of legislation, once adopted, mentions equality before the law: civil procedure, criminal procedure, labour law, etc.

16. Law No. 5 was published in “Monitorul Oficial” on 24 March 2006 and entered into force from publication.

17. Defined as “the overall anatomical-physiological characteristics that separate human beings in males and females”, Article 2, Law No. 5/2006.

18. Defined as “the social aspect of the relationships among women and men, which manifests in all spheres of one’s life”, Article 2 Law No. 5/2006.

19. Defined as “any form of physical, verbal or nonverbal behaviour, of a sexual nature, which violates one’s dignity or creates an unpleasant, humiliating, degrading or insulting environment”, Article 2, Law No. 5/2006.

20. Defined as “any difference, exception, limitation or preference aiming, or as consequence, to limit or intimidate the recognition, use and implementation on an equal basis by women and men of their fundamental rights and freedoms of humans”, Article 2, Law No. 5/2006.

21. The adoption of Law No. 121/12 was preceded by criticism and street protests of the Moldovan Orthodox Church; see [www.ziare.com/articole/moldova+legea+antidiscriminare+biserica+ortodoxa](http://www.ziare.com/articole/moldova+legea+antidiscriminare+biserica+ortodoxa), accessed 28 November 2016. The Church argued that the equality law provides LGBT people with additional rights. The Moldovan Parliament accepted a compromise and deleted “sexual orientation” from the list of protected grounds indicated in Article 1 (1) of Law No. 121/12, indicating it only in Article 7, which bans discrimination in employment. It had also introduced exceptions from discrimination, stating in Article 1 (2) of Law No. 121/12 that non-discrimination provisions are not applicable to adoption, to a family based on a relationship between a man and a woman, to religious organisations and their components. Even so, the Moldovan Orthodox Church refused to accept the fact the equality law was voted in, see <http://omg.md/index.php?newsid=1678>, accessed 28 November 2016.

22. Law No. 121/12 defines in Article 2 direct and indirect discrimination, reasonable accommodation, victimisation, racial segregation, harassment, discrimination by perception, discrimination by association, and instigation to discrimination.

23. Doina Ioana Straisteanu and Oxana Gumennaia were appointed on 7 March 2013. Andrei Birghidin, Ian Feldman and Lucia Gavrilita were appointed on 6 June 2013 by a parliamentary decision, after being selected in an open contest. Each member was appointed for five years and all five are members of civil society.

discrimination (Coalition for Non-Discrimination 2014b). Immediately after registration,<sup>24</sup> and beginning in October 2013, the Equality Council opened its doors to people wishing to lodge a complaint. Its first report to the Moldovan Parliament presents statistics and conclusions from its first three months of activity. During that time, the Equality Council received 44 complaints, of which 34 were admissible.<sup>25</sup> On 14 of these complaints<sup>26</sup> and 3 *ex officio*<sup>27</sup> investigations, 12 decisions were adopted. People complained about discrimination in access to justice (complaints referred to the violation of the domestic law regarding the use of Russian language in correspondence with the public authorities), in education, and in employment based on sex and gender, among other grounds.<sup>28</sup> The Equality Council issued 12 decisions finding sex-based discrimination in the following cases: commercial companies that had used sexism to promote and sell their products;<sup>29</sup> gender-based discrimination by law enforcement officials who stigmatised and shamed women for complaining about domestic violence;<sup>30</sup> gender-based discrimination in the exercise of parental rights by child protection services for arbitrary decisions about visiting hours for a separated parent;<sup>31</sup> and gender-based discrimination in equal access to protection from the law for women who sought police assistance.<sup>32</sup> Each of these decisions is presented in detail in this study.

## 2. GENDER GAPS IN ACCESS TO JUSTICE

### Analysis of the national legal and policy frameworks to identify the obstacles women encounter in gaining access to the justice system

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#### Possible discriminatory laws or policies

Since the Equality Council officially started its mandate,<sup>33</sup> several pieces of current legislation have been examined from the perspective of gender equality.

#### Parental leave benefits

The most significant analysis was done on the modifications to Law No. 289/2004 regarding payments of temporary leave from work and other social security payments<sup>34</sup> changed by Law No. 332/2013.<sup>35</sup> It has been found that Article 6 para. 7 discriminates against women and men on the basis of their marital status and gender. A woman may benefit from maternity leave payment and parental leave payment for childcare, above a minimum of €20, only if she is married to the child's father and can prove that she depends on his income. Such payments are not available to married men dependent on their wives' income or to unmarried women and men who have a child in common. The law uses "wife" and "husband" to indicate one's status as a condition to benefit from these payments, in addition to their income and previous social payments. The dependent partner in the couple has to be the woman (the wife). The man (the husband) may not benefit from the same right as his wife, should the child's parents decide that the woman's income is more considerable and therefore the child's father could benefit from parental leave payments calculated from the mother's income upon which the father could have been dependent. Therefore, two impediments arise: civil status (the woman must be married to the child's father) and gender (the wife must be dependent upon her husband's income; the reverse situation

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24. Registration procedure was officially finalised on 31 July 2013.

25. Not all 34 complaints declared admissible were resolved in 2013. Many of these were registered in December 2013 and had to be examined and resolved through a decision in 2014.

26. Several complaints from different individuals were merged in one case and examined together when they referred to the same person or institution acting in a discriminatory manner. Therefore, statistics show different numbers for individual complaints and for decisions.

27. Any member of the Equality Council has the right to initiate on his/her own motion an investigation into a possible discriminatory practice or law, pct. 60-69 of the Council's regulation adopted by Law No. 298.

28. Opinion, disability, social origin, language and HIV status were protected grounds invoked by plaintiffs, p. 4 of the Equality Council Report for 2013, available at <http://egalitate.md/index.php?pag=page&id=850&l=ro>.

29. Decision of 24 February 2014 in Case No. 048/14 regarding sexism in the "Radio Plai" SRL advert; Decision of 28 July 2014 in Case No. 108/14 regarding a sexist image used for candies by S.A. "Bucuria"; available at [www.egalitate.md](http://www.egalitate.md).

30. Decision of 28 July 2014 in Case No. 125/14 regarding the conduct of police officers with I.T., available at [www.egalitate.md](http://www.egalitate.md).

31. Decision of 21 February 2014 in Case No. 028/13 regarding gender-based discrimination in setting out visiting hours, available at [www.egalitate.md](http://www.egalitate.md).

32. Decision of 13 February 2014 in Case No. 034/13 and Decision of 30 October 2014 in Case No. 098/14 in which the Equality Council found law enforcement's prejudice against women victims of domestic violence to be an impediment to secure equal protection from the law, available at [www.egalitate.md](http://www.egalitate.md).

33. After being officially registered on 31 July 2013, the Equality Council received the first complaint on 20 September 2013 from a police officer alleging harassment at work.

34. Original title: "Legea privind indemnizațiile pentru incapacitatea temporară de muncă și alte prestații de asigurări sociale".

35. The analysis has been provided in the Decision of 26 May 2015 in Case No. 071/14, available at [www.egalitate.md](http://www.egalitate.md).

is not regulated). The Equality Council found the provision discriminatory to expecting mothers who are not married to the child's father but are dependent upon his income.<sup>36</sup> The Ministry of Labour, Social Protection and Family finds it insufficient that on the child's birth certificate, with the statements of both parents (as the Family Law dictates), the child's paternity and maternity is recognised by both parents. An unmarried woman who is also a mother-to-be is thus disadvantaged and indirectly forced into changing her marital status.

The Ministry of Labour, Social Protection and Family argues that these provisions are meant to protect women and motherhood as a whole. However, considering the breadth of current roles played by women in Moldovan society (assuming leadership roles, founding businesses, securing their own income, occupying decision-making positions, assuming leadership in the family), such provisions fail to respond to the individual situation of modern families. After all, parental leave payments and social security payments, as the law itself explains, are meant to cover the loss of income in the family due to the occurrence of particular events, such as childbirth and parenthood (not only motherhood). The only reason provided by the Ministry of Labour, Social Protection and Family, during the official hearing in the case before the Equality Council,<sup>37</sup> for attaching parental leave payments to a married woman, appears to be to secure the legal ownership of the child to the man whose income will serve as the basis for the calculation of the payment. This provision works to protect men from wrongful claims of paternity when he is not married to the child's mother, and as such, from wrongful claims on parental leave payments. There was no explanation given for the fact that a married man cannot benefit from a parental leave payment calculated based on his wife's income, as a dependent spouse.

## Occupations

Another challenge is the List of National Occupations No. CORM 006-14, updated and approved by the Ministry of Labour, Social Protection and Family.<sup>38</sup> The titles of the occupations are masculinised and feminised by the nature of the labour they refer to. For example, decision-making positions, leadership role positions and heads of divisions, institutions and others are masculinised. Childcare and cleaning occupations are feminised. The Romanian language allows gender-based declinations of job titles and yet, as recently as March 2014, the Ministry of Labour, Social Protection and Family approved the new, updated list, which does not allow gender declinations for job titles. The Equality Council initiated an *ex officio* case,<sup>39</sup> the public hearing being held on 9 July 2015.<sup>40</sup> The same *ex officio* note examined whether the list of professions banned for women is justified<sup>41</sup> – approved in 1993 and never reconsidered. The Equality Council's decision found both lists to be sexist and recommended that the Ministry of Labour, Social Protection and Family revise them to secure women and men similar labour protection for both women and men, ensuring that prejudices about gender are not an impediment for employment.<sup>42</sup>

## Access to employment for women with disabilities

Women with disabilities face barriers in accessing courses for professional requalification,<sup>43</sup> which would further facilitate their employment. Social payments and pensions for disability are far from providing a decent living. People, no matter what their disability, may wish to be employed and secure their own income.<sup>44</sup> As has been established by the Equality Council in this particular case, a number of legal regulations, among which are the methodological standards regarding the organisation and continuous education of the unemployed approved by Order No. 42/1 of 13 March 2012 of the Ministry of Labour, Social Protection and Family and by Order No. 135 of 13 March 2012 of the Ministry of Education, require persons with disabilities to present a medical certificate stating their capacity to work. The Equality Council found that such a request

36. *ibid.*

37. *ibid.*, annex to the case file No. 071/14 with the verbatim minutes of the hearing.

38. Order No. 22 of 3 March 2014 adopted by the Ministry of Labour, Social Protection and Family by which the List of National Occupations CORM 006-14 is updated and approved; published in "Monitorul oficial" No. 120-126 of 23 May 2014.

39. Any member of the Council can register an *ex-officio* note by which s/he proposes to the Council the verification of whether a particular law or practice is discriminatory against a particular group. In this note, the member argued that the Ministry of Labour, Social Protection and Family commits sexism when it does not allow for gender-based declinations of job titles.

40. The list of hearings is available at [www.egalitate.md/index.php?pag=news&id=895&rid=758&l=ro](http://www.egalitate.md/index.php?pag=news&id=895&rid=758&l=ro).

41. The list of occupations and professions banned for women was approved by the Moldovan Government Decision No. 264 of 6 October 1993, original title "Hotărîrea de Guvern nr. 264 din 6 October 1993 privind aprobarea Nomenclatorului industriilor, profesiilor și lucrărilor cu condiții de muncă grele și nocive, proscrie femeilor și Normelor de solicitare maximă, admise pentru femeii la ridicarea și transportarea manuală a greutăților".

42. *ibid.*, Decision of 9 September 2015.

43. Decision of 9 September 2014 in Case No. 110/14 regarding the refusal of the National Agency for Employment to accept a woman with a psycho-social disability into a course for a manicurist, available at [www.egalitate.md](http://www.egalitate.md).

44. Petitioner's statement, *ibid.*

is discriminatory because it does not allow the person with the disability to take his/her own decision about his/her employment and occupation.<sup>45</sup>

### **Access to employment for transgender people**

Currently, there is no access to employment for transgender persons.<sup>46</sup> This is not because they cannot be employed, but because they need to change their identity papers before seeking employment.<sup>47</sup> Changing identity papers is a particular challenge for transgender persons who have been “diagnosed” with “transsexualism” and who have started hormone therapy to transform their bodies to their desired gender. Law No. 100/2001 on civil status acts prescribes that a change of name and sex on a birth certificate be accepted only upon the presentation of an official document confirming the change of sex.<sup>48</sup> The only medical document, or official document a transgender person can obtain, is the one stating the diagnosis and (if possible and accessible in the Republic of Moldova) a medical document about the surgical intervention. Cases known to have had all these documents have been rejected by the Civil Registration Office because these were not considered an “official document confirming the change of sex”.<sup>49</sup> After litigation was initiated in two court cases for transgender persons against the Civil Registration Office,<sup>50</sup> the Supreme Court of Justice issued on 2 November 2012 Recommendation No. 16.<sup>51</sup> The Supreme Court stated that the right to respect for private life includes one’s gender identity and a request for the change of sex and name should be considered through the jurisprudence of the European Court of Human Rights under Article 8 of the European Convention on Human Rights. The Ministry of Health of the Republic of Moldova followed the Supreme Court and on 17 December 2012 issued Order No. 1268,<sup>52</sup> which created an expert commission to examine and consider every single case of “transsexualism”. The commission issues a medical conclusion stating the person’s gender identity. Unfortunately, no further changes followed the national legislation and the definition and legal regulation of “gender identity” continues to be absent. For this reason, every transgender person has to seek a court decision obliging the Civil Registration Office to approve the change of sex and of name to correspond with his/her new gender identity.

### **The negative impact of gender-neutral legislation**

Gender-neutral legislation is rarely considered to be the cause of discriminatory practices. The absence of a prohibited ground mentioned directly in the text of a specific law raises doubts about possible discriminatory effects on a particular social group until statistics are presented to support this assumption. This becomes evident after closer scrutiny of the situations described below.

Indirect discrimination against women in the provision of a “personal assistant” to severely disabled persons

The Moldovan Government’s Decision No. 314 of 23 May 2012 adopted the Framework Regulation regarding the organisation and functioning of the Social Service “Personal Assistant”. The new service aims to provide persons with severe disabilities (the beneficiary) a caregiver employed by the Social Protection Services, under the Ministry of Labour, Social Protection and Family. The caregiver could be a member of the family or someone close to the beneficiary of this social service but should not have reached the age of retirement, which is 57 for women and 62 for men. Besides the age limit, the Framework Regulation contains a list of professional requirements that a caregiver should meet before being officially employed by the Social Protection Services: over the age of 18; with full legal capacity; without a criminal record; possessing good health that corresponds to the position’s requirements; and acceptance by the beneficiary. The Social Protection Services and the Ministry of Labour, Social Protection and Family argued that the age limit was an essential requirement for caregivers because the beneficiaries are persons with severe disabilities. However, they failed to explain how age reflects one’s ability to perform the tasks of a caregiver. The Equality Council received a complaint from three mothers who care for their severely disabled children at home, in the family, and were denied the opportunity to be a caregiver for their children because they had reached the age of retirement – 57 years old.<sup>53</sup> In its decision

45. Equality Council conclusions, *ibid.*

46. Situation as described by the LGBT organisation GENDERDOC-M, see <http://gdm.md/ro/litigations>; see also the Amnesty International letter

47. Nadine’s story, available at <http://attitude-analyst.blogspot.com/2011/08/nadine-chilianu-moldovas-voice-for.html>, accessed 28 November 2016.

48. Article 66(2c), Law No. 100.

49. The case of O. and S. examined by the Buiucani court, and the case of A. and S. examined by the Centre Court, available at [www.gdm.md](http://www.gdm.md).

50. Information available at <http://ilga.org/groundbreaking-strategic-legal-victory-for-transgender-people-in-moldova>, accessed 28 November 2016.

51. Available at [http://jurisprudenta.csj.md/db\\_rec\\_csj.php](http://jurisprudenta.csj.md/db_rec_csj.php), accessed 28 November 2016.

52. Available at [www.ms.gov.md/?q=legislatie](http://www.ms.gov.md/?q=legislatie), accessed 28 November 2016.

53. Decision of 13 February 2014 in Case No. 030/13, available at [www.egalitate.md](http://www.egalitate.md), accessed 28 November 2016.

of 13 February 2014, the Equality Council found that the age limit constitutes discrimination against women because women retire earlier than men and therefore in this particular situation they were deprived of five years of potential employment as caregivers for their severely disabled children. The disadvantage resided also in the fact that from 1 January 1999, national legislation excluded the years spent by parents caring for their severely disabled children at home in calculations for their pension. Women, who may also be the primary caregivers for their own children, may have chosen to offer care and love within the family rather than transfer their children and duties of care to state-run institutions for disabled children. However, in doing so, they were deprived of the opportunity to secure an income for themselves and their disabled children, becoming dependent on disability payments or social alimony.<sup>54</sup>

#### ***Indirect discrimination against women lawyers in accessing decision-making positions within the profession***

Law No. 1260/2002 regarding Lawyers and the Status of Lawyers, in force since 8 April 2011, requires a minimum of five years of continued work experience for a lawyer to qualify as a candidate and run in the election for the position of Chairperson, member of the Union Board, member of the Commission on admission into the profession, member of the Censors Commission, member of the Ethics and Disciplinary Commission, or Dean of the Regional Bar. This seems to be a gender-neutral legislative provision, but it discriminates against women lawyers. The Equality Council examined a common petition from seven lawyers, women and men, raising discrimination claims in access to medical insurance policy.<sup>55</sup> One of the claims concerned a practice that obliged pregnant women lawyers to suspend their licence in order to benefit from free medical insurance policy like any other pregnant woman during pregnancy. The same rule applies when a lawyer, a woman or a man, decides to benefit from free medical insurance policy during the first three years of the child's life. This practice has been found unjustified and discriminatory against women lawyers, and indicated that once such a condition is imposed on women lawyers because they are women and they are pregnant or primary caregivers for their children, then a woman lawyer would need more than five years of work experience to run in an election to occupy a decision-making position in the Union of Lawyers. This in part explains the predominant number of men elected to occupy decision-making positions within the profession.<sup>56</sup>

#### ***Parenthood***

Parenthood is a field of frequent and commonly accepted discriminatory practices based on gender.<sup>57</sup> Upon a court's pronouncement of divorce, one of the parents leaves the common dwelling to live separately from the ex-partner and, usually, from their common child. Child Protection Services (CPS) frequently examine requests from parents living separately to establish a schedule of visiting hours to allow the parents, after separation, to maintain a relationship with their child and be kept in the loop about the child's life, needs and health. Such requests lead to a full examination of both parents' situations and commonly become a ground for disputes between separated parents, and sometimes a reason for conflicts or even domestic violence incidents. There were six different complaints<sup>58</sup> to the Equality Council where women and men, parents in dispute, have been discriminated against by the CPS in the process of setting out a schedule for visiting hours. A common element of each of these complaints was the fact that the separated parent received a schedule that diminished significantly his/her presence in the child's life, despite remaining a parent with rights. In all cases, an additional factor for the justification of differential access to the child provided by the CPS referred exclusively to the gender roles assumed by both parents discriminating against both sexes. For example, references such as the girl child is too young and she needs her mother; the mother is breast-feeding the child and she knows better when the child sleeps and when s/he is awake; it was the woman's decision to leave their common house and leave her child behind, thereby making her less deserving of custody rights.

In two of the cases,<sup>59</sup> both applicants were victims of domestic violence who escaped in leaving their common dwelling but were prevented from taking the child into their care by their abusive partners. They addressed requests to the CPS denouncing the violent behaviour of the second parent and sought support to maintain their relationships with the children; instead they received hourly visiting rights exclusively because they left their children when they fled violence. The Equality Council took note of the fact that the CPS would use gender

54. Equality Council conclusions, *ibid.*

55. Decision from 17 April 2014 in Case No. 060/2014 initiated at the complaint of lawyers R. Z., V. G., V. M-M, N. M., M. D., O. P. and L. V. against the National Company for Medical Insurance and the Ministry of Health.

56. A list of lawyers in decision-making positions within the Lawyers' Union can be consulted at <http://avocatul.md/despre-barou>, accessed 28 November 2016.

57. According to an analysis developed and published by the organisation Centre "Partnership for the Development", available at [www.progen.md/index.php?pag=n&opa=view&id=286&tip=publicatii&start=0&l=](http://www.progen.md/index.php?pag=n&opa=view&id=286&tip=publicatii&start=0&l=), accessed 28 November 2016.

58. Case law of the Equality Council: Decision of 13 February 2014 in Case No. 034/13; Decision of 21 February 2013 in Case No. 028/13 and others, available at [www.egalitate.md](http://www.egalitate.md), accessed 28 November 2016.

59. Case Nos. 028/13 and 034/13, brought to the Equality Council.

prejudices about women victims of domestic violence to justify the limited schedule of visiting hours given to the women and to ignore the fact that domestic violence negatively affects children as well.<sup>60</sup>

Women with disabilities face greater challenges in parenthood. Those living in psycho-neurological institutions are not allowed to become pregnant and have a child.<sup>61</sup> A gynaecologist and medical personnel closely monitor the women's health and menstrual cycle. Instances are known of where women with disabilities identified as pregnant have been sent to the local hospital accompanied by medical assistants to have an abortion. Women who have escaped such scrutiny and given birth<sup>62</sup> faced the risk of being separated from their child on the assumption that women with disabilities cannot care properly for their child since they need assistance themselves.

Lesbian women face prejudice in courts as unfit parents on account of their sexual orientation. For example, D. had decided to divorce her husband when he found out she was lesbian and became violent. She obtained a protection order as a victim of domestic violence but the court decided to leave the child with the father. No reasons were given by the first instance court. The Chisinau Court of Appeal rejected the woman's appeal and reflected numerous prejudices against lesbians: she provoked him to be violent, she was unfit to educate a child, and she had no permanent income and place of her own. It was a Supreme Court decision that established the facts and granted her custody of the child.<sup>63</sup>

## **Shortcomings of the special laws aimed at equality between women and men or the protection of women**

### ***Regarding civil, labour and family law***

#### **Sexism in advertising**

Sexism in advertising and mainstream media has been a matter of public debate since 2009. There have been cases litigated in domestic courts against some of the biggest commercial companies that have advertised their products by exploiting the female body (Financiarul 2011). As a result, an initiative emerged to raise awareness on the meaning of sexism and its influence on the perception of beauty, femininity and the relevance of certain products that were being advertised alongside the female body (Everyday Sexism Project 2016). A female member of the Moldovan Parliament, assisted by a feminist lawyer, registered a draft law, which meant to introduce the definition of sexism in the Law on Advertising No. 1227/1997, and thereby ban it. This initiative was never considered in Parliament, but in 2015 a new draft law was registered with more comprehensive changes in the gender equality field,<sup>64</sup> among which were quotas for women to occupy decision-making positions in public office, parental leave for fathers, and the introduction of the definition of sexism in Law No. 1227/1997 on advertisement, banning it. While the first two proposals are more than welcome, the proposal to introduce the definition of sexism in Law No. 1227/1997 on advertisement is redundant. The existence of Law No. 121/2012 on ensuring equality and the practice of the Equality Council on cases of sexism indicate that such a definition would be better placed in the special law on equality. This would allow for the extension of the application of the definition to all fields of human activity, not only to advertising, and leave the appreciation of the occurrence of sexism to the competence of the Equality Council. On the other hand, Law No. 1227/1997 on advertisement entrusts the task of prohibiting unlawful advertisement to the Antimonopoly Council.

#### **Adoption and assisted reproduction**

Same-sex couples face multiple challenges when they decide to form their own families. First, they do not receive recognition under Moldovan law as a family. This in contradiction to the jurisprudence of the European Court of Human Rights, which has found that same-sex couples<sup>65</sup> and single parents with their/her/his child to be families,<sup>66</sup> thereby benefiting from the protection of Article 8 of the European Convention on Human Rights. There is no alternative to marriage for same-sex couples to seek recognition and protection under the Moldovan Family Law. Similarly, it is impossible to obtain the recognition of same-sex marriages or civil partnerships registered outside of the Republic of Moldova. Nevertheless, it appears that the Family Law protects

60. Equality Council conclusions in Cases No. 028/13 and 034/13.

61. Decision of 4 July 2014 in Case No. 087/14 regarding the rights of women with disabilities from Balti psycho-neurological institution, available at [www.egalitate.md](http://www.egalitate.md), accessed 28 November 2016.

62. A., a beneficiary of a psycho-neurological institution in Soroca, gave birth to a son and was separated from him at birth; T. S., the beneficiary of a psycho-neurological institution in Balti, gave birth to a son in June 2015.

63. The decision of the Supreme Court is available at [http://jurisprudenta.csj.md/search\\_col\\_civil.php?id=3861](http://jurisprudenta.csj.md/search_col_civil.php?id=3861), accessed 28 November 2016.

64. Draft law No. 180 approved by the Moldovan Government Decision No. 322 of 8 May 2014, once it is voted on by the Moldovan Parliament, Law No. 1227/1997 will contain the definition of sexism in advertisement.

65. European Court of Human Rights case of *Schalk and Kopf v. Austria*, Application No. 30141/04, judgment of 24 January 2010.

66. European Court of Human Rights case of *Marckx v. Belgium*, Application No. 6833/74, judgment of 13 June 1979.

some relationships, for example that of a gay parent and her/his child. A second parent, not biologically related to the child, but who has lived with the child and cared for her/him, may be appointed the child's guardian in the case of death of the biological parent or if s/he is deprived of her/his parental rights or legal capacity. Once the child has reached the age of 10, the CPS is bound by Family Law to take into account the opinion of the child when it decides upon guardianship. Before the age of 10, however, no such obligation exists and the second parent risks being excluded from the child's life by members of the extended family or by the CPS.

Lesbian couples can use *in vitro* or artificial insemination medical services to give birth to a child that would be biologically linked to both of them if one of the women uses donor sperm from a close relative. Such an opportunity is not open to homosexual male couples because the birth act and then the birth certificate of the child will only indicate as the mother the woman who gave birth and not the woman who donated the eggs which can be biologically linked. Surrogate birth is not allowed by law; therefore the only way for a homosexual male couple to become parents is for one of them to have the child with a woman who then becomes the child's biological mother. There are no known cases where maternity has been challenged between the woman who has given birth and the one who donated the eggs. There are same-sex couples where one is officially in a registered marriage to someone else. If a child is born to such a parent, paternity will be presumed to belong to the mother's husband until he successfully challenges this in court. Once a child is born in a same-sex couple, affiliation and kinship will be determined with regard to her/his biological parent only, to the mother.

Law No. 99/2010 on adoption<sup>67</sup> is explicit only about heterosexual couples and single adults regardless of sexual orientation, as eligible for adoption. Adoption is open for a single homosexual or heterosexual person, provided that other eligibility criteria are met.

Law No.138/2012 on reproductive health<sup>68</sup> guarantees the right to treatment for infertility and the right to medically assisted reproduction using new scientific technologies. It clearly states that single women can receive and use donor sperm, upon their written request, for artificial or *in vitro* insemination. Single men, however, may not use donor eggs due to the fact that surrogacy is not regulated by legislation. The law does not explicitly deny medically assisted reproduction to same-sex couples.<sup>69</sup>

### **Discriminatory criminalisation of women who have abortions**

The right to terminate one's pregnancy<sup>70</sup> is guaranteed by the legislation in force.<sup>71</sup> Any woman who has reached the age of 16 may have an abortion before prior to becoming 12 weeks pregnant. Below 16 years of age, teenage girls need to have the consent of their parent or guardian.<sup>72</sup> If the woman wishes to have an abortion between 12 and 21 weeks of pregnancy, she needs to demonstrate that her situation falls into one of the permissible situations under the Ministry of Health Order No. 647 of 21 September 2010 on voluntary termination of pregnancy.<sup>73</sup>

The Equality Council's decision of 4 July 2014, in Case No. 087/14, recognised as gender-based discrimination against women with disabilities who were residents of the Balti psycho-neurological institution, the use of abortion as contraception in the absence of the woman's free and informed consent.<sup>74</sup> Due to their disability and placement in a residential state institution, and a lack of information on reproductive health and law, none of these women known to have had such an experience complained to the law enforcement authorities. The complaint to the Equality Council, and later to the prosecution office, became possible after a lawyer learned of this practice and assumed the role of victims' public defender.<sup>75</sup> Another case has been made public as

67. The full text of the law is available at <http://lex.justice.md/md/335424>, accessed 28 November 2016.

68. The full text of the law is available at <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=344838>, accessed 28 November 2016.

69. Law No. 138 of 15 June 2012 on reproductive health, Article 9, pp. 6, 7, 9.

70. Abortion has been allowed since 1955 through the legislation of the Soviet Union, and has been performed upon the woman's request until she is 12 weeks pregnant. This right has suffered minor changes over time, mostly as regards the list of situations allowing for abortion at a later stage in pregnancy, available at [www.avort.md](http://www.avort.md), accessed 28 November 2016.

71. Articles 3 and 5 of Law No. 138 of 15 June 2012 on reproductive health guarantee and secure access to safe abortion for every woman, as well as to the new technologies for prenatal diagnosis of any foetus' malformation, in which case the woman may have a free and safe abortion.

72. Article 12 of Law No. 138 of 15 June 2012 on reproductive health.

73. Published in the "Monitorul Oficial" nr. 241-246 of 10 December 2010, as Article 948, available at <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=336941&lang=1>, accessed 28 November 2016. Also applicable is the Ministry of Health Order No. 482 of 14 June 2011 regarding approved standards for safe termination of pregnancy.

74. The full text of the decision is available at [www.egalitate.md/index.php?page=news&id=836&rid=503&l=ro](http://www.egalitate.md/index.php?page=news&id=836&rid=503&l=ro), accessed 28 November 2016.

75. Case No. 087/14 had at its basis the pleadings of the female lawyer who took on the representation of the women with disabilities.

gender-based discrimination when a young woman, Z.,<sup>76</sup> was convicted to 20 years' imprisonment for having conducted an abortion at home late in her pregnancy that was qualified as premeditated murder, then denied access to post-abortion medical care and humiliated by guards while being detained awaiting trial (Centre for Reproductive Rights 2012a). An application to the European Court of Human Rights was lodged (and is still pending), arguing that in addition to the shortcomings of the investigation, conviction and punishment of Z. for the abortion, that the actions of the judicial system against her were due, in large part, to discriminatory attitudes towards unwed pregnant women and the stigmatisation of abortion in the Republic of Moldova (Centre for Reproductive Rights 2012b).

### **Other gaps related to the reproductive health of women**

Other issues in reproductive health law that present particular challenges for women are a lack of regular data collection on indicators of sexual and reproductive health, including disaggregated data on vulnerable groups; the absence of mandatory, non-judgmental, evidence-based sex education in public schools;<sup>77</sup> the absence of affordable contraceptives<sup>78</sup> and reproductive health services; the parental consent requirement on abortion, which may prevent an adolescent girl from accessing safe abortion; the requirement on doctors to report illegal abortions, which may lead to women being blamed, stigmatised and marginalised, impeding them from accessing post-abortion medical care; continued gender stereotypes in the health system and other areas, including the media; and stigmatisation of women who have had an abortion.<sup>79</sup>

### **The discriminatory pressure of caregiving roles for women**

The mass media periodically reports on cases of discrimination against women for being at a reproductive age or for being mothers. Parenthood can become a barrier for a woman to find or keep employment. Termination of women's employment due to pregnancy or childcare duties is not uncommon (Radio Europa Libera 2012). Women report being asked about their civil status and children at job interviews. Companies explain that they seek dedicated employees and expect them to be at work, not on sick leave or childcare leave. It is a common practice for private companies to employ women for a determined period of time (e.g. one year) with the possibility to continue the employment for another year. Such an approach allows the employer to terminate the agreement once the woman employee becomes pregnant. In such cases she may lose her maternity and parental leave payments (Centrul de Investigatii Jurnalistice).

Women continue to be primary caregivers for their family members, children and the elderly. They juggle childcare duties and employment and some state institutions consider such a situation as identifiable only to women.<sup>80</sup>

### **Discriminatory effects of unequal retirement ages**

Initially, different retirement ages for women and men were meant to "compensate" women for the time spent giving birth and caring for children. Experts consider that the calculation of pensions for women and men today uses the same formula for both sexes, which in the end penalises women: a woman and a man with the same minimal work years for their sexes, who had the same monthly income, having reached the retirement age for their sexes find that the woman receives a smaller pension than the man.<sup>81</sup> This may be corrected if women and men retire at the same age.

76. As reported by IDOM (the Moldovan Institute for Human Rights), available at [www.idom.md](http://www.idom.md), accessed 28 November 2016.; in May 2006, Z., an unmarried, pregnant and poor young woman from rural Moldova, induced an abortion at a late stage of her pregnancy at her home. When she was taken to the hospital for haemorrhagic shock, doctors reported her to the police. She was then charged with intentional murder, even though medical records show that she had an abortion and there is no criminal penalty for women who illegally terminate their pregnancy. In December 2006, Z. was found guilty of murder and sentenced to 20 years in prison. On 31 January 2012, the Moldovan Pardoning Commission granted a pardon to Z. after she had spent five years in prison.

77. Ms Tamara Plamadeala, the Child's Ombudsperson, and the Moldovan Orthodox Church protested against sex education in schools, see [www.publika.md/juristii-ortodocsi-avocatul-copilului-si-mitropolia-moldovei-impotriva-vietii-sexuale-in-scoli--cerem-retragerea-cartii\\_1321531.html](http://www.publika.md/juristii-ortodocsi-avocatul-copilului-si-mitropolia-moldovei-impotriva-vietii-sexuale-in-scoli--cerem-retragerea-cartii_1321531.html), accessed 28 November 2016.

78. Contraceptives are not covered by the medical insurance policy.

79. Human rights NGOs submitted a letter of protest to the Minister of Health against the intention of an Orthodox group to place a "commemorative stone for unborn, aborted children" near a maternity Centre for the Mother and Child, see [www.avort.md/wp-content/uploads/2015/06/SCRISOARE-DE-SESIZARE-ON-PRIVIN-A-INTIMID-RII-FEMEILOR-ON-EXERCITAREA-DREPTULUI-LA-ALEGERE-I-DISPUNERII-DE-PROPRIUL-CORP1.pdf](http://www.avort.md/wp-content/uploads/2015/06/SCRISOARE-DE-SESIZARE-ON-PRIVIN-A-INTIMID-RII-FEMEILOR-ON-EXERCITAREA-DREPTULUI-LA-ALEGERE-I-DISPUNERII-DE-PROPRIUL-CORP1.pdf), accessed 28 November 2016.

80. On 16 June 2015, the General Police Inspectorate of the Republic of Moldova announced a contest among women police officers to choose the best candidate to be the hero of a journalistic report reflecting on "women in police", see [www.igp.gov.md/ro/content/inspectoratul-general-al-politiei-lanseaza-concursul-politista-anului-2015](http://www.igp.gov.md/ro/content/inspectoratul-general-al-politiei-lanseaza-concursul-politista-anului-2015), accessed 28 November 2016. One of the criteria for selection, as indicated in the announcement, was an ability to show how one balances professional and family duties. Such criteria are never considered applicable to a policeman, nor are they reflected in the media.

81. "Reforming the pension system through gender dimension", available at [www.progen.md/files/6827\\_reforma\\_pensii\\_final.pdf](http://www.progen.md/files/6827_reforma_pensii_final.pdf), p. 9, accessed 28 November 2016.

## Prejudices limiting access to employment for Roma women

Roma women are discriminated against in access to employment based on their ethnicity.<sup>82</sup> The National Centre of Roma in the Republic of Moldova has stated that due to poor education opportunities and low competitiveness of Roma in the labour market, their employment rate is low. Those who succeed in school and university and find employment are subjected to further discrimination. The National Centre of Roma reported on a case of a Roma woman being denied employment because “she is a Gypsy and Gypsies steal”.<sup>83</sup> In another case, a Roma woman was harassed to leave her position as a teacher in kindergarten because “she is a Gypsy and can put a spell on their children”.<sup>84</sup> There is no information on whether these women sued for discrimination.

## Measures to redress the underrepresentation of women in decision-making positions

A separate concern continues to be the low representation of women in decision-making positions in the public and private sector. To this, the UN Committee on Economic, Social and Cultural Rights recommended that temporary special measures be introduced to promote the representation of women in decision-making positions (UN Committee on Economic, Social and Cultural Rights 2011: 9). In a comprehensive draft law, the Moldovan Government has proposed changes to Law No. 64/1990 on the Government, and Law No. 797/1996 approving the Regulation of the Moldovan Government to impose a minimum quota of 40% in all decision-making positions in Parliament and in Government to be occupied by women. The draft law also proposes introducing changes to the Election Code, as well as allowing the Central Election Commission to refuse to register electoral lists for political party candidates if 40% of all candidates are not women.<sup>85</sup>

## Regarding criminal and misdemeanour laws

### Sexual harassment

There is no protection in the law against stalking and harassment, unless it qualifies as discrimination or sexual harassment. Law No. 121/2012 recognises harassment as a form of discrimination.<sup>86</sup> Harassment, in particular, is banned in employment, providing that one can prove that a hostile working environment is based on a protected ground, e.g. sex, age, disability or religion.<sup>87</sup> If there is enough evidence, the Equality Council, upon the victim’s request, may decide to recommend that the court apply a penalty with a fine.<sup>88</sup> Sexual harassment<sup>89</sup> has been recognised as a criminal offence<sup>90</sup> in the Moldovan Criminal Code since 2010. The burden of proof in criminal cases rests on the Prosecutor’s Office and since sexual harassment frequently occurs in private settings in the absence of an eyewitness or direct evidence, successful investigation and conviction is problematic. There is no data about the number of complaints lodged or cases brought successfully to court that have ended with a conviction. One criminal case known to have reached the domestic courts concerned two female state employees who had complained about being sexually harassed by their boss. They filmed the ordeal and reported him to law enforcement. Once the criminal case reached the court, the defendant and the victims came to an agreement for a pardon. The court accepted the agreement and closed the case.<sup>91</sup> There are also a number of cases lodged in the civil courts that have examined allegations of harassment. In one case a woman sued her ex-husband for harassing her because of her sexual orientation. In another case, one individual alleged sexual harassment when another forced him to undress and filmed him without his consent. A single case has been lodged with the Equality Council alleging sexual harassment in the workplace.<sup>92</sup>

82. Report of the National Centre for Roma, available at <http://roma.md/ro/rapoarte/87-rapoarte-anuale-2010>, accessed 28 November 2016.

83. Case of D.M. in Zirnesti, Cahul, available at <http://roma.md/ro/rapoarte/87-rapoarte-anuale-2010>, accessed 28 November 2016.

84. Case of E.S. in Tohatin District, available at <http://roma.md/ro/rapoarte/87-rapoarte-anuale-2010>, accessed 28 November 2016.

85. Draft law No. 180 approved by Moldovan Government Decision No. 322 of 8 May 2014.

86. Defined as unwanted conduct that creates a degrading, hostile working environment based on a protected ground aimed at, or resulting in, humiliation of one’s dignity, Article 2 of Law No. 121 of 25 May 2012.

87. Article 7 Law No. 121 of 25 May 2012.

88. Article 54 (2) of the Misdemeanour Code imposes a penalty with fines from 2 600 MDL to 8 000 MDL.

89. Law No. 5 of 9 February 2006 on the equal chances of men and women defines sexual harassment as any behaviour – physical, verbal or non-verbal – of a sexual nature that denigrates the dignity of the person or creates an unpleasant, hostile, degrading, humiliating or offensive environment. This definition will be changed by draft law No. 180 approved by Moldovan Government Decision No. 322 of 8 May 2014, once it is voted on by the Moldovan Parliament. The new definition will be same as that in the Criminal Code.

90. It has been defined differently by Article 173 of the Criminal Code and by Article 2 of Law No. 5 on equal chances for men and women.

91. A news article on this case is available at <http://unimedia.info/stiri/dosar-penal-pe-numele-sefului-hidrometeo-pentru-hartuire-sexuala-50791.html>, accessed 28 November 2016.

92. Decision of 12 June 2014 in the Case No. 074/14 lodged by N.G.-J against her boss A.R. and colleagues I.C., V.C., V.G., employees of S.A. “Apa-Canal”. The Equality Council did not find sexual harassment but made a statement about discriminatory practices against women in promotion decisions.

## Domestic violence

Law No. 45/2007 on prevention and combating family violence recognises several forms of domestic violence: physical, psychological, sexual, economic and spiritual. In the past, law enforcement and prosecutor offices open criminal investigations only where victims can show the presence of bodily injuries, however light or insignificant. This approach has left those women unprotected who suffer forms of domestic violence other than physical abuse.<sup>93</sup>

In July 2016, the Parliament of the Republic of Moldova adopted amendments to improve and harmonise national legislation on domestic violence and violence against women with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Importantly, the amendments introduce emergency restraining orders, free legal aid to victims, and extend the definition of violence to include stalking.

A child facing violence in the home for their sexual orientation or gender identity may benefit from the protection of Law No. 45/2007 and yet, the children's fear of violence and hatred towards them for their sexual orientation or gender identity prevents them from seeking protection. As a result they may become runaways and homeless.<sup>94</sup>

Some cases also show that the Prosecutor's Office will open a criminal case on a domestic violence crime only if the victim provides evidence of bodily injuries (light, medium or grave). Economic violence or psychological violence are not considered for a criminal conviction.<sup>95</sup>

Gender is not among the grounds recognised by the Criminal Code as an aggravating circumstance. Hate crimes are only those committed on the basis of race, religion, nationality or social status. In 2013 and 2014, women remained the predominant group of victims of domestic violence.<sup>96</sup> In the cases of *Eremia and Others v. the Republic of Moldova*<sup>97</sup> and *Mudric v. the Republic of Moldova*<sup>98</sup> the European Court of Human Rights found the Republic of Moldova responsible for discriminatory ill-treatment, meaning failure to fulfil its positive obligations to protect women from gender-based violence such as domestic violence.

## Rape

Rape remains an egregious crime against women.<sup>99</sup> Evidence of physical resistance and of lack of consent for sexual intercourse is required of victims, no matter what their age.<sup>100</sup>

Women with disabilities, who are residents of psycho-neurological institutions, are extremely vulnerable to sexual violence, as has been proven by law enforcement during criminal investigations between January and May 2013, when 20 women were identified as having been sexually abused by their doctor.<sup>101</sup> Some of them were left pregnant and underwent abortions at late stages of pregnancy.<sup>102</sup>

## Access to legal aid

There are numerous factors impeding a woman's effective access to justice,<sup>103</sup> including not being guaranteed free and qualified legal aid. Law No. 1260/2002 on lawyers<sup>104</sup> provides that the state guarantees access to qualified legal assistance to everyone.<sup>105</sup> Once a lawyer is appointed by the Territorial Office of the National Council for Qualified Legal Assistance, the plaintiff must secure an effective right to protection and representation.<sup>106</sup>

93. European Court of Human Rights case of *T.M. and C.M. v. Moldova*, Application No. 26608/11, judgment of 7 January 2014, para. 47.  
94. *ibid.*

95. Facts-based survey of the OSCE and La Strada, "Existing practices on access to justice for victims of domestic violence and the realisation of their right to legal assistance in the Republic of Moldova".

96. *ibid.*, Table 2 "Statistical information".

97. European Court of Human Rights, Application No. 3564/11, judgment of 28 May 2013.

98. European Court of Human Rights, Application No. 74839/10, judgment of 25 June 2013.

99. Article 171 of the Moldovan Criminal Code states that rape, meaning sexual intercourse committed by use of the physical or psychological constraints of a person or by abusing a person's inability to defend herself/himself or to consent, is punishable with imprisonment from three to five years, and Article 174 of the Moldovan Criminal Code states that sexual intercourse, homosexual acts or lesbian acts with a person who is known to be under the age of 16, are punishable with imprisonment for up to five years.

100. European Court of Human Rights, *I.G. v. the Republic of Moldova*, Application No. 53519/07, judgment of 15 May 2012.

101. Criminal case against Doctor V. F., pending before the Balti court, on numerous counts of rape and sexual abuse.

102. The Equality Council concluded this to be the case when it had examined the complaints and issued the Decision of 4 July 2014 in Case No. 087/14.

103. Conclusion made also in the facts-based survey of the OSCE and La Strada, "Existing practices on access to justice for victims of domestic violence and the realisation of their right to legal assistance in the Republic of Moldova".

104. Original title "Legea cu privire la avocatura".

105. Articles 3 and 5(2) of Law No. 1260.

106. Article 46(1) of Law No. 1260.

In addition, Law No. 198/2007 regarding state qualified legal assistance<sup>107</sup> declares that non-discrimination of beneficiaries of legal aid is one of the core principles of the free legal aid system.<sup>108</sup> Women subjected to discrimination because of their gender, sex or gender identity benefit from free legal aid. The actual procedure for accessing state guaranteed legal aid is too cumbersome, consumes time and impedes immediate access to free legal aid.<sup>109</sup> According to the NGO La Strada Moldova,<sup>110</sup> 9 out of 10 victims who benefited from legal aid had been informed by local authorities of available services only after they found themselves in life-threatening situations. Women who did not benefit from legal aid knew nothing about the legislation, rights or the existing legal aid resources. In half of such cases, local authorities knew about domestic violence cases but did not provide them with information on their rights and the relevant legal procedures.

### ***Additional barriers for women from national and linguistic minority groups***

Women from national and linguistic minority groups and Russian speakers face additional barriers when accessing the courts. Over a dozen complaints submitted and examined by the Equality Council show that judges refuse to accept complaints and lawsuits if they are written in Russian.<sup>111</sup> In six decisions,<sup>112</sup> the Equality Council found such a practice to be discriminatory against national and linguistic minorities, to whom the domestic law guarantees the right to use Russian for inter-ethnic communication. On 25 May 2015, a representative of the Supreme Council of Magistrates assured members of the Equality Council that the practice would end.<sup>113</sup>

Women with disabilities, who are residents of psycho-neurological institutions, do not have access to free legal aid. One reason resides in their legal capacity being taken away by court decisions. The Ministry of Labour, Social Protection and Family asks for the court decision declaring that the person with disability is incapable and should be placed under guardianship before issuing acceptance into one of its residential institutions. A guardian for a woman with disabilities who has been declared incapable can be a member of her family (husband, offspring or a relative), the social assistant or the residential institution itself. The woman will then depend on her guardian's willingness to help her protect her rights if her rights are violated. The criminal case against the doctor of Balti psycho-neurological institution, charged with raping and sexually abusing 20 women with disabilities, clearly shows that none of these women's guardians acted with diligence to ensure that such abuse was reported immediately and would not be repeated. Only one guardian, the sister of the first complainant, sought to engage a lawyer and insisted that a criminal case be initiated. Recently, another case was reported to have occurred in the city of Soroca with a woman placed under the guardianship of her husband due to her mental health disability. She could not divorce him and seek another guardian without his consent as the court rejected her lawsuit and the lawyer she chose to represent her.<sup>114</sup> Only recently has the domestic law changed so that people placed under guardianship may access the courts directly with any lawsuits or complaints they need to lodge.<sup>115</sup>

## **Analysis of practices and mechanisms for the implementation of laws**

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The Equality Council is currently the most effective mechanism for combating non-discrimination in the Republic of Moldova. Established by Law No. 121/2012, it applies the relevant national legislation and international standards when it examines a complaint alleging discrimination. Between October 2013 and June 2015, the Equality Council received 265 complaints, of which 17 were *ex officio* investigations. Of these, 102 complaints were declared inadmissible because they were either anonymous or failed to demonstrate *prima facie* discrimination. There have been 126 decisions, and only in 68 has the Equality Council found discrimination. Statistics also show that the larger number of decisions, 30, found discrimination in access to public goods and services, and that 16 decisions referred to sex and gender-based discrimination.<sup>116</sup>

107. This law establishes the National Council for Qualified Legal Assistance, with territorial offices in Balti, Chisinau, Comrat and Cahul, as the main authority to select lawyers that will provide free legal aid and to monitor the quality of the legal aid, available at [www.cnajgs.md/ro/structura/page/cnajgs](http://www.cnajgs.md/ro/structura/page/cnajgs), accessed 28 November 2016.

108. Article 4 of Law No. 198.

109. Facts-based survey of the OSCE and La Strada, "Existing practices on access to justice for victims of domestic violence and the realisation of their right to legal assistance in the Republic of Moldova".

110. Conclusion made by the organisation in its above-mentioned study, presented at a press conference held on 10 December 2014 at "Infotag" Press Agency.

111. Council report for 2014, available at [www.egalitate.md](http://www.egalitate.md).

112. Example Case No. 007/13 Decision of 30 November 2013, Case No. 009/13 decision of 2 December 2013, available at [www.egalitate.md/media/files/files/decizia\\_009\\_4237096.pdf](http://www.egalitate.md/media/files/files/decizia_009_4237096.pdf).

113. The Equality Council's Round Table on "Dignity at work".

114. Statement made by Dumitru Sliusarenco, lawyer acting in the case.

115. Article 24 of the Civil Code, available at <http://lex.justice.md/md/325085>, accessed 28 November 2016.

116. Statistics indicated in the reports for 2013 and 2014, available at [www.egalitate.md](http://www.egalitate.md).

The Equality Council has gained the trust and confidence of the public and lawyers. Recent interviews with lawyers actively litigating discrimination cases outlined the numerous difficulties they face in court: prejudices, insufficient knowledge of Law No. 121/2012, misunderstanding about *prima facie* claims and the burden of proof, among others.

## Socio-economic and cultural barriers to women's access to justice

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### Level of women's awareness of their rights

In general, women living in urban areas have access to various sources of information and they are mostly the ones who seek out lawyers and actively defend their rights in the courts. By contrast, women living in rural areas are more likely to lack information on the legislation on combating domestic violence and sex-based discrimination, and on their rights and available resources for legal assistance. In urban areas, information is available via the internet, TV, radio and newspapers. Internet access and computers may be absent in rural areas, which means that rural women may access only the information available to them through newspapers and some TV channels and radio stations. Police officers, social assistance and local public authorities have been found to be inactive in helping women to receive information in Moldova.<sup>117</sup> Women lack confidence in the legal system and the fear of possible repercussions triggers a refusal to defend their own rights.<sup>118</sup> Women with disabilities living in residential institutions receive only the information they may access within the premises.

### Discussion of possible specific socio-economic and cultural barriers affecting women's access to justice

Women's economic situations can influence their ability to defend their rights in court or with the police. Women receive 13% less in wages than men.<sup>119</sup> Official statistics show that in 2015, 51.37% of women were unemployed and 48.63% of men were unemployed.<sup>120</sup> The causes of unemployment among women differ from those for men and are rooted in their perceived gender roles as mothers and wives. Women continue to be primary caregivers and as such spend most of their early years caring for children and the elderly, and maintaining the household. A woman who was formerly a housewife and who has decided to seek employment faces numerous challenges: prejudice, low pay, long work hours, job offers below her educational level, and discrimination due to her childcare obligations. These barriers demotivate women from seeking employment, leaving them dependent on the income of husbands/partners/families, or in poverty. In the NGO submission<sup>121</sup> to the UN Committee on the Elimination of All Forms of Discrimination against Women, survey results were presented indicating that only 40.2% of all women facing violation of their employment rights "tried to clarify the situation with the manager/head of the unit"; only 6% complained to their supervisor; and only 2.6% lodged a case with the courts or law enforcement bodies.<sup>122</sup> Among the factors that prevent women's access to employment and to securing a decent income are: existing stereotypes on the part of employers, according to whom there are feminine and masculine professions (36.5%); employers' fear of possible loss of profits as a result of hiring women of a certain age, who may apply for maternity, childcare or medical leave (26.3%); lack of knowledge about rights in the field of women's employment (17.3%); and existing traditions that imply the existence of different gender roles in society (16.7%).<sup>123</sup>

Where the woman is dependent on the income of her family or partner/husband, her chances to access the legal system and protect herself from abuse in the family diminish significantly. Specialists, legal advisors and psychologists admit that victims of domestic violence encounter the greatest obstacles in obtaining an effective protection order, dissolving marriage and determining custody of children, collecting minor child support, and agreeing on distribution of common property.<sup>124</sup>

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117. Facts-based survey of the OSCE and La Strada, "Existing practices on access to justice for victims of domestic violence and the realisation of their right to legal assistance in the Republic of Moldova".

118. Statement made by Ms R. Munteanu, victim of domestic violence, who complained to the European Court of Human Rights (Application No. 34178/11) on non-execution of protection orders, the court's failure to see domestic violence in the actions of her abusive husband, and police negligence towards her complaints, which led to her ceasing further complaints.

119. See [www.statistica.md/category.php?l=ro&idc=264&](http://www.statistica.md/category.php?l=ro&idc=264&), accessed 28 November 2016.

120. According to official data for 2015 made public by the National Employment Agency, available at [www.anofm.md](http://www.anofm.md), accessed 28 November 2016.

121. Alternative/shadow Report on Women's Rights in the Republic of Moldova, presented at the 56th session of the Committee on the Elimination of Discrimination against Women (CEDAW), 30 September to 18 October 2013, available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN), accessed 28 November 2016.

122. *ibid.*, page 11-12.

123. *ibid.*

124. *ibid.*

Many still consider domestic violence to be normal within a family and to be primarily concerned with physical violence. Society considers domestic violence to be a family affair, and prefers not to intervene.<sup>125</sup> Although the subject of domestic violence is not new for society, it is still treated as taboo for many families or an issue/problem that not even specialists (e.g. police officers, doctors) want to discuss, as they are also marked by social stereotypes.

The perception of women and men in society is also influenced by numerous sexist advertisements and media articles that present women as perfect housewives and mothers who have to remain sexually attractive and look perfect, criticising them if they fail to meet these standards. Mass media scrutinises women's behaviour and is judgmental of their lifestyles.<sup>126</sup>

### **Brief overview of key statistics concerning women's position in society, the economy and politics vis-à-vis men's position**

As of 1 January 2013, Moldova's population of 3 559 500 consisted of 51.9% women and 48.1% men. Among the elderly, 69.5% are women and only 30.5% are men. Women live longer than men by approximately 7.8 years. They also marry earlier, at an average age of 23, while men marry for the first time at the average age of 26. When women have children after the age of 16, or more than one child, they leave the labour market. Figures show the employment rate for women with more than one child to be 15.3% where the child is younger than two years old, while men are employed at a rate of 53%. Of all the decision-making positions, men occupy 56%, and women only 44%. Only one in four employers, public or private, is a woman.

There were 441 judges sitting on the courts of the Republic of Moldova in 2012, of which 59.9% were men and 40.1% were women. Of all the courts, 26% were presided over by women. In 2012, the Prosecutor's Office had 66.89% men employees and 33.1% women employees. The territorial prosecutor's offices had 90.8% male leadership (CEPEJ 2014). There is no official disaggregated data on the number of women and men in other legal professions: lawyers, notaries, court clerks and bailiffs.

Women constitute 57% of all students enrolled at university. Women give preference to social assistance (85%), education and communication (84%), pharmacy (82%) and medicine (74%), social science (81%) and humanitarian studies (77%), public service (75%), and art (62%). Men dominate in military and transport services, where for every 100 men there are only 6 women. Men are predominantly represented in courses on security and protection (88%), engineering (86.7%), agriculture (80.5%), architecture (70.9%), sport (69.3%) and science (64.1%).

Of those who benefit from social payments, 66% are women, while 72% of those who receive an old age pension and 50% of those who receive a disability pension are women. Women receive smaller pensions (934.3 MDL average) than men (1115.7 MDL average).<sup>127</sup>

Official statistics indicate that women commit fewer criminal offences than men.<sup>128</sup> In 2013, of a total of 5 363 detainees just 429 were women. Of those convicted, with various terms of imprisonment, 99 were women (1 727 men); 178 women were fined (1 966 men); 272 women received a conditioned sentence (2 867 men); and 56 women received community service (2 132 men).

Statistically, women continue to occupy most of the low-paid jobs available and experts have stated that poverty in the Republic of Moldova has a feminine face.<sup>129</sup> The UN Committee on Economic, Social and Cultural Rights described as alarming the "significant gender disparities in wages, resulting in women earning 76.4% of the average monthly wage of men in 2009" (UN Committee on Economic, Social and Cultural Rights 2011: 9). Two years after this finding, the Minister of Labour, Social Protection and Family recognised officially that the situation reported for 2009 continues to be applicable in 2011, although a much larger number of women than men obtain higher education and skills.<sup>130</sup> In 2012, women were earning a 13% smaller average monthly

125. A preliminary and primary investigation of the phenomenon in the Republic of Moldova – *Rapid assessment of domestic violence in the Republic of Moldova* conducted by the International Center "La Strada" in 2007.

126. An example is the show "What women want" ("Ce vor femeile") produced by [www.ea.md](http://www.ea.md), accessed 28 November 2016.

127. Official statistics, available at [www.statistica.md/public/files/publicatii\\_electronice/femei\\_si\\_barbati/Portret\\_statistic\\_femei.pdf](http://www.statistica.md/public/files/publicatii_electronice/femei_si_barbati/Portret_statistic_femei.pdf), accessed 28 November 2016.

128. Women committed 1 183 criminal offences in 2013, while men committed 14 820 criminal offences, see [www.statistica.md/category.php?l=ro&idc=264&](http://www.statistica.md/category.php?l=ro&idc=264&), accessed 28 November 2016.

129. See "Reforming the pension system through gender dimension", p. 6, available at [www.progen.md/files/6827\\_reforma\\_pensii\\_final.pdf](http://www.progen.md/files/6827_reforma_pensii_final.pdf), accessed 28 November 2016.

130. Ms V. Buliga stated in a press conference dedicated to International Women's Day that no matter how qualified women are, they still receive a lower wage than men (March 2011), available at [www.timpul.md/articol/ministrul-muncii-femeile-sunt-mai-instruite-dar-au-salarii-mai-mici-decat-barbatii-21199.html](http://www.timpul.md/articol/ministrul-muncii-femeile-sunt-mai-instruite-dar-au-salarii-mai-mici-decat-barbatii-21199.html), accessed 28 November 2016.

wage than men, with correspondingly smaller pensions.<sup>131</sup> It is argued by experts that the lower salary and pension contribution further contributes to poverty for women once they retire, as the law prescribes,<sup>132</sup> at the age of 57, four years before men.

### 3. GENDER RESPONSIVENESS OF THE JUSTICE SYSTEM

#### An overview of the number of cases women bring before national courts, in comparison to men

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There is no official data about the number of cases brought to court by women or men. An estimate, at least qualitative, is given by women's human rights NGOs that manage hotlines and provide a large spectrum of services, including legal aid. In 2014, a La Strada hotline that had worked for 5 years, had recorded over 7500 calls during this time, by which over 5000 people benefited from support, information and instructions in cases of domestic violence, around 4000 of which were considered to be in crisis situations.<sup>133</sup>

#### Gender bias, gender stereotypes, poor services and hostile attitudes among legal professionals and the police

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The author of this study recently witnessed a woman victim of violence being ignored by a police officer when she entered the police station seeking help.<sup>134</sup> He explained that he was busy taking testimonies from other people and asked her to leave her phone number for him to call later. He did not ask what had happened to her or whether she needed help.<sup>135</sup> Police officers' negligence in providing women with information about their rights, legal procedures and the assistance that is available to them takes away their confidence.

Judges and prosecutors continue to be influenced by their prejudices when deciding on cases of gender-based violence. An illustration of the prejudices against women in legal proceedings came out at the examination of the case of *I.G. v. the Republic of Moldova*<sup>136</sup> while it was pending before the European Court of Human Rights. In August 2012, the General Prosecutor's Office of Moldova issued a recommendation to all prosecutor's offices about the effective investigation of sexual crimes.<sup>137</sup> One of the recommendations stated that to determine consent of the victim to sexual intercourse, the prosecutor should understand in cases involving a young woman that her age meant that her partner would need to use force to carry out the act. Accordingly, such cases should not be considered rape. This recommendation still stands.

There are events dedicated to awareness raising about violence against women and domestic violence in particular. An example is the 16 Days of Activism against Gender Violence campaign (Gender Equality Commission of the Council of Europe 2014: 69-70) organised annually in Moldova. It is a strategy that is applied at all levels, regional, national and local, in order to reach all potential women victims of domestic violence. The campaign features a number of activities, including press conferences, roundtables, public debates, conferences, and TV and radio programmes on human rights, gender-based violence and domestic violence. Similar events on raising awareness about domestic violence and gender-based violence are organised to celebrate International Family Day on 15 May (Gender Equality Commission of the Council of Europe 2014: 69-70).

#### Mapping of existing gender training for judges and lawyers

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In 2014, the National Institute of Justice and La Strada Moldova, in partnership with the International Organization for Migration (IOM) Mission in Moldova and the OSCE Mission to Moldova, held six workshops on "Hearing child victims-witnesses of abuse/sexual exploitation" for psychologists, prosecutors, instruction judges and representatives of multidisciplinary teams from the local authorities. There were 166 trained professionals: 37

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131. Official statistics, available at [www.statistica.md/category.php?l=ro&idc=264&](http://www.statistica.md/category.php?l=ro&idc=264&), accessed 28 November 2016.

132. Law No. 156-XIV of 14 October 1998 on state social insurance pensions notes that women retire at the age of 57 and men at 61.

133. La Strada Moldova provided relevant data in a 2014 public statement, available at <http://cupluarmonios.lastrada.md/en/access-to-justice-of-victims-of-domestic-violence>, accessed 28 November 2016.

134. I. B. was beaten by her neighbour, who disliked her looks. She ran to the police station seeking protection and help to access medical assistance, Case No. 0345 of 3 July 2015 at Buiucani Police Station No. 4.

135. This explanation was provided by the police officer the same day, after an official complaint was lodged with his superior for having refused to receive the complaint from I. B.

136. European Court of Human Rights, *I.G. v. the Republic of Moldova*, Application No. 53519/07, judgment of 15 May 2012.

137. See [www.promolex.md/upload/publications/ro/doc\\_1332166962.pdf](http://www.promolex.md/upload/publications/ro/doc_1332166962.pdf), accessed 28 November 2016; the Romanian title of this recommendation is "Ghidul metodologic privind investigarea infracțiunilor sexuale", publicat la 15 August 2008 de Direcția Urmărire Penală din cadrul Procuraturii Generale.

judges, 46 prosecutors, 73 psychologists and 10 co-ordinators of multidisciplinary territorial teams (Gender Equality Commission of the Council of Europe 2015: 87). Since 2009, the National Institute of Justice, in partnership with the OSCE Mission in Moldova has trained around 400 judges, prosecutors and lawyers on combating trafficking in human beings and efficient examination of cases of domestic violence. In 2012-13, 50 public lawyers and 25 paralegals were trained on providing counsel in cases of domestic violence. In 2014, around 175 judges and prosecutors were trained on how to handle cases of trafficking in human beings, and issuance and execution of protection orders in cases of domestic violence (Gender Equality Commission of the Council of Europe 2015: 87). Also, in 2014, as a pilot project, the OSCE Mission in partnership with the National Institute of Justice, the Ministry of Labour, Social Protection and Family, and the NGO Gender-Centru organised a workshop on promoting gender equality and non-discrimination for around 20 judges and prosecutors. In November 2014, a group of Moldovan judges and prosecutors completed a “Training of trainers” course to enhance the capacity of the Moldovan judiciary system to prevent and combat domestic violence.

The National Institute of Justice currently has a separate course on domestic violence and one on non-discrimination, which also covers gender equality. Each course is approved annually by its Board. The National Institute of Justice has shown receptiveness to host a course on women’s human rights, either as a separate course or as a component of a more general one on human rights.

The Council of Europe office in Moldova organised a “Training of trainers” in 2013 for lawyers, and later in 2014 and 2015 cascade trainings for other lawyers and legal professionals on various subjects of equality and non-discrimination. It has also hosted open thematic seminars. In 2015, the Council of Europe office in Moldova has also prepared seminars for judges and prosecutors on access to justice that aim to include a module on equality and non-discrimination.

## **Mapping of the extent to which women’s rights and gender equality issues have been introduced in the curricula of basic education and further training for legal professionals and police**

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In order to support the police in the fight against domestic violence, the Ministry of Internal Affairs, with the support of the US Department of State and the United Nations Population Fund in partnership with the Women’s Law Centre, has initiated specialised training sessions at the Institute of Continuous Professional Education and Applied Scientific Research within the Academy “Stefan cel Mare” on effective police response to cases of domestic violence.<sup>138</sup> A “Training of trainers” for a group of police officers, lecturers of the Police Academy and civil society representatives was conducted by the Advocates for Human Rights in partnership with the Women’s Law Centre in December 2012. The national trainers, based on a special curriculum developed by the Women’s Law Centre, trained at least 500 police officers from all over Moldova during 2013-14. These training sessions are part of multidisciplinary efforts, and three “Training of trainers” were organised from October to November 2012 for health workers. At the same time, a project funded by the US Department of State and implemented by the IOM focuses on training all multidisciplinary teams at local level from different regions in Moldova. As part of the project, at least 1 400 professionals from 455 multidisciplinary teams from 21 regions were trained during 2014.<sup>139</sup>

## **4. REMEDIES, GOOD PRACTICES AND RECOMMENDATIONS**

### **Existing remedies to facilitate women’s access to justice**

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There are several existing remedies to facilitate women’s access to justice:

- ▶ under amendments adopted in July 2016, free legal aid is granted to women victims of domestic violence, sexual abuse or other forms of violence against women;
- ▶ the Equality Council examines complaints against police officers and prosecutors who use prejudices to undermine effective access to protection from the law;
- ▶ the National Institute of Justice organises trainings on domestic violence in particular and access to justice for women.

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138. Described also in the Gender Equality Commission of the Council of Europe “Compilation of good practices to reduce existing obstacles and facilitate women’s access to justice”, p. 53.

139. The contribution of the Republic of Moldova on key challenges and good practices on access to justice for women victims of violence at national level, published by the Council of Europe on 3 February 2014, p. 71, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/SSODisplayDCTMContent?documentId=0900001680597b15>, accessed 28 November 2016.

## **National good practices to promote equal access of women to justice**

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National practices to promote equal access of women to justice include:

- ▶ execution of the Equality Council's decision in finding police officers responsible for discrimination against women victims of violence in accessing legal remedies;
- ▶ planned training on gender equality for police officers throughout the country (2015-16);
- ▶ awareness-raising campaigns on women's rights and domestic violence.

## **Proposed measures to address obstacles that prevent equal access to justice for women**

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Measures to address obstacles to equal access to justice for women include:

- ▶ making information available in rural areas in all public places for women to access and learn about their rights;
- ▶ issuing injunctions on journalistic interventions about women and men being judged through prejudices and stereotypes;
- ▶ ensuring higher scrutiny of police officers so they can provide proper support to women in need;
- ▶ rigorous supervision for the execution of protection orders;
- ▶ conducting continuous campaigns targeting women and men on prohibition of violence and discrimination;
- ▶ introducing mandatory courses on women's human rights for police, prosecutors, judges and lawyers, social assistants and child service personnel.

## **Proposed measures to address research and data needs in the field of women's equal access to justice**

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State institutions should disaggregate data on women's access to the legal system by the number of requests for legal aid as well as the number of cases brought to the courts, the police or prosecutor's offices or to other public authorities. These are currently unavailable. The only sex-disaggregated data that have been produced, and which are referred to in this study, are those from the National Bureau of Statistics (2012) titled "Statistical portraits of women and men in the Republic of Moldova".<sup>140</sup>

## **Mapping of relevant actors in the field of women's access to justice (official institutions, civil society organisations, and academia)**

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- ▶ Moldovan Equality Council;
- ▶ NGOs with activities focused on women's human rights (e.g. domestic violence, discrimination, abuse);
- ▶ Ministry of Labour, Social Protection and Family;
- ▶ Ministry of Internal Affairs;
- ▶ Ministry of Justice and National Council for State Guaranteed Legal Aid;
- ▶ National Institute for Justice;
- ▶ Moldovan State University.

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140. See [www.statistica.md/public/files/publicatii\\_electronice/femei\\_si\\_barbati/Portret\\_statistic\\_femei.pdf](http://www.statistica.md/public/files/publicatii_electronice/femei_si_barbati/Portret_statistic_femei.pdf), accessed 28 November 2016.

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