



**CENTRUL DE DREPT
AL FEMEILOR**

*Promovând împreună drepturile femeilor
Advancing women's rights together*

18 March 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 (authorities' failure to provide protection from domestic violence)

INTRODUCTION

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. The WLC developed the first analysis on compatibility of national legislation with the Convention of the Council of Europe on preventing and combating violence against women and domestic violence. The recommendations from the report were the foundation for the amendment of 11 laws to enhance protection of victims of domestic violence in Moldova.

The aim of the submission is to provide alternative information about the execution of general measures in case of [T.M. and C.M. v. the Republic of Moldova](#). The case concerns failure to observe the positive obligations under Articles 3, 8 and 14 on account of the manner in which the authorities and courts handled the applicants' complaints about domestic violence by their ex-/husbands (events of 2009-2011). *T.M. and C.M. v. the Republic of Moldova* was part of the *Eremia, B. and Mudric* group of cases. By Final Resolution [CM/ResDH\(2017\)425](#), the Committee of Ministers decided to close the supervision of the three cases above, and continue supervision of outstanding individual and general measures under the *T.M. and C.M.* case.

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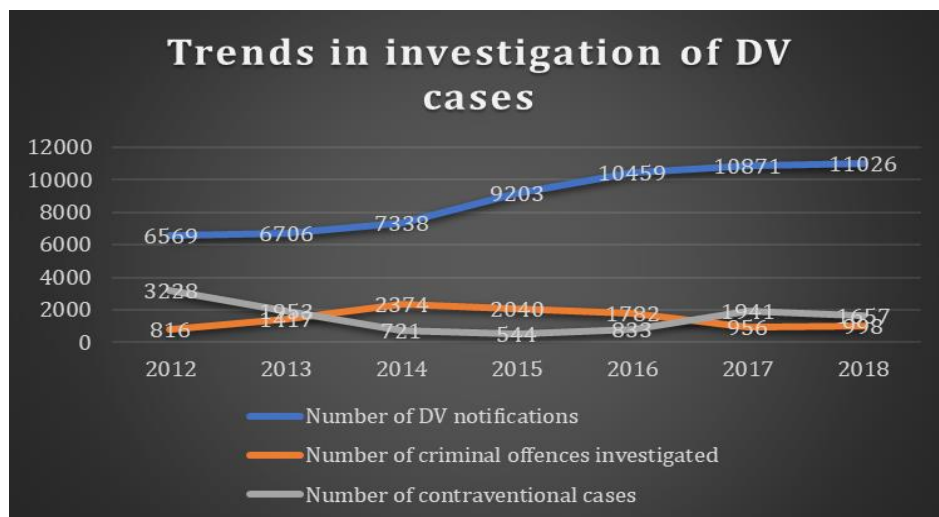
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The decision to make a submission in March 2019 was determined by the fact that the Ministers' Deputies by Decision [CM/Del/Dec\(2017\)1302/H46-19](#) decided to continue supervision of *T.M. and C.M. case* and invited the authorities to provide information, by 31 March 2019, preferably for the period January 2016 to December 2018, on: a) the number of complaints of domestic violence registered; b) the number of criminal and administrative investigations initiated and their outcome; c) the number of requests for protection orders submitted and the average time for their examination by the domestic courts; d) the number of protection orders adopted and the average time for their enforcement by the competent authorities; e) the number of emergency restraining orders issued by the police; f) the number of criminal and administrative proceedings initiated for breaches of protection or emergency restraining orders and their outcome.

I. INVESTIGATION OF DOMESTIC VIOLENCE CASES IN MOLDOVA

In its [Action Report](#) on the execution of judgments in the European Court of Human Rights in the group of cases *Eremia v. the Republic of Moldova* dated 28 September 2017, the Government of the Republic of Moldova referred to amendments to the national legal framework in the field of domestic violence approved in 2016. The amendments included extension of the list of family members; new wording of Article 201/1 of the Criminal Code (Domestic violence), which, besides more serious punishment, establishes criminal liability for other forms of violence, including psychological and economic violence; introduction of emergency barring orders, etc.

However, the same law amended the Contravention Code of the Republic of Moldova by introducing Article 78/1 (Domestic violence). The amendment to the Contravention Code has had serious negative consequences for victims of domestic violence. It has resulted in many fewer cases being treated as criminal, and many more as contravention cases.



In 2015 and 2016, 2040 and, respectively, 1782 criminal cases, while 544 and 833 contravention cases were initiated. After the amendment to the Contravention Code was introduced, the number of criminal cases initiated halved compared to previous years (956 in 2017 and 998 in 2018), while the number of contravention cases doubled (1944 in 2017 and

1657 in 2018)¹. The contravention rule (Article 78/1) sanctioning domestic violence differs from the criminal rule (Article 201/1) by the degree of bodily injury caused. A perpetrator who causes a victim an insignificant bodily injury is subject to contravention liability. If a light, medium or serious bodily injury is caused, the perpetrator may be subject to criminal liability.

Thus, in practice, a mandatory condition to initiate a criminal investigation is the bodily injuries caused to the victim, which are typically characteristic of physical violence and in some cases of sexual violence. Therefore, while the Government claims that there are now harsher punishments for acts of domestic abuse and that there is criminalisation of psychological and economic violence, the reality is that criminal investigations are initiated primarily based on the degree of bodily injuries caused and there are almost no convictions for psychological or economic violence as these forms of violence do not cause any bodily injuries.

Many criminal justice institutions representatives share the perception that economic or psychological violence cannot produce suffering similar to that caused by physical violence. They tend to dismiss cases of economic or psychological violence if no bodily injuries accompany such acts.

II. VICTIMS' LIMITED ACCESS TO LEGAL REMEDIES

Awareness raising campaigns on gender-based violence, including domestic violence, conducted with the direct support of non-governmental organisations and development partners, resulted into the increase in the number of reported cases of violence. Thus, in 2015, Police registered 9203 notifications related to family conflicts, while in 2018 this figure reached 11026 notifications². However, in 2018, only 998 criminal cases and 1657 contravention cases were initiated, i.e. only 24% of the total number of registered notifications were addressed; in 2017, of 10871 notifications to police about domestic violence, 956 criminal cases and 1944 contravention cases were initiated, i.e. 26.6% of domestic violence notifications were addressed.

Thus, according to the official information, in 2017 about 74%, and in 2018 about 76% of the total number of registered notifications about conflicts in families remained without duly involvement by national authorities.

In addition, the mechanism of victims of domestic violence referral by public institutions representatives to specialised support and protection services is underdeveloped and victims do not avail of an approach based on their needs when interacting with the state while seeking protection.

III. IMPUNITY OF PERPETRATORS

The ECtHR judgment in the *T.M and C.M. case* referred to lack of deterrent effect of the measures applied by the national authorities. Considering the aforementioned, the legislative amendments which the Government referred to in its report to the Committee of Ministers

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

² Ibidem

had, in fact, the effect opposite to deterring perpetrators. They rather encourage them to perpetuate the acts of violence given the impunity or milder sanctions applied. There is no liability for psychological and economic violence although such acts are in the Criminal Code. The sanctions applied for a domestic violence offence under the Contravention Code are community service from 40 to 60 hours or contravention arrest from 7 to 15 days. Considering that most cases are contravention cases, perpetrators are mostly given a minimum sanction of 40 hours of community service. It is very seldom that contravention arrest is applied, while individuals exempted from contravention arrest (according to the Contravention Code) and refusing community service avoid any liability for acts of domestic violence.

The [Report on monitoring of court proceedings in cases of domestic violence, sexual violence and trafficking in human beings](#), developed by the WLC in 2018, revealed that in criminal cases of domestic violence and sexual violence against women, only an insignificant number of cases resulted in imprisonment. Usually, defendants were subject to community service or imprisonment with conditional suspension of punishment. No case has been identified where the defendants were obliged to undergo alcohol or drug addiction treatment, or to participate in a special treatment or counselling programme for reducing violent behaviour. The monitoring of the contravention proceedings has revealed many cases where the mildest punishment provided for by law was applied - community service, and this was also at the minimum limit. No case was revealed where counselling measures were applied to the perpetrator.

These data are confirmed by 2016 data provided by the General Prosecutor's Office, as per which the courts completed the hearing of 1069 criminal cases regarding domestic violence crimes and ruled 1005 sentences on conviction of 1005 persons. In 422 cases (41.9% of the total number of convictions) the defendants were sentenced to community service; prison sentence with conditional suspension of punishment was applied to 377 persons (37.5%), imprisonment was applied to 202 persons (20%) and 4 convicts (0.39%) were punished with a fine.

IV. DOMESTIC VIOLENCE VICTIM'S LIMITED ACCESS TO LEGAL AID

In its [Action Report](#), the Government referred to the new amendments providing for the right of domestic violence victims to free legal aid. Authorities in charge of preventing and combating domestic violence must inform the victims how and under what conditions they have access to qualified counselling or legal aid. According to Law No. 198 of 26.07.2007 on State-Guaranteed Legal Aid, with amendments and addenda introduced by Law No. 196/2016, victims of violence may receive *primary legal aid* – which implies providing information on how to exercise and use rights, legal consultancy and assistance in preparing legal documents, as well as *qualified legal aid* – in the form of legal advice, representation and/or defence services before the prosecution authorities, courts in criminal, contravention, civil or administrative cases, representation before public administration authorities. Qualified legal aid may be requested by victims of domestic violence, regardless of their income, at any stage of the criminal proceedings, and prior to the initiation of the proceedings in civil cases. With all these amendments, the rights of domestic violence victims to free legal aid is still very limited. For instance, the [Report of monitoring of court proceedings in cases of domestic violence, sexual violence and trafficking in human beings](#)

revealed that in criminal cases of domestic violence, 96% of defendants availed of a defence lawyer, while only 7% of injured parties had access to a lawyer.

The law also states that when reviewing the domestic violence victim's application for protective measures, the court shall request the coordinator of the territorial office of the National Legal Aid Council to immediately appoint a lawyer to defend victim's interests. Nonetheless, a clear procedure of assigning a lawyer who would provide state-guaranteed legal aid in cases of domestic violence is still missing. The laws contain imperative rules that provide for compulsory assistance of a domestic violence victim during the lawsuit by an appointed lawyer if the victim is not assisted by a chosen lawyer. However, [Report on monitoring of court proceedings in cases of domestic violence, sexual violence and trafficking in human beings](#) revealed that in about 20% of civil cases on the application of protective measures subjected to monitoring, domestic violence victims were not offered state-guaranteed legal aid. In some cases, ex-officio lawyers were requested, but they did not show up, or if they showed up, they asked to postpone the hearing because they had to participate in other lawsuits. At the same time, in around 55% of cases with appointed lawyers, their performance was inappropriate.

Moreover, during the first hearing on the application for protection order, the courts use the practice of explaining to the victim the right to be assisted by a lawyer or to have a lawyer appointed by the territorial office of the National Legal Aid Council. Thereafter, the court postpones the meeting to provide the victim with a lawyer. This practice is unfavourable to the victim, since every hearing postponement increases the risk for the victim to be repeatedly abused.

In most cases, according to a [report](#), victims are provided qualified legal aid after they are given a shelter by the centre/service lawyer. Due to the lack of logistical capacities of state authorities, some victims are seeking assistance from NGOs, the latter also having to operate with limited resources as the Government does not have a well-developed and viable aid mechanism based on the public-private partnership, which could allow procuring primary and qualified legal aid services from the non-governmental organisations. Consequently, the broad access of gender-based and domestic violence victims and potential victims to an efficient state-guaranteed legal aid is still a desideratum in the Republic of Moldova.

V. APPLICATION OF EMERGENCY RESTRAINING ORDERS

The [Action Report](#) submitted by the Government highlights that since March 16, 2017, the police is bound to issue immediately an emergency restraining order by which it is entitled to remove the aggressor from home and to set specific prohibitions ensuring the safety of victims and other family members. Since March 2017 until December 2018, police issued 6038 emergency restraining orders. However, as compared to a total of 21897 domestic violence complaints to police in 2017-2018, the number of emergency barring orders represents only 28%.

In addition, an emergency barring order is issued based on the assessment of risks a perpetrator poses to the victim. Currently, the risk assessment is used exclusively to justify the issuance of the emergency barring order. It is not applied in all cases of domestic violence and it is not part of a domestic violence criminal/contravention/civil case file. Hence, none of

the professionals in the justice chain, except for police officers, has access to the risk assessment. Use of the risk assessment tool in every domestic violence case gives law enforcement the information it needs to take appropriate action to keep victims safe. Sharing that information with prosecutors, the courts, and probation will ensure that all sectors have valuable information to allow them to make good decisions.

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 and to recommend the Moldovan Government to:

- 1) Amend the 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 safety of victims of domestic violence and correction of perpetrators' behaviour.
- 3) Ensure information of victims of domestic violence about state-guaranteed legal aid and provide state-guaranteed legal aid to all victims of domestic violence in due time.
- 4) Ensure application of the assessment of the risk of re-abuse or lethality in all cases of domestic violence and include the risk assessment in the criminal/contravention/civil case file.
- 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.