



WOMEN'S LAW CENTRE

Advancing women's rights together

15 November 2019

**To: Department for Execution of Judgments
of the European Court of Human Rights
Committee of Ministers of the Council of Europe**

SUBMISSION

**in line with Rule 9.2 of the Committee of Ministers on the case T.M. and C.M. v. the Republic of Moldova (Application No. 26608/11)
based on Action Report submitted by the Government on 19 September 2019**

The Women's Law Centre (WLC) is a non-governmental organisation based in Chisinau, Republic of Moldova. The WLC's mission is to contribute to the promotion of gender equality and the prevention and combating of gender-based violence in the Republic of Moldova by raising public awareness, building the capacity of relevant actors, providing holistic services to assist and protect women, conducting research and analysis, monitoring the legislation and aligning it with international standards. The WLC has extensive expertise in providing holistic services to victims of gender-based and domestic violence and in monitoring the implementation of legislation aimed to protect victims and prosecute perpetrators, as well as in contributing to developing national policies to prevent and combat violence against women and domestic violence.

The aim of the submission is to provide alternative information about the execution of general measures in the case of T.M. and C.M. v. the Republic of Moldova. It is submitted as an addition to our Rule 9.2 Submission dated 18 March 2019, which provides a deeper analysis of the issues involved and should be read in conjunction with this submission. The current submission is made as a response to the Action Report submitted by the Government on 19 September 2019.

In summary, whilst there have been steps forward in addressing domestic violence in Moldova, in some ways the issue has got worse – and it is still far from being properly addressed. The government's submissions fail to identify a series of critical problems – whilst also presenting statistics that do not reflect the true state of affairs. Issues of particular note are highlighted in the points below.

1. **Limited implementation of the National Strategy:** In its Action Report on the execution of judgments in the European Court of Human Rights in in Case T.M. and C.M. v.

Republic of Moldova of 19 September 2019, the Government of the Republic of Moldova referred to the adoption of the National Strategy to Prevent and Combat Violence against Women and Domestic Violence for 2018-2023 (hereinafter referred to as – the National Strategy) and the Action Plan to implement the National Strategy for 2018-2020 (hereinafter referred to as – the Action Plan).

The Action Plan includes 70 actions aimed to prevent and combat violence against women and domestic violence and to be implemented throughout 2018-2020. According to the Report on implementation of the Action Plan, by the end of 2018, 35 actions were reported as being implemented, 7 – as partially implemented, and 28 – as not implemented. Therefore, according to the government's documentation, their strategic response to the issue is only half-complete. The most significant barrier in the implementation of the Action Plan is the limited funds allocated by the state for the implementation of the National Strategy and dependence on funds from development partners.

2. **Authorities take action in only a low proportion of cases:** In 2017, 10871 notifications about domestic violence cases were received by police and 956 criminal and 1953 contravention cases were initiated. I.e., in 2017, the state responded only in 26,7% of domestic violence cases. In 2018, 11026 notifications about domestic violence cases were received by police and 998 criminal cases and 1657 contravention cases were initiated¹. I.e., in 2018, the state responded only in 24% of domestic violence cases. Although the number of cases reported to police is constantly increasing, as mentioned in the Action Report, a significant number of notifications about domestic violence did not lead to the due involvement of national authorities in 2017 and 2018.
3. **Victims have restricted access to forensic examination:** National legislation guarantees the right of domestic violence victims to benefit from free medical forensic examination and the issuance of a forensic report stating the seriousness of bodily or health injuries. However, when around 70% of the victims' requests to law enforcement to initiate investigations remain unaddressed, victims often have to pay for the costs of forensic examination themselves. These costs are high and not all victims can afford them. In addition, information about the location of forensic examination services is unavailable for many victims - preventing their access to these services.
4. **Decrease in criminal prosecutions and the severity of sentencing:** The application of the contravention procedure in domestic violence cases has led to milder sanctions being applied to perpetrators as compared to the period when domestic violence implied only criminal liability. Thus, according to the Action Report, in 2016, before contravention liability for domestic violence was introduced, 1782 criminal cases were initiated, as compared to 998 criminal cases initiated in 2018. The number of criminal cases has almost halved since 2016 and, hence, the punishments applied to perpetrators have become considerably milder. The sentences applied are not accompanied by measures obliging the convict to participate in programs aimed at diminishing their violent behaviour. There is no efficient procedure to make a perpetrator undergo a behaviour correction programme.

¹ http://politia.md/sites/default/files/ni_violenta_in_familie_12_luni_2018_pagina_web_a_igp.pdf

5. According to the *Action Report*, in 2016, 640 perpetrators were convicted to community service. In 2018, the situation changed and the number of perpetrators convicted to community service increased to 1417 persons. The change derives from the increase of the number of contravention cases, a decrease in the number of criminal cases and milder sanctions being applied under the Contravention Code.
6. **A failure to investigate psychological and economic violence:** Criminal investigation of cases of psychological violence is inefficient. Following the 2016 introduction of contravention liability for domestic violence that causes insignificant bodily injuries, the degree of bodily injury being caused has become the main criterion to classify an act of domestic violence as a crime or a contravention. Hence, the provisions in the Criminal Code that relate to criminal liability for psychological and economic violence are rarely applied, if they are not accompanied by any bodily injuries.
7. **Poor application of protection orders:** According to the most recent data², in the first six months of 2019, national courts issued 285 protection orders, of which 140 were violated, i.e. 49%. In 2018, national courts issued 666 protection orders, while 408 protection orders were violated, i.e. 61%. The very high percentage of protection orders being violated is evidence of an inefficient system of monitoring of the execution of protection orders by the perpetrators.
8. **Victims' restricted access to legal aid:** Victims of domestic violence continue to face problems in their access to the free state legal aid guaranteed by national legislation. According to the Analysis of judicial practice related to the application of protection measures in cases of domestic violence conducted by the Supreme Court of Justice in 2019, there are still cases when the courts issue judgments on protection measures when the victim has not been represented by a lawyer. This statement is also supported by the findings from the [Report on monitoring of court proceedings in cases of domestic violence, sexual violence and trafficking in human beings](#) referred to in the *Rule 9.2 Submission* dated 18 March 2019.
9. **Non-Ratification of the Istanbul Convention:** it is noted that the Moldovan government has still not ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence. It is submitted that this group of cases should not be closed until the Convention is ratified and the issue of domestic violence is fully addressed, in line with the Convention's requirements and in a way that addresses the issue comprehensively.

RECOMMENDATIONS:

Considering the aforementioned issues, we call the Committee of Ministers to maintain the case of *T.M. and C.M. v. the Republic of Moldova* under the procedure of enhanced supervision. We also ask that the Committee of Ministers issues a decision, requesting that the Moldovan Government carry out the following actions:

² <http://politia.md/sites/default/files/ni-violenta-in-familie-6-luni-2019-pagina-web-a-igpmmm.pdf>

- 1) Amend the relevant national legislation to ensure that all forms of domestic and gender-based violence are criminalised in Moldova irrespective of the degree of bodily injuries caused;
- 2) Replace sanctions in the form of community service or fine with measures ensuring the safety of victims of domestic violence and the correction of perpetrators' behaviour;
- 3) Ensure that information is provided to victims of domestic violence about state-guaranteed legal aid; and provide state-guaranteed legal aid to all victims of domestic violence in good time;
- 4) Ensure that an assessment is carried out in all cases of domestic violence of the risk of re-abuse or lethality - and include the risk assessment in the criminal/contravention/civil case file on domestic violence/protection order;
- 5) Create a system of referral of victims of domestic violence to specialised support services; and collect and present official statistical information to this end;
- 6) Ratify the Istanbul Convention and fully abide by its requirements.