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## **Partnership for Good Governance 2019-2021**

### **PROJECT**

**Support to further strengthening the efficiency and quality of the judicial system  
in the Republic of Moldova**

## **Strengthening access to courts for vulnerable groups in the Republic of Moldova: challenges and recommendations**

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**Acronyms**

CEDAW	UN Convention on the Elimination of all Forms of Discrimination Against Women
CEPEJ	European Commission for the Efficiency of Justice
CERD	UN Convention on the Elimination of all Forms of Racial Discrimination
COVID-19	SARS-COV-2 infection
CRC	Un Convention on the Rights of the Child
CRPD	UN Convention on the Rights of Persons with Disabilities
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
OHCHR	Office of the UN High Commissioner for Human Rights
SDGs	Sustainable Development Goals

## Introduction

This report was commissioned within the project “Support to further strengthening the efficiency and quality of the judicial system in the Republic of Moldova”. The project is implemented by Council of Europe - Co-operation Unit of the European Commission for the Efficiency of Justice (CEPEJ), Justice and Legal Co-operation Department, Directorate General of Human Rights and Rule of Law of the Council of Europe.

Access to justice, including access to courts, is a fundamental pre-requisite for rule of law and fulfilment of fundamental human rights. This procedural right is of particular importance for people living in poverty and marginalized groups, who may often may not be aware of their legal rights, lack legal protection and access to mechanisms to remedy their grievances, or face other barriers, resulting in their increased vulnerability.

In the context of this report, vulnerability is defined as belonging to a group whose vulnerability is partly constructed by broader societal, political, and institutional circumstances, including power differentials and policy frameworks unresponsive to the needs of the individuals belonging to this group. The document is rather indicative and does not pretend to be exhaustive. It will consider the particular vulnerability in access to justice of the following vulnerable groups: women victims of domestic and/or gender based violence, minorities, persons with disabilities, children.

Ensuring access to courts constitutes a national priority and an internally acknowledged obligation of the country. The draft Strategy on the Development of the Justice Sector for 2019-2022 prioritises access to justice, stressing the necessity for improving quality of services for vulnerable and under-represented groups.<sup>1</sup> The Republic of Moldova ratified most international and regional human rights treaties, in this way undertaking to ensure access to justice and courts for all, without discrimination. In addition, the Moldovan Government committed to ensure realisation of Sustainable Development Goals (SDGs),<sup>2</sup> undertaking to ensure equal access to justice for all,<sup>3</sup> leave none behind,<sup>4</sup> achieve gender equality and empower all women and girls.<sup>5</sup>

The Council of Europe is assisting the Republic of Moldova in setting up a more accessible, efficient, independent, transparent, and more professional justice. The Action Plans for the Republic of Moldova 2017-2020<sup>6</sup> and 2021-2024<sup>7</sup> include among their priorities protection of human rights and dignity, anti-discrimination, rule of law. The action plans envisage implementation of actions designed on the basis of the tools, methodology and expertise of the European Commission for the Efficiency of Justice.

Against this background, the aim of the report is to provide advice to the judicial authorities on facilitating access to courts for vulnerable groups. The report is structured into three Chapters. The first chapter considers the international and regional standards on ensuring access to courts for most vulnerable

<sup>1</sup>[http://www.justice.gov.md/public/files/directia\\_analiza\\_monitorizare\\_si\\_evaluare\\_a\\_politicilor/Proiectul\\_Strategiei\\_de\\_dezvoltare\\_a\\_sectoru\\_l\\_justitiei\\_pentru\\_anii\\_2019-2022.pdf](http://www.justice.gov.md/public/files/directia_analiza_monitorizare_si_evaluare_a_politicilor/Proiectul_Strategiei_de_dezvoltare_a_sectoru_l_justitiei_pentru_anii_2019-2022.pdf)

<sup>2</sup> UN General Assembly (2015). *Transforming our world: the 2030 Agenda for Sustainable Development*, A/RES/70/1, adopted on 25.09.2015, available online at [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)

<sup>3</sup> Ibid, SDG 16

<sup>4</sup> Ibid, SDG 10

<sup>5</sup> Ibid, SDG 5

<sup>6</sup> <https://rm.coe.int/16807023ee>

<sup>7</sup> [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a029ad](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a029ad)

groups, with due attention to the COVID-19 pandemic and lessons learnt and challenges faced by the judiciary during the pandemic.

The second chapter examines the current situation on access to courts for vulnerable groups. This section also considers the situation of the judicial authorities during the COVID-19 pandemic in the Republic of Moldova.

Based on the above-mentioned analysis, the third chapter formulates recommendations for decision-makers and judicial authorities. Specific recommendations are formulated in the context of COVID-19 or similar emergencies.

## Chapter 1. International and Regional Standards on Access to Courts for Vulnerable Groups

This chapter seeks to map the international and regional standards on facilitating access to courts for vulnerable groups. The section also considers specific recommendations and lessons learnt identified for judicial authorities at regional and international level in the context of the COVID-19 pandemic or similar crises.

### Section 1.1. International standards on access to courts for vulnerable groups

This section aims to outline the standards on access to courts enshrined in the following international human rights instruments: ICCPR, CRPD, CEDAW, CRC, CERD. Due attention will be paid to relevant recommendations issued by the OHCHR in the context of the pandemic.

#### International Covenant on Civil and Political Rights:

The Human Rights Committee substantiated the normative content of Article 14 “Right to equality before courts and tribunals and to a fair trial” in its General Comment no. 32.<sup>8</sup> The specific standards that apply to vulnerable groups are provided below.

The right of access to courts and tribunals and equality before them is not limited to citizens of States parties, but must also be available to all individuals, regardless of nationality or statelessness, or whatever their status, whether asylum seekers, refugees, migrant workers, unaccompanied children or other persons, who may find themselves in the territory or subject to the jurisdiction of the State party.

Expressions of racist attitudes by a jury that are tolerated by the tribunal, or a racially biased jury selection are other instances which adversely affect the fairness of the procedure.

Juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under article 14 of the Covenant. In addition, juveniles need special protection. In criminal proceedings they should, in particular, be informed directly of the charges against them and, if appropriate, through their parents or legal guardians, be provided with appropriate assistance in the preparation and presentation of their defence; be tried as soon as possible in a fair hearing in the presence of legal counsel, other appropriate assistance and their parents or legal guardians, unless it is considered not to be in the best interest of the child, in particular taking into account their age or situation. Detention before and during the trial should be avoided to the extent possible.

Whenever appropriate, in particular where the rehabilitation of juveniles alleged to have committed acts prohibited under penal law would be fostered, measures other than criminal proceedings, such as mediation between the perpetrator and the victim, conferences with the family of the perpetrator, counselling or community service or educational programs, should be considered, provided.

<sup>8</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en)

### UN Convention on the Rights of Persons with Disabilities:

The Committee on the Rights of Persons with Disabilities substantiated the standards on access to courts for persons with disabilities in its General Comment no. 1. (2014) on Equal Recognition Before the Law.<sup>9</sup> Specific obligations are outlined below.

States parties have an obligation to ensure that persons with disabilities have access to justice on an equal basis with others. The recognition of the *right to legal capacity* is essential for access to justice in many respects. In order to seek enforcement of their rights and obligations on an equal basis with others, persons with disabilities must be recognized as persons before the law with equal standing in courts and tribunals.

States parties must also ensure that persons with disabilities have *access to legal representation* on an equal basis with others. This has been identified as a problem in many jurisdictions and must be remedied, including by ensuring that persons who experience interference with their right to legal capacity have the opportunity to challenge such interference — on their own behalf or with legal representation — and to defend their rights in court. Persons with disabilities have not to be excluded from *key roles in the justice system as lawyers, judges, witnesses, or members of a jury*.

Persons with disabilities must also be granted legal capacity to testify on an equal basis with others. Article 12 of the Convention guarantees support in the exercise of legal capacity, including the capacity to testify in judicial, administrative, and other legal proceedings. Such support could take various forms, including recognition of diverse communication methods, allowing video testimony in certain situations, procedural accommodation, the provision of professional sign language interpretation and other assistive methods.

The judiciary must also be trained and made aware of their obligation to respect the legal capacity of persons with disabilities, including legal agency and standing.

### UN Convention on the Elimination of All Forms of Racial Discrimination

The Committee on the Elimination of Racial Discrimination outlined the standards on access to courts for victims of racism in its General recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system.<sup>10</sup> The key requirements for the judicial authorities are outlined below.

In order to make it easier for the victims of acts of racism to bring actions in the courts, the steps to be taken should include the following:

- Offering procedural status for the victims of racism and xenophobia and associations for the protection of the rights of such victims, such as an opportunity to associate themselves with the criminal proceedings, or other similar procedures that might enable them to assert their rights in the criminal proceedings, at no cost to themselves;
- Granting victims effective judicial cooperation and legal aid, including the assistance of counsel and an interpreter free of charge;
- Ensuring that victims have information about the progress of the proceedings;
- Guaranteeing protection for the victim or the victim's family against any form of intimidation or reprisals;

<sup>9</sup> [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/1&Lang=en)

<sup>10</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7503&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7503&Lang=en)

- Providing for the possibility of suspending the functions, for the duration of the investigation, of the agents of the State against whom the complaints were made;
- In countries where there are assistance and compensation plans for victims, States parties should ensure that such plans are available to all victims without discrimination and regardless of their nationality or residential status.

States parties should ensure that the system of justice:

- Grants a proper place to victims and their families, as well as witnesses, throughout the proceedings, by enabling complainants to be heard by the judges during the examination proceedings and the court hearing, to have access to information, to confront hostile witnesses, to challenge evidence and to be informed of the progress of proceedings;
- Treats the victims of racial discrimination without discrimination or prejudice, while respecting their dignity, through ensuring in particular that hearings, questioning or confrontations are carried out with the necessary sensitivity as far as racism is concerned;
- Guarantees the victim a court judgement within a reasonable period;
- Guarantees victims just and adequate reparation for the material and moral harm suffered as a result of racial discrimination.

#### UN Convention on the Rights of the Child

The children's rights in the child justice system and corresponding obligations of the judicial authorities are explained by the Committee on the Rights of the Child in its General Comment no. 24 (2019).<sup>11</sup> Key standards are outlined below.

When judicial proceedings are initiated by the competent authority, the principles of a fair and just trial are applicable. The child justice system should provide ample opportunities to apply social and educational measures, and to strictly limit the use of deprivation of liberty, from the moment of arrest, throughout the proceedings and in sentencing. States parties should have in place a probation service or similar agency with well-trained staff to ensure the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day reporting centres, and the possibility of early release from detention.

Safeguards against discrimination are needed from the earliest contact with the criminal justice system and throughout the trial, and discrimination against any group of children requires active redress. In particular, gender-sensitive attention should be paid to girls and to children who are discriminated on the basis of sexual orientation or gender identity. Accommodation should be made for children with disabilities, which may include physical access to court and other buildings, support for children with psychosocial disabilities, assistance with communication and the reading of documents, and procedural adjustments for testimony.

The child has the benefit of the doubt and is guilty only if the charges have been proved beyond reasonable doubt. Suspicious behaviour on the part of the child should not lead to assumptions of guilt, as it may be due to a lack of understanding of the process, immaturity, fear, or other reasons.

<sup>11</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en)



Children have the right to be heard directly, and not only through a representative, at all stages of the process, starting from the moment of contact. The child has the right to remain silent and no adverse inference should be drawn when children elect not to make statements.

A child who is above the minimum age of criminal responsibility should be considered competent to participate throughout the child justice process. To effectively participate, a child needs to be supported by all practitioners to comprehend the charges and possible consequences and options in order to direct the legal representative, challenge witnesses, provide an account of events and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed.

Proceedings should be conducted in a language the child fully understands or an interpreter is to be provided free of charge. Proceedings should be conducted in an atmosphere of understanding to allow children to fully participate. Developments in child-friendly justice provide an impetus towards child-friendly language at all stages, child-friendly layouts of interviewing spaces and courts, support by appropriate adults, removal of intimidating legal attire and adaptation of proceedings, including accommodation for *children with disabilities*.

### UN Convention on the Elimination of all Forms of Discrimination Against Women

The Committee on the Elimination of all Forms of Discrimination Against Women underlines Six interrelated and essential components: (i) justiciability, (ii) availability, (iii) accessibility, (iv) good-quality, (v) accountability of justice systems, and (vi) the provision of remedies for victims, that are necessary to ensure access to justice for women.<sup>12</sup> The key aspects on ensuring women's access to courts are provided below.

**Justiciability** requires the unhindered access by women to justice as well as their ability and empowerment to claim their rights under the Convention as legal entitlements. On justiciability the Committee recommends, inter alia, to:

- Ensure that the professionals of justice systems handle cases in a gender sensitive manner;
- Revise the rules on the burden of proof in order to ensure equality between the parties, in all fields where power relationships deprive women of the chance for a fair judicial treatment of their case.

**Availability** requires the establishment of courts and other quasi-judicial or other bodies across the State Party in both urban, rural and remote areas, as well as their maintenance and funding. Recommendations on availability include:

- In cases of violence against women, ensure access to financial aid, crisis centres, shelters, hotlines, and medical, psychosocial and counselling services;
- Ensure that rules on standing allow groups and civil society organizations with an interest to lodge petitions and participate in the proceedings; and
- Establish an oversight mechanism by independent inspectors to ensure the proper functioning of the justice system and address any discrimination against women committed by justice system professionals.

**Accessibility** requires that all justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to women, and are adapted and appropriate to the needs of women

<sup>12</sup> [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_33\\_7767\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf)

including those who face intersectional or compounded forms of discrimination. This includes, inter alia, the following requirements:

- Remove linguistic barriers by providing independent and professional translation and interpretation services when needed; provide individualized assistance for illiterate women in order to guarantee their full understanding of the judicial or quasi-judicial processes;
- Ensure access to Internet and other information and communication technologies (ICTs) to improve women's access to justice systems at all levels. Give consideration to the development of internet infrastructure, including video conferencing, to facilitate the holding of court hearings, and sharing, collection and support of data and information among stakeholders;
- Establish justice access centres, such as "one-stop centres", which include a range of legal and social services, in order to reduce the number of steps that a woman has to take to access justice.

**Provision of remedies** requires the ability of women to receive from justice systems viable protection and meaningful redress for any harm that they may suffer.

#### Recommendations on ensuring access to courts in the context of the COVID-19 pandemic:

The Special Rapporteur on independence of judges and lawyers, Diego García-Sayán, stressed that the economic impact of the pandemic and the extended regulations on lockdown or stay-at-home orders are dramatic and severe. Especially for the poor, migrants, women, detainees, children, and other groups at risk. But also for the institutions themselves. In this context, the Special Rapporteur released seven key guidelines to ensure judges, justice workers, prosecutors and lawyers maintain functioning judicial systems.<sup>13</sup> The key recommendations are outlined below:

"2. An immediate streamline -to the essential- on the services being provided by the justice systems on *certain matters that may be considered a priority* is an urgent decision that must be taken by an independent judicial system, broadly understood. Considering the current global crisis and the institutional and budgetary constraints, in many countries this is an urgent and inevitable option so to *prevent social exclusion and to guarantee protection of human rights*. [...]

4. Matters oriented to protect rights, when serious crimes are committed (including corruption connected to this crisis) and *cases of domestic violence should receive prior attention and space*.

5. Where and how to report abuses, using *current online technologies* must be addressed and urgently implemented. Innovation and online working are essential, especially by tribunals and judges that have to deal with human rights or a growing insecurity situation that is being envisaged. Lockdowns and "social distances" shouldn't prevent the judicial system from acting and following due process guarantees. [...]

6. *High levels of incarceration with huge and unbearable number of detainees, affect human rights standards and increase the risk of the prison's population and staff of being infected with the virus*. In several countries, for instance, prisons are filled with persons under pre-trial detentions. Effective steps should be taken immediately so that pre-trial detentions are applied only in extraordinary and specific cases. [...]

<sup>13</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25816&LangID=E>

7. In this context, *judges, magistrates, public prosecutors, and their staffs need to be put in conditions to perform their functions*. They deserve special health attention in testing programs considering that they necessarily will be in contact with several individuals and groups.”

## Section 2.1. Regional standards on access to justice for vulnerable groups

This section examines the relevant Council of Europe standards on accessibility of courts for vulnerable groups. It also seeks to map key lessons learnt and corresponding recommendations of the European Commission for the Efficiency of Justice (CEPEJ) in the context of the COVID-19 pandemic.

### Relevant case-law on the ECtHR on access to justice for vulnerable groups

The concept of vulnerable groups<sup>14</sup> was introduced in 2001, in *Chapman v. the United Kingdom*, to refer to the Roma minority. The case involved a Roma woman who was evicted from her own land because she stationed her caravan there without a planning permission. The Court rejected the applicant’s alleged violation of the right to respect for her minority lifestyle (Article 8 ECHR).

Notwithstanding this, Chapman’s articulation of vulnerability already puts in place the elements that will shape the Court’s later formulations of “vulnerable groups”: belonging to a group (in this case, the Roma minority) whose vulnerability is partly constructed by broader societal, political, and institutional circumstances (in this case, power differentials and a planning framework unresponsive to the needs arising from a way of life different from that of the majority).

In the years following Chapman, the Court has broadened and refined the concept’s content and scope. The Court has not only reaffirmed the vulnerability of Roma in different contexts and for a mix of other reasons; it has also extended the list of “vulnerable groups” to persons with mental disabilities, people living with HIV, and asylum seekers, victims of domestic violence.

### *Roma*

In cases concerning the discrimination of Roma students in education (Article 14 ECHR together with Article 2 of Protocol No. 1 of the Convention), the Court acknowledges the vulnerability of Roma against a different background: prejudices. These are well-known school segregation cases: *D.H. and Others v. the Czech Republic* (2007), *Sampanis and others v. Greece* (2008), and *Oršuš and others v. Croatia* (2010), *Horváth and Kiss v. Hungary* (2013). In all these cases, the Court found that the Roma children were discriminated against in the enjoyment of the right to education. The Grand Chamber held in *D.H.*: “As a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority”. In case *Horváth and Kiss v. Hungary* (2013) the Court noted that “the Roma have become a specific type of disadvantaged and vulnerable minority requiring special protection.”

The Court has also viewed negative social attitudes as the main source of vulnerability of Roma in *V.C. v. Slovakia* (2011), a case concerning the forced sterilization of a Roma woman. The Court recognizes that forced sterilization has affected vulnerable individuals of different ethnic origins but admits that Roma are at particular risk “*due, inter alia, to the widespread negative attitudes towards the relatively high birth*

<sup>14</sup> For further information please see Lourdes Peroni, Alexandra Timmer, *Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law*, International Journal of Constitutional Law, Volume 11, Issue 4, October 2013, Pages 1056–1085, <https://doi.org/10.1093/icon/mot042>

rate among the Roma compared to other parts of the population, often expressed as worries of an increased proportion of the population living on social benefits.” The Court condemned Slovakia for not ensuring the applicant’s free and informed consent to sterilization, finding violations of both Article 3 ECHR (degrading treatment) and Article 8 ECHR (respect for private and family life).

#### *Persons with disabilities*

The Court has similarly grounded its vulnerability assessment on (historical) prejudice— and, additionally, on the resulting social exclusion—in cases concerning other non-dominant groups. One example is *Alajos Kiss v. Hungary (2010)*. The case deals with the blanket disenfranchisement of people with mental disabilities in Hungary. The Court found a violation of the applicant’s right to vote (Article 3 of Protocol 1 to the Convention). The Court’s view of people with mental disabilities as a “particularly vulnerable group” rests on the considerable discrimination they have experienced in the past. The group, the Court affirms, was “historically subject to prejudice with lasting consequences, resulting in their social exclusion.”

In case *Slawomir Musial v Poland (2009)* The Court found a violation of article 3 “Degrading treatment Inhuman treatment” - Inadequate medical care and conditions of detention of remand prisoner suffering from serious mental disorders.

In *Malgalhães Pereira v Portugal (1998)* a lawyer was appointed to assist a man suffering from schizophrenia during the judicial review of his confinement. However, the lawyer did not take part in the proceedings. The Court concluded that merely “assigning counsel does not in itself ensure effective legal assistance” and found a violation of Article 5 § 4 of the Convention.

#### *People living with HIV*

The Court has continued along these lines with *Kiyutin v. Russia (2011)*, another case concerning the indiscriminate exclusion of a group historically subject to prejudice. This time, the group in question is people living with HIV and the exclusion at issue the refusal of a residence permit. The applicant, a man from Uzbekistan married to a Russian national with whom he had a daughter, was denied a residence permit on the ground that he was HIV-positive. The Court found that the applicant was discriminated against in the enjoyment of his private and family life (Article 14 ECHR together with Article 8 ECHR). In the *Kiyutin* judgment, the Strasbourg Court refers to *Alajos Kiss* and explains in considerable detail how it came about that people living with HIV have suffered from widespread stigma and exclusion from the 1980s till the present. The Court therefore holds that “people living with HIV are a vulnerable group with a history of prejudice and stigmatization.”

In the Case *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania (2014)* the applicant was an orphan and HIV-positive from an early age who had been in hospital care for most of his young life. He was also educationally subnormal. He had been transferred to a hospital unit that was unequipped to provide the type of care that he needed including antiretroviral treatment for his condition. When a local NGO came to hospital to visit him, having been alerted to his condition, they found that he had died.

The Court noted that the case concerned a highly vulnerable young Roma man suffering from severe mental disabilities and HIV infection who had spent his entire life in State care and died in hospital through alleged neglect. In view of his extreme vulnerability, he had been incapable of initiating proceedings in the domestic courts without proper legal support and advice. Court also found, unanimously, a violation of the procedural limb of Article 2 for failure to carry out an effective investigation into the circumstances surrounding his death and a violation of Article 13 in conjunction with Article 2 on account of the failure

to secure and implement an appropriate legal framework that would have enabled Mr Câmpeanu's allegations relating to breaches of his right to life to have been examined by an independent authority.

#### *Asylum seekers*

The case that has significantly broadened the Court's notion of group vulnerability is *M.S.S. v. Belgium and Greece* (2011). The applicant, an Afghan asylum seeker, was returned by Belgium to Greece under the "Dublin II Regulation" of the EU. One of the main questions was whether the detention and living conditions of M.S.S. in Greece amounted to inhuman and degrading treatment under Article 3 ECHR. In analysing the applicant's conditions of detention—more precisely, in examining the Greek government's argument that the duration of his detention was insignificant—the Court observes: "*In the present case the Court must take into account that the applicant, being an asylum seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously*".

#### *Victims of domestic violence*

In the landmark Chamber judgment of *Opuz v Turkey* (2009) the Court found violations of Articles 2 and 3 because of the failure to protect the applicant's mother from a repeatedly violent husband. It had regard to the general attitude of the police when confronted with allegations of domestic violence as well as a consistent pattern of judicial passivity. It also found that the situation was discriminatory in breach of Article 14 on the grounds that the criminal law system had not provided sufficient protection to the applicant's mother who was, predictably and shockingly, killed by her violent husband. It cited with approval the statement by CEDAW that violence against women, including domestic violence, amounts to a form of discrimination against women. In reaching this conclusion the Court emphasised that the applicant fell into the group of "vulnerable individuals" entitled to state protection and took into account not only the repetitive violence suffered by the victim in the past but also the vulnerable situation generally of women in south east Turkey.

#### European Commission against Racism and Intolerance

ECRI General Policy Recommendations<sup>15</sup> provide pertinent recommendations designed to facilitate access to courts of vulnerable groups. Specific recommendations are substantiated below.

General Policy Recommendation no. 7 focuses on the key elements of national legislation to combat racism and racial discrimination. It recommends, inter alia, that the law should ensure that easily accessible judicial and/or administrative proceedings, including conciliation procedures, are available to all victims of discrimination. In urgent cases, fast-track procedures, leading to interim decisions, should be available to victims of discrimination.<sup>16</sup>

General Policy Recommendation no. 11 is concentrated on combating racism and racial discrimination in policing, including the recommendation to (i) clearly define and prohibit racial profiling by law, (ii) to carry out research on racial profiling and monitor police activities in order to identify racial profiling practices, including by collecting data broken down by grounds such as national or ethnic origin, language, religion

<sup>15</sup> see ECRI General Policy Recommendation N°1 on combating racism, xenophobia, antisemitism and intolerance; ECRI General Policy Recommendation N°2 revised on Equality Bodies to combat racism and intolerance at national level; ECRI General Policy Recommendation N°3 on combating racism and intolerance against Roma/Gypsies;

<sup>16</sup> ECRI (2002). *General Policy Recommendation no. 7 on National Legislation to Combat Racism and Racial Discrimination*, para. 10, adopted on 13.12.2002, available online at <https://rm.coe.int/ecri-general-policy-recommendation-no-7-revised-on-national-legislatio/16808b5aae>

and nationality in respect of relevant police activities, (iii) to introduce a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria; (iv) to train the police on the issue of racial profiling and on the use of the reasonable suspicion standard; (v) To ensure that legislation prohibiting direct and indirect racial discrimination cover the activities of the police; (vi) to provide for support and advice mechanisms for victims of racial discrimination or racially-motivated misconduct by the police; To ensure effective investigations into alleged cases of racial discrimination or racially motivated misconduct by the police and ensure as necessary that the perpetrators of these acts are adequately punished.<sup>17</sup>

General Policy Recommendation no. 15 focuses on combating hate speech. It recommends, inter alia:

- those targeted by the use of hate speech should be notified in good time of any relevant court hearing and their dignity should be assured when they give evidence as a witness.
- provide appropriate training for and facilitate exchange of good practices by law enforcement officers, prosecutors and judges who deal with cases involving hate speech;
- ensure that the judges, lawyers, and officials involved in the provision of the various administrative and civil remedies for such use have appropriate training. This is important to enable them to appreciate whether or not a use of hate speech has occurred or is occurring is of sufficient gravity to warrant the use of these remedies, as well as whether or not a specific use of a particular remedy is consistent with the right to freedom of expression.
- all those involved in the criminal justice system ought to be provided with appropriate training to enable them to determine whether particular remarks involve the use of hate speech and, if so, whether – having regard to the right to freedom of expression – imposing a criminal sanction would be the appropriate response.<sup>18</sup>

In its latest monitoring report on the Republic of Moldova (2018, Fifth Monitoring Cycle) ECRI noted that hate speech and various forms of expressing intolerance, including sexism, were increasingly prevalent in the country. In relation to hate crime, ECRI pointed out that few cases have been recorded by the police.<sup>19</sup> Despite ECRI's recommendations, the Republic of Moldova has so far failed to approve changes in the Criminal Code and in the Law on Ensuring Equality to address hate crime and hate speech in line with European standards.

#### Council of Europe Human Rights Commissioner

In the Issue Paper *Human Rights and disability: equal rights for all (2008)*<sup>20</sup> the Human Rights Commissioner of the Council of Europe provides a number of recommendations designed to strengthen access to courts for persons with disabilities.

<sup>17</sup> ECRI (2007). *General Policy Recommendation no. 11: Combating Racism and Racial Discrimination in Policing*, adopted on 29.06.2007, available online at <https://www.coe.int/web/european-commission-against-racism-and-intolerance/recommendation-no.11>

<sup>18</sup> ECRI (2015). *General Policy Recommendation no. 15: Combating Hate Speech*, adopted on 08.12.2015, available online at <http://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>; see also *ECRI General Policy Recommendation N°1 on combating racism, xenophobia, antisemitism and intolerance*; *ECRI General Policy Recommendation N°2 revised on Equality Bodies to combat racism and intolerance at national level*; *ECRI General Policy Recommendation N°3 on combating racism and intolerance against Roma/Gypsies*.

<sup>19</sup> ECRI (2018). *Report on the Republic of Moldova*, CRI(2018)34, available online at <https://rm.coe.int/fifth-report-on-the-republic-of-moldova/16808de7d7>

<sup>20</sup> <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1355349>

- Develop action plans to remove physical, legal, social, and other barriers that prevent persons with disabilities from participating in society. Collect and analyse the necessary data to monitor the effective implementation of the action plans.
- Review guardianship legislation to ensure that persons with disabilities can effectively exercise their right to make decisions and have them respected. When necessary and asked for, provide support tailored to individual needs to enable persons to exercise this right together with adequate safeguards to protect them against abuse.
- Decisions on admission and prolongation of detention of person in psychiatric institution must be subject to judicial review, either by giving the individual the right to appeal or by an automatic periodic review. Procedural safeguards including legal representation must be guaranteed, not only formally, but also effectively in practice.

Other pertinent recommendations were formulated in view of strengthening access to courts for children:<sup>21</sup>

- The response to young offenders should take into consideration not only the gravity of the offence but also the offender's circumstances. Factors such as the child's social status, the family situation, the harm caused by the offence and other factors affecting personal circumstances should influence the reactions. The Courts shall further not impose sanctions or measures of indeterminate duration on juvenile offenders.
- It is the responsibility of adjudicating and sentencing bodies to ensure that children's rights and fair trial guarantees are respected. The sentencing process should itself respect their rights. It should not therefore discriminate between children – the same sentence should be available regardless of the child's location or background/origin for example - and should comply with the best-interest's principle.
- States must make available a range of sanctions and measures to ensure that the response to offending behaviour takes into account the well-being of the child. A large variety of measures is necessary to allow for flexibility and a tailored response to each individual case and to ensure that detention is a last resort. The types of orders can include care, guidance and supervision orders, probation orders, community service orders, financial penalties and compensation, treatment orders, orders to participate in group counselling or similar activities and orders concerning foster care, residential care or care in other educational settings.
- Children must be involved in a meaningful way in the decision to impose a sanction and be informed, in a language and manner they understand, how the measure imposed is to be implemented and about their rights and duties with regard to its implementation. Implementation must be based on individualized assessments and best practice in social work and youth care.

#### Framework Convention on the Protection of National Minorities of the Council of Europe

The Convention stipulates, in Article 4 that “parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited. According to Article 10(3) of the Convention “Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or

<sup>21</sup> *Issue Paper - Children and juvenile justice: proposals for improvements (2009)*, available online at <http://rm.coe.int/children-and-juvenile-justice-proposals-for-improvements-issue-paper-b/16806daa31>

her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.”

### Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

Article 56 of the Convention stipulates the measures of protection that should be provided to victims, including “measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by: [...] f) ensuring that measures may be adopted to protect the privacy and the image of the victim; g) ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible; h) providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence; i) enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.”

### Lessons Learnt and Challenges faced by the Judiciary during and after the Covid-19 pandemic

The European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe underlined that “[t]he COVID-19 pandemic is a health crisis with serious human and social consequences, it has also created challenges for courts and judicial authorities in the member States.” It also stressed that “judicial systems have to be prepared, notably when it comes to effective solutions to ensure the continuity of court work and access to justice while respecting individual rights.”<sup>22</sup>

Against this background, CEPEJ reminded the members States of seven relevant principles: (i) Human Rights and Rule of law; (ii) Access to Justice; (iii) Safety of persons; (iv) Monitoring case flow, quality and performance; (v) Cyber justice; (vi) Training; (vii) Forward looking justice. The most relevant recommendations regarding access to courts for vulnerable groups are presented below.

#### *Principle 2 (Access to Justice)*

During a pandemic, locking down courts might be necessary to protect the health and safety of justice professionals and court users. It should be done in a careful and proportionate manner as it results in an important limitation of access to justice which is a fundamental principle of the Rule of Law.

The public service of justice must be maintained as much as possible, including providing access to justice by alternative means such as online services or strengthening access to information through court websites and other means of communication (phone, email, etc.).

Greater consultation and coordination with all justice professionals (including lawyers, enforcement agents, mediators, and social services) will help to ensure a good level of access to justice.

*Access to courts must be ensured for all users, but at a time of health crisis, special attention must be devoted to vulnerable groups who are even more at risk of suffering from the situation. Thus, judicial systems should give priority to cases which concern these groups, such as cases of domestic violence, in particular against women and children, involving elderly people or persons with disabilities, or concerning serious economic situations. Vulnerabilities arising from the crisis should also be taken into account.*

<sup>22</sup> <https://rm.coe.int/declaration-en/16809ea1e2>



*Principle 5 (Cyberjustice)*

IT-solutions, such as online services, remote hearings, and videoconferences, as well as future development of digital justice must always respect fundamental rights and principles of a fair trial.

*To reduce risks inherent in the deployment of IT, their use and accessibility for all the users should have a clear legal basis. Special attention should be paid to the most vulnerable groups in this respect.* The impact of the use of these technologies on justice delivery should therefore be evaluated regularly and remedial measures taken when necessary. Ensuring cyber-security and the protection of personal data must be a priority.

## Chapter 2. The current situation on access to courts for vulnerable groups in the Republic of Moldova

This chapter considers the extent to which access to courts is facilitated in Moldova. Special attention is paid to the information provided by Moldovan authorities under the CEPEJ Scheme for evaluating judicial systems, relevant concluding observations of human rights bodies. In addition, due attention is paid to considering the extent to which access to courts was ensured during the COVID-19 Pandemic.

*The comments provided by Moldovan authorities under the CEPEJ scheme for Evaluating Judicial Systems:*

According to the comment provided by the Moldovan judicial authorities on the existence of favourable arrangements to be applied, during judicial proceedings, to the various categories of vulnerable persons, special arrangements are in place for victims of domestic violence, minors, victims and other participants in criminal proceedings.

Upon the request of domestic violence victims, the court can issue a special order granting protection by means of the following obligations imposed to the aggressor:

- obligation to leave temporary the common housing or to keep distance from the victim's house, regardless of the property title;
- obligation to keep distance from the victim, ensuring his/her safety; obligation not to contact the victim, his/her children or other persons depending on her/him;
- prohibition to visit the working place of the victim;
- restriction on the unilateral use of joint property;
- obligation to undergo a medical examination and, if needed, to follow a compulsory medical treatment;
- obligation to participate in a special conciliation program if the court considers such measure necessary;
- prohibition of having arms (article 215<sup>1</sup> of the Criminal Procedure Code and article 278<sup>7</sup>, para2), let. i) of the Civil Procedure Code).

The case of a minor is subdivided to the maximum extent and constitutes a single file when adults have participated to the commission of the offence (article 476 of the Criminal Procedure Code). Custody or preventive arrest of minors are possible only in exceptional situations of serious offences with use of violence, severe and extremely severe crimes (the prosecutor, the parents or other legal representatives of the concerned minor are immediately informed about these measures (article 477 of the Criminal procedure Code)).

According to art. 14 of the Law no. 105 of 16.05.2008 on the protection of witnesses and other participants in the criminal proceeding, the following protection measures may be applied in respect of the protected person: a) protection of identity data; b) hearing by applying special arrangements; c) change of domicile or place of work or study; d) change of identity, change of appearance; e) installing an alarm system at home or residence; f) changing the phone number; g) ensuring the protection of the goods.<sup>23</sup>

<sup>23</sup> <https://www.coe.int/en/web/cepej/cepej-work/evaluation-of-judicial-systems>

## Findings of International Human Rights Bodies

### Persons with disabilities

In its most recent Concluding Observations (2017)<sup>24</sup> the CRPD Committee expressed concerns about the lack of information on specific measures and protocols to provide procedural, gender and age-appropriate accommodation in judicial proceedings *for persons with disabilities*, including the provision of sign-language interpretation for deaf persons and accessible formats for communication for deaf-blind persons and persons with psychosocial and/or intellectual disabilities. It notes with concern: (a) the prejudices against persons with disabilities, particularly those with psychosocial and/or intellectual disabilities; (b) the lack of access to free legal aid for persons with disabilities, particularly for those still living in institutions; (c) the lack of access to justice of women with disabilities in criminal proceedings related to gender-based violence.<sup>25</sup>

The Committee noted with concern the discriminatory legal provisions in the Civil Code<sup>26</sup> which allow for the deprivation of a person's legal capacity and the appointment of a guardian, on the grounds of psychosocial and/or intellectual disabilities. The Committee is concerned that current efforts to amend legislation in this regard may still not be in line with the Convention and that there are no mechanisms in place to replace the system of substituted decision-making with a supported decision-making regime.<sup>27</sup>

The Committee also expressed concerns regarding the overall lack of accessibility for persons with disabilities in the State party. It is concerned about the insufficient implementation of the guarantees relating to accessibility stipulated in laws No. 121<sup>28</sup> and No. 60,<sup>29</sup> and government decision No. 599,<sup>30</sup> and to eliminate obstacles and barriers relating to access to facilities and public services such as transport, information and communications. It is also concerned that the Contravention Code does not stipulate sanctions for failure to ensure accessibility in all areas and that existing sanctions are rarely enforced.<sup>31</sup>

### Women

In its most recent concluding observations on Moldova, the CEDAW Committee expressed concern about women's limited access to justice in Moldova, in particular:

- (a) The provisions in the Contravention Code that reduce the criminal liability of perpetrators of domestic violence and restrict women's access to criminal justice;
- (b) The barriers faced by victims of hate speech and women belonging to disadvantaged groups in accessing legal aid;
- (c) The insufficient implementation of the provision of free legal aid under Act No. 196/2016 for victims of gender-based violence;

<sup>24</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMDA%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMDA%2fCO%2f1&Lang=en)

<sup>25</sup> Ibid, para. 26

<sup>26</sup> Article 32 of the Civil Code of the Republic of Moldova no. 1107 from 06.06.2002 with subsequent amendments, available online at [https://www.legis.md/cautare/getResults?doc\\_id=122982&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=122982&lang=ro#)

<sup>27</sup> Ibid, para. 24

<sup>28</sup> Law no. 121 from 25.05.2012 on Ensuring Equality, available online at [https://www.legis.md/cautare/getResults?doc\\_id=106454&lang=ro](https://www.legis.md/cautare/getResults?doc_id=106454&lang=ro)

<sup>29</sup> Law no. 60 from 30.03.2012 on the Social Inclusion of Persons with Disabilities, available online at [https://www.legis.md/cautare/getResults?doc\\_id=110494&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=110494&lang=ro#)

<sup>30</sup> Government Decision no. 599 from 13.08.2013 on approval of the Action Plan on the Implementation of Measures for Ensuring Accessibility for Persons with Disabilities to Social Infrastructure, available online at [https://www.legis.md/cautare/getResults?doc\\_id=20665&lang=ro](https://www.legis.md/cautare/getResults?doc_id=20665&lang=ro)

<sup>31</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMDA%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMDA%2fCO%2f1&Lang=en), para. 20

(d) The limited access to justice for women with disabilities.<sup>32</sup>

### Children

While welcoming various legislative and policy initiatives to assist children in conflict with the law, including the Justice Sector Reform Strategy, the development of the Individual Juvenile Plan, and strengthening psychosocial programmes, the Committee expressed concerns about:

(a) The absence of a specialized juvenile court system in the State party [Republic of Moldova], the lack of legislation with respect to children victims, witnesses and offenders, and the lack of child-sensitive interviewing facilities outside of the capital;

(b) The length of pretrial detention, quality of legal services provided to assist children in conflict with the law, conditions of detention facilities, inadequate access to quality education, including vocational training, ill-treatment, including physical beatings, solitary confinement, and children being held in adult detention facilities.<sup>33</sup>

### Minorities

The CERD Committee noted that article 346 of the Criminal Code was amended in 2016 and renamed Intentional Actions Aimed at Inciting Ethnic, Racial or Religious Hatred, Differentiation or Discord. The Committee is concerned that this amendment is not fully in line with the prohibition on hate speech in article 4 of the Convention. It is also concerned about the lack of hate crime legislation in effect in the State party and welcomes information provided by the State party that Parliament is considering amending the Criminal Code to address this concern. The Committee is further concerned at the reported promulgation of racist stereotypes and hate speech in the media and political sphere against members of certain groups, such as ethnic minority Muslims, Roma, Jews and asylum seekers or refugees, and the lack of accountability for such acts (arts. 2, 4, and 6).

The Committee was concerned that from 2013 to date very few complaints of racial discrimination were registered and prosecuted. The Committee reminds the State party that a low number of complaints does not necessarily signify the absence of racial discrimination in the State party, but rather may signify barriers in invoking the rights in the Convention domestically, including lack of public awareness of the rights under the Convention and available methods to seek judicial recourse.

The Committee requested updated disaggregated statistics and detailed information on the number and types of complaints on racial discrimination reported to the Council and the Courts, and on prosecutions and the convictions of perpetrators.<sup>34</sup>

Similarly, the European Commission against Racism and Intolerance expressed concern, *inter alia*, that “Moldovan criminal law is not entirely in line with the ECRI’s General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination and does not provide for aggravating circumstances in cases of homo/transphobic motivation.”<sup>35</sup> ECRI also noted that “Racist and intolerant

<sup>32</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMDA%2fCO%2f6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMDA%2fCO%2f6&Lang=en), para. 12

<sup>33</sup> CRC Committee (2017). Concluding Observations on the combined fourth and fifth periodic report of the Republic of Moldova, CRC/C/MDA/CO/4-5, para. 42, available online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/324/41/PDF/G1732441.pdf?OpenElement>

<sup>34</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fMDA%2fCO%2f10-11&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fMDA%2fCO%2f10-11&Lang=en)

<sup>35</sup> ECRI (2018). Report on Moldova (Fifth Monitoring cycle), CRI(2018)34, available online at <https://rm.coe.int/fifth-report-on-the-republic-of-moldova/16808de7d7>

hate speech in public discourse is escalating; the main targets are LGBT persons, Roma and Black community. LGBT persons have especially been the subject of derogatory comments both as individuals (in the work place) or as a group (by politicians, opinion leaders or some church representatives).<sup>36</sup>

### Access to courts during the COVID-19 pandemic

This section will consider access to courts during the COVID-19 pandemic. In the context of digitalisation of the courts, due attention will be paid to the accessibility of available digital platforms for persons with visual disabilities. In addition, this section will examine the extent to which the courts were accessible for women victims of domestic violence and gender based violence during the pandemic.

Access to justice has been directly affected by the COVID-19 pandemic and the judicial authorities have tried to keep up with decision-making quickly. Access to justice through the courts has been and remains a sensitive issue. Until 2016, there were 44 ordinary courts (including two specialized courts for military and commercial matters) and four courts of appeal. Today, there are 15 common law courts<sup>37</sup> some of them still suffering of insufficient and congested infrastructure.

Few things have changed since then. The courts are crowded and there are no sufficient courtrooms, raising suspicions about efficiency, transparency, integrity, and accountability. The lack of (clear) signage, lifts, canteens, and toilets, as well as access deficiencies, result in users who are not well informed and not well treated.<sup>38</sup> These shortcomings serve to prove the acute need for digitization of the courts.

A first step in this direction was the installation of the Integrated Case Management Program (ICMP)<sup>39</sup>, which is currently used by all national courts. The ICMP does not just facilitate the work of court staff. This system provides a set of advantages for citizens:

- Randomly distribute the application / file (without the involvement of the human factor);
- Automates the activity of courts; an important factor in the context of today's pandemic;
- Automatically publishes court decisions on the national court portal. Which minimizes travel to the courthouse;
- Ensures the transparency of the activity of the courts;
- Contributes to the prevention and fight against corruption in the courts.

Notwithstanding the aforementioned advantages, the ICMP needs further improvement, especially on data collection and monitoring of cases. When a case leaves the Prosecutor's office and enters this IT system its unique file number is changed. This makes it impossible to track cases in the Moldovan system from the initiation stage, including cases discrimination, hate speech and hate crimes.

The Current ICMP version 5.0 is integrated with modern government services (M-Pass, M-Sign, M-Notify, M-Log, M-Pay), which allows an acceleration of the process from the perspective of the litigant.

<sup>36</sup> *ibid*

<sup>37</sup> Law on the reorganization of courts, no. 76 from 21.04.2016, in the Official Monitor no. 184-192 art. 387

<sup>38</sup> World Bank in collaboration with the UK Fund for Good Governance, REPUBLIC OF MOLDOVA Improving access to justice: From resources to results, Chisinau, 2018, p. 30

<sup>39</sup> Regulation on the random distribution of files for examination in the courts, approved by SCM Decision no. 110/5 of February 5, 2013

In order to reduce the risk of spreading COVID-19 infection, it is proposed to citizens to access from home the National Court Portal: <http://www.instante.justice.md/>. This is a complex system, characterized by a single access point to information about the activity of all courts. Its purpose is to support a virtual and accessible information environment to ensure communication between citizens and the courts. Thus, citizens accessing the National Court Portal will find the agenda of court hearings, court decisions, court summonses, judicial practice, and other information relevant to litigants.<sup>40</sup>

The front page of the web portal <http://www.instante.justice.md/> is partially accessible for persons with visual disabilities. For a blind person, the menu from the right side is practically invisible, because it is composed of images that are not accompanied by a corresponding description. Under such circumstances, the assistive program used by the person with disability will only detect images, not their content. Consequently, the user with sensorial disabilities will be deprived of the opportunity to (i) ask questions about the activity of courts and (ii) participate in the opinion poll on the services provided by translators and interpreters in courts and criminal investigation bodies.

Although in 2019, the E-file Module was launched, it still remains a pilot project, in the Cahul Court and the Cahul Court of Appeal, where the experimental exploitation of the information system E-file Module takes place, adapted to the new version of the ICMS. Thanks to the E-File Module service, when participating in a case, the court user will not have to go to the court headquarters to get acquainted with the case materials, but, through a computer, the lawyer will access them and make them available.

The information posted on [www.edosar.justice.md](http://www.edosar.justice.md) is also only partially accessible for persons with visual disabilities. The front page includes a user guidebook in PDF format. The guidebook includes a myriad of pictures and figures which, in the absence of clear information that would describe the image and its content, will not be accessed by the persons with visual disabilities. In addition, in order to facilitate access to information for persons with disabilities, the portal could benefit from the possibility to modify the contrast between the text and the background.

Access to information is a fundamental right and a precondition for the realisation of access to justice and access to courts. In order to fulfil this right, there is a need for inclusive access to information, facilitated by public authorities for everyone, including for persons with disabilities. Web accessibility refers to the access of persons with disabilities to the web content, to a web design that allows persons with disabilities to perceive, understand, browse, and interact with web pages in an effective manner and to create web content.

In order to ensure accessibility of web pages, Web Content Accessibility Guidelines were developed (WCAG 2.0), along with recommendations for their operationalisation in practice.<sup>41</sup> At the level of the European Union, these recommendations were transposed through the Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies.<sup>42</sup> The Directive is based on four accessibility principles:

1. **perceivability**, meaning that information and user interface components must be presentable to users in ways they can perceive;

<sup>40</sup> Government Decision no. 593 of 24.07.2017 regarding the approval of the Technical Concept of the Judicial Information System. <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=371068>

<sup>41</sup> <https://www.w3.org/WAI/standards-guidelines/wcag/>

<sup>42</sup> EU (2016). *Web Accessibility Directive 2016/2102*. Available online at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L2102&from=EN>

2. **operability**, meaning that user interface components and navigation must be operable;
3. **understandability**, meaning that information and the operation of the user interface must be understandable;
4. **robustness**, meaning that content must be robust enough to be interpreted reliably by a wide variety of user agents, including assistive technologies.

On the basis of the analyses about the limitation of the access to justice in conditions of emergency in the Republic of Moldova, the following examples are of relevance:

1. In one of the districts (Hincești), the activity of the court was generally suspended;
2. The courts functioned in a more special regime, limiting to the maximum the public access in order to prevent the spread of the COVID-19 virus;
3. Priority was given to cases that do not suffer postponement for various reasons: detention, protection of the victim or witnesses, protection of state security, etc.;
4. The courts entered quarantine spontaneously and unevenly;
5. The court office most affected by COVID-19 is the Ciocana office of the Chisinau court.<sup>43</sup>

The reform in the justice sector is ranked fourth in importance by citizens, being ahead of the reforms in the field of health care, pensions, and education. Citizens point out that the specialization of judges, simplified procedures for small cases and the reform of courts and prosecutors' offices are the most important reforms in the justice sector. Less than 30 percent of employees and professional users believe that the ongoing reforms have had a positive impact.<sup>44</sup> The justice system needs to make the most of the instruments already existing in the judiciary, such as: ICMS, E-file Module, court portal. There is strong need for a digitized extension of the activity of the courts:

- the need for a legal framework in order to establish rules on trial proceedings by videoconference;
- lack of a procedure for communicating procedural documents exclusively by electronic means.

The current health circumstances appears to have brought to the forefront the inadequacy of the digitalization of the judiciary and the problem of inadequate legal framework to conduct proceedings before the judiciary through the widespread use of distance communication means and directly affect the facility of access to justice for citizens of Republic of Moldova.

#### *Response to Cases of Domestic Violence and Gender based Violence during the COVID-19 Pandemic*

In accordance with para. 4 of the Annex to the Disposition no. 1 from 18 March of the Committee on Exceptional Situations,<sup>45</sup> civil cases, except those examined in compliance with the law in the absence of parties, those that were postponed for pronouncing a judgment, issuing protection orders on public custody of aliens, orders on extending the duration of custody, actions of confiscation of unjustified property, approval of forced hospitalisation and forced treatment, any other claims in the electoral matters. Thus, requests for issuing protection orders were examined in general order, within the

<sup>43</sup> <https://juridicemoldova.md/10045/facilitarea-accesului-la-instante-a-cetatenilor-republicii-moldova-pe-timp-de-pandemie.html>

<sup>44</sup> World Bank in collaboration with the UK Fund for Good Governance, REPUBLIC OF MOLDOVA Improving access to justice: From resources to results, Chisinau, 2018, p. 45

<sup>45</sup> Committee on Exceptional Situations of the Republic of Moldova (2020). *Disposition no. 1*, Annex, para. 4, available online at [https://gov.md/sites/default/files/dispozitia\\_cse\\_nr.1.pdf](https://gov.md/sites/default/files/dispozitia_cse_nr.1.pdf)

framework provided by law, with the participation of parties and observance of safety measures (masks, gloves).

According to a Report issues by La Strada in August 2020,<sup>46</sup> during the pandemic courts examined scanned complaints lodged through emails. It transpires that most claims on issuing protection orders were examined on the day of submission. Chisinau Court issued protection orders much faster than usual, with 80% of protection orders being issued during the day when the claim was lodged, an unprecedented practice during the periods prior to the pandemic. However, in the regions there were situations when courts issued protection orders without obliging the aggressor to leave the place arguing that the person may not have find a place to live in during the pandemic.<sup>47</sup>

In the context of fighting domestic violence and gender based violence, the report recommended to ensure the practical implementation of the art. 17<sup>1</sup> of the Civil Procedure Code that stipulates that court claims, appeals, claims of applications for revisions, of issuing court orders as well as other complaints or procedural acts can be lodged to courts the Integrated Case Management Program, unique for the whole judiciary system; in this case, the claim and other attached documents in electronic format should be signed with digital signature.

Ensuring digitalisation of courts by amending the legislation and ensuring technical endowment of courts in order to enable them to conduct trial proceedings online; the state of health of participants to the justice act should be prioritised and should determine the adoption of legislative norms and interpretation of norms in force with the view to providing an effective and efficient response to a new context, that is challenging and will continue to challenge societies.<sup>48</sup>

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<sup>46</sup> Ibid, p. 38

<sup>47</sup> Ibid, p. pp. 50-51

<sup>48</sup> La Strada (2020). *Needs of Women Affected by Domestic Violence and Gender Based Violence and the Systemic Response to cases of Domestic Violence in the Context of COVID-19 crisis*, available online in Romanian at [https://moldova.un.org/sites/default/files/2020-08/Raport\\_violenta\\_covid\\_RO.pdf](https://moldova.un.org/sites/default/files/2020-08/Raport_violenta_covid_RO.pdf)



## Chapter 3. Recommendations

### Discrimination

National Institute of Justice (in case of judges and prosecutors), Police Academy „Ștefan cel Mare” (in case of law enforcement):

- Provide appropriate training for and facilitate exchange of good practices by law enforcement officers, prosecutors and judges who deal with cases involving hate speech and hate crimes;
- Ensure that the judges, lawyers, and officials involved in the provision of the various administrative and civil remedies for such use have appropriate training, with due attention to developing practical skills to appreciate whether or not a use of hate speech has occurred or is occurring is of sufficient gravity to warrant the use of these remedies, as well as whether or not a specific use of a particular remedy is consistent with the right to freedom of expression;
- Facilitate experience sharing with the Moldovan Council on Preventing and Combating Discrimination and Ensuring Equality.

Courts, Superior Council of Magistracy, Agency for Court Administration:

- Collect disaggregated statistics and detailed information on the number and types of complaints on racial discrimination reported to Courts, and on prosecutions and the convictions of perpetrators; due attention should be paid to further improving ICMP in order to enable users to fully track cases, including cases of discrimination, hate speech and hate crimes.
- Ensure all incidents of discrimination, hate crimes and hate speech are investigated and prosecuted and that the perpetrators are punished, regardless of their official status, and provide data on numbers of discrimination, hate crimes and hate speech cases reported, prosecutions and convictions, and compensation to victims;
- Reinforce dialogue with the Moldovan Council on Preventing and Combating Discrimination and Ensuring Equality to identify common approaches, rooted in the international and regional human rights standards.

Parliament:

- Ensure that article 346 of the Criminal Code is fully in line with article 4 of the Convention on the Elimination of all forms of Racial Discrimination and ECRI General Policy Recommendations and that the amended article is enforced to prosecute incidents of hate speech;
- Adopt without delays the draft law 3013/2016 that is pending second reading approval since 08.12.2016.<sup>49</sup>

Superior Council of Prosecutors:

- Reinforce the role of the prosecutors in supporting victims of racial discrimination to report violations;

Government:

<sup>49</sup> <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3349/language/ro-RO/Default.aspx>

- Conduct educational campaigns to address the root causes of prejudices and promote tolerance and respect for diversity, including in particular with a focus on the role and responsibilities of journalists and public officials.

## Persons with disabilities

### Government:

- Allocate resources for the implementation of Objective no. 7 (Ensuring support to persons with disabilities in exercising their legal capacity and guaranteeing access to justice) of the Government Decision no. 723 from 08.09.2017 on the approval of the National Program for Social Inclusion of Persons with Disabilities for 2017-2022;<sup>50</sup> during the process of ensuring accessibility to infrastructure, international and domestic accessibility standards will be applied, including the Practical Code in Constructions.<sup>51</sup>
- Raise awareness on access to justice for persons with disabilities, taking into consideration their diversity, including by means of braille for persons with visual impairment, as well as friendly formats for persons with intellectual disabilities.

### Parliament:

- Repeal the discriminatory legal provisions in the Civil Code, including article 32;
- Restore the full legal capacity of all persons with disabilities and review its guardianship system with the aim of introducing supported decision-making mechanisms;
- Amend Art. 90 (3) of the Criminal Procedure Code of the Republic of Moldova that limits the rights of persons with disabilities to be heard as witnesses within judicial proceedings.<sup>52</sup>

### National Institute of Justice:

- Provide training, in consultation with organizations of persons with disabilities and the Ombudsman, at the national, regional and local levels for all stakeholders, including civil servants, judges and social workers, on the recognition of the legal capacity of persons with disabilities and on existing good practices in supported decision-making.

### Courts, Superior Council of Magistracy

- Ensure the provision of procedural, gender and age-appropriate accommodations based on the free choice and preference of persons with disabilities and establish related safeguards to enable the participation of persons with disabilities in all legal proceedings on an equal basis with others, including the provision of sign-language interpretation for deaf persons and accessible formats for communication for deaf-blind persons and persons with psychosocial and/or intellectual disabilities.

<sup>50</sup> [https://www.legis.md/cautare/getResults?doc\\_id=101863&lang=ro](https://www.legis.md/cautare/getResults?doc_id=101863&lang=ro)

<sup>51</sup> Including NCM C.01.06-2014 (MCH 23-01-2014) – General security requirements for construction objects on their use and accessibility for persons with disabilities, approved through Order of the Minister of Regional Development and Constructions no. 48 from 08 April 2014, in force as of 01 July 2014; CP C.01.02-2014 – Design of buildings and constructions considering the accessibility for persons with disabilities: general provisions, approved through the order of the Minister of Regional Development and Constructions no. 49 from 14 April 2014, in force as of 01 July 2014; NCM D.02.01:2015 – Designing public roads; CP D.02.11 – 2014 – recommendations on designing streets and roads in urban and rural localities.

<sup>52</sup> [https://www.legis.md/cautare/getResults?doc\\_id=123540&lang=ro#](https://www.legis.md/cautare/getResults?doc_id=123540&lang=ro#)

- Explore good practices of developing and implementing action plans for ensuring the accessibility of courts (ex. Chişinău Court) and ensuring reasonable accommodation for persons with disabilities, both for beneficiaries and professionals from the justice sector (judges and their staff, prosecutors, lawyers).

Agency for Court Administration:

- Ensuring full accessibility of the portals [www.edosar.justice.md](http://www.edosar.justice.md) and [www.instante.justice.md](http://www.instante.justice.md), in compliance with the Web Content Accessibility Guidelines and Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies.

## Children

Parliament, Government:

- Adopt and implement comprehensive juvenile justice legislation for all children under 18 years of age, as well as a strategy on preventing child offending;
- Expedite the adoption of the regulation on the organization and operation of the support centre for child victims and witnesses of crime;

National Institute of Justice:

- Continue to strengthen the capacity of judges, law enforcement personnel, lawyers, prosecutors, and social workers with respect to child-sensitive juvenile justice in Moldova.

Courts, Superior Council of Magistracy:

- Strengthen the implementation of the Criminal Procedure Code in law and in practice, ensuring the hearings involving child defendants protect the privacy of children, be closed and held separately from other hearings, and develop child-friendly interviewing standards in all regions of the country;
- Promote measures for dealing with children accused of having infringed the penal law without resorting to judicial proceedings, such as diversion, probation, mediation, counselling or community service; and, wherever possible, use alternative measures at sentencing and ensure that detention is used as a last resort, for the shortest possible period of time and reviewed on a regular basis, with a view to withdrawing it; and implement the 2016-2020 Strategy for the Development of the Probation System;
- In cases where detention is unavoidable, ensure that detention is used as a last resort, for the shortest possible period of time and reviewed on a regular basis, with a view to withdrawing it, that children are held separately from adults, including in the case of pre-trial detention, and that detention conditions are compliant with international standards, including adequate nutritional food, sufficient exercise and outdoor activities, access to education and health services, including psychological counselling, and prohibit solitary confinement for children under all circumstances;

National Free Legal Aid Council:

- Ensure the provision of qualified and independent legal representation to children in conflict with the law at an early stage of the procedure and throughout the legal proceedings;

Government:

- Raise awareness on procedural rights ensuring that information is developed and disseminated in child friendly language.

## Women

Parliament:

- Amend article 78 of the Contravention Code to remove the provision that exempts perpetrators of violence against women from criminal liability, and encourage women to report cases of gender-based violence to relevant authorities without fear of stigma by ensuring their access to criminal justice;

Government:

- Raise awareness among women, including those belonging to ethnic minority groups, women with disabilities, migrant women, older women and lesbian, bisexual, and transgender women about their rights and the legal remedies available to them to claim those rights;
- Provide adequate human, technical and financial resources for the provision of free legal aid under Law No. 196/2016, amending Act No. 45-XVI on Preventing and Combating Domestic Violence;

Courts, Agency for the Administration of Courts

- Address physical and communication accessibility in courts of law, including the lack of procedural accommodation in court procedures and the deprivation of legal capacity on grounds of disability.

## Specific recommendations in the context of COVID-19 pandemic

Courts:

- Maintain the public service of justice as much as possible, including providing access to justice by alternative means such as online services or strengthening access to information through court websites and other means of communication (phone, email, etc.);
- At a time of health crisis, special attention must be devoted to vulnerable groups who are even more at risk of suffering from the situation. Thus, the Moldovan judicial system *should give priority to cases which concern these groups, such as cases of domestic violence, in particular against women and children, involving elderly people or persons with disabilities, or concerning serious economic situations*. Vulnerabilities arising from the crisis should also be taken into account;
- Effective steps should be taken immediately so that pre-trial detentions are applied only in extraordinary and specific cases;

Parliament:

- Adopt legal framework in order to establish rules on trial proceedings by videoconference;
- Adopt procedures for communicating procedural documents exclusively by electronic means;

Government:

- The Government should ensure that judges and their staffs have adequate conditions to perform their functions. They deserve special health attention in testing programs considering that they necessarily will be in contact with several individuals and groups. In this context, it is recommended to streamline the execution of the Plan for the construction of new buildings for the courts in the context of their reorganization.<sup>53</sup>

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<sup>53</sup> Parliament of the Republic of Moldova (2017). Decision no. 21 from 03.03.2017 on the approval of the Plan on construction of new buildings and/or renovation of existing premises, necessary for the good functioning of the courts system, available online at [https://www.legis.md/cautare/getResults?doc\\_id=98551&lang=ro](https://www.legis.md/cautare/getResults?doc_id=98551&lang=ro)

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