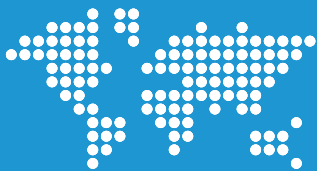


REPORT ON THE COMPATIBILITY

OF MOLDOVAN LEGISLATION  
WITH THE COUNCIL OF EUROPE  
CONVENTION ON PREVENTING AND  
COMBATING VIOLENCE AGAINST  
WOMEN AND DOMESTIC VIOLENCE



MARCH, 2013  
UN WOMEN  
CHISINAU, MOLDOVA



CENTRUL DE DREPT  
AL FEMEILOR

  
UN  
WOMEN  
United Nations Entity for Gender Equality  
and the Empowerment of Women

REPORT ON THE COMPATIBILITY  
OF MOLDOVAN LEGISLATION WITH  
THE COUNCIL OF EUROPE IN  
FRAGILE STATES  
CONVENTION ON PREVENTING AND  
COMBATING VIOLENCE AGAINST  
WOMEN AND DOMESTIC VIOLENCE

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COMMISSIONED BY UN WOMEN MOLDOVA  
Chisinau, March, 2013



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AL FEMEILOR



United Nations Entity for Gender Equality  
and the Empowerment of Women

*The study was commissioned by UN Women Moldova office following the request of the Ministry of Labour, Social Protection and Family to support advocacy efforts aimed at promoting signature and ratification of this Convention.*

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# INTRODUCTION

Violence has always been a part of human existence and its impact can be seen in the whole world. According to the World Health Organization, each year more than a million of persons die as a result of violence<sup>1</sup>. Thus, on the global scale, the main reason of death for persons aged between 15 and 44 years is violence.

The phenomenon of violence, including domestic violence, has no ethnic origin, is not limited to age or geographical borders, and is an international problem. Whether physical, sexual, psychological or economic, violence inflicts serious damages on physical and/or mental integrity of the victim, the latter being hindered to benefit from fundamental rights, such as right to personal security and liberty, the right to be treated with dignity etc.

Most frequently the role of the victim, including in the family environment, falls on the woman. This happens mainly due to the unequal relationship between women and men, generating discrimination against women and girls, both in family and in society. However, most violent acts against women are committed by men of their environment, including by former partners.

Gender-based violence is the most brutal form of inequality in society. Women become victims of this phenomenon simply because their aggressors do not acknowledge their minimum rights to liberty, respect and decision making. The United Nations Organisation recognised that violence against women is an obstacle to achieve equality, development and peace and violates the fundamental human rights and freedoms. Moreover, violence against women is defined as the power relationship between women and men, which has always been unequal, as history proves it.

In the whole world<sup>2</sup>, on average at least one of three women is beaten up, forced sexually or abused

otherwise by her intimate partner during her life. Women with ages of 15 to 44 run a higher risk of being raped or subjected to domestic violence than the risk to develop cancer, have car accidents or get infected with malaria, according to the data presented by the World Bank.

Studies show that in the world, about 1/3 of women have been abused by an intimate partner. Some global studies suggest that 1/3 of all women who died by homicide were murdered by their spouses or former spouses or dating partners. In Australia, Canada, Israel, South Africa and United States, in 40-70% of all cases of homicide, victims were murdered by their partners, based on the data presented by World Health Organization. In many countries, victims of domestic violence are a significant category of patients in need of emergency medical assistance, and the costs for violence inflicted in intimate relationships in United States exceeds the sum of 5,8 milliard US dollars per year, 4,1 milliard US dollars being spent on medical assistance and circa 1,8 milliard dollars - on loss of working capacity.

According to some estimative data of the European Union, about 20-25% of all women have suffered from physical violence and over 10% suffered from sexual violence during their adulthood. To sum up all the forms of violence against women, approximately 45% of all women have been subjected to violence.<sup>3</sup> Thus, based on the same data, in those 27 member states of the European Union with a total population of approximately 500 million persons,

3 Rosa Logar, "Good practices and challenges in legislation on violence against women", expert paper for the Expert Group

1 See the WHO Report on violence and health, Geneva 2002

2 UN Commission on Women's Statute, 2000 and Company UNITE for stopping violence against women.

about 20 and 30 million women have been subjected to violence by men during their life.<sup>1</sup>

Domestic violence is the most frequent form of violence, but also the most difficult to identify, due to its intimate and less obvious nature. Acts of domestic violence are the most difficult to identify because these take place in the family – a place where authorities cannot intervene. Due to this, state authorities perceive domestic violence as a private matter, with little to be done. The situation is also aggravated by the tolerance towards domestic violence even when it comes to victims. Thus, „women in Moldova are generally ashamed to talk about the abuse in the family. This is due to generally accepted perception that violence is allowed for letting women know their place or that in fact they are the ones who provoke violence”.<sup>2</sup>

Because of the private sphere in which domestic violence occurs, it is very difficult to estimate the proportions of violence. The few available studies in this field indicate an alarming situation. Thus, the Study on demographic situation and health in Moldova, performed in 2005, notes that approximately 21% of women and men consider as acceptable beatings of the wife by the husband for one of the following reasons: she burns the food, neglects her children, refuses sexual intercourse, quarrels or leaves home without permission.<sup>3</sup>

The same Study reveals that approximately 27% of interviewed women have been subjected to violence starting with the age of 15 and approximately 13% suffered from violence in the last 12 months. The main aggressors are husbands (69%) and to a lesser degree

fathers/step fathers and mothers/step mothers. The study also states that women with more children become more frequently victims of violence.<sup>4</sup> The largest number of interviewed persons, who believed that beatings of wife are acceptable are from the category of population with low income and with unfinished college degree. The largest number of interviewed persons, who believed that beatings of wife are acceptable are from the category of population with low income and with unfinished college degree. Thus, most vulnerable for domestic violence are persons with the lowest chances to request help and bring to an end a situation of abuse. e.

A recent study<sup>5</sup> revealed that violence inflicts a large number of women, irrespective of their age, living conditions and social-economic status. The total incidence rate of violence applied by husband/partner during life (psychological, physical or sexual) starting with the age of 15 is 63%. Most vulnerable are women from rural areas, women with low education, unemployed or those self-employed in agriculture. The incidence rate of violence perpetrated during lifetime, with cumulative violence episodes (psychological, physical or sexual) is of 12,3%. The highest incidence rates of cases of multiple violence during lifetime have been reported by women from rural areas, elder women and those separated or divorced.

In other words, women most frequently become victims of domestic violence, this being in fact a form of gender-based violence, that is „violence oriented against a woman because of her gender and violence which affects women disproportionately”.<sup>6</sup>

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<sup>1</sup> Stop violence against women, <http://www.stopvaw.org/Moldova.html>, Report: An investigation on the status of women's rights in South-Eastern Europe and CIS.

<sup>2</sup> Stop violence against women, <http://www.stopvaw.org/Moldova.html>, Report: An investigation on the status of women's rights in South-Eastern Europe and CIS.

<sup>3</sup> National Scientific Centre for Preventive Medicine and the Ministry of Health and Social Protection; Moldova: Study on demographic situation and health, 2005, pp. 43-45.

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<sup>4</sup> Winrock International, Women at Risk in the Republic of Moldova, 2005, p. 63.

<sup>5</sup> Assessment report on Violence against women in families from the Republic of Moldova, Chisinau 2011, National Bureau for Statistics and UNDP Moldova.

<sup>6</sup> UN, CEDAW Recommendation No.19, 1992.

However, the family is not a reason in itself for occurrence of violence, but violence „is a display of historically unequal power relations between women and men which has led to domination over and discrimination of women by men and have hindered a full advancing of women”. Women suffer of physical, psychological and sexual violence, even after separation from their partners, they may be abused by the acquaintances, at their workplace or in public sphere. Women may become victims of men’s violence at any age and frequently suffer from numerous forms of violence against them. Violence inflicted by men against women is so frequent, that each woman may be affected by it, which leads to a climate of fear and as a result, hinders them to fully advance their rights.

Frequently, violence against women affects also children, because women traditionally are in charge of caring for children. Thus, the UNICEF Moldova study from 2003 „Health and development of youth” stated that four out of ten young persons (38,3 %) know someone who has been a victim of sexual violence and almost eight out of ten (78,3 %) know someone who has been subjected to physical violence.<sup>1</sup>

Combating discrimination and violence against women is the subject of many international and European regulations. As an important strategic objective of the international community, the issue of eradicating violence against women is also included into the Agenda for Reunion from 2013 of the Economic and Social Council of the United Nations Organisation.

Adoption of the Law on preventing and combating family violence (hereinafter referred to as Law No. 45) is an important step in stopping acts of violence, which marks the recognition and implementation by the Republic of Moldova of international commitments for enforcement of human rights. The law contains important notions regarding domestic violence and its forms, and establishes an institutional framework listing detailed responsibilities of

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<sup>1</sup> UN, CEDAW Recommendation No.19, 1992.

competent authorities, sets forth the creation of centers for assistance of victims of violence and an efficient mechanism for resolution of cases of violence, with the possibility to file complaints, to apply protective orders and isolate the aggressor.

At the first glance, this law appears to be revolutionary by the mere recognition of the phenomenon of violence in the Republic of Moldova, providing the definition of domestic violence and its forms and introduction of the protective order, based on the western model. However, a detailed analysis of legal provisions through human rights perspective, reveals a series of inconsistencies, such as addressing the issue of violence with the family consolidation<sup>2</sup> approach and not based on the obligation of the state to protect the person by intervening into and curbing violence even in private environment. Thus, because of this approach, the social pressure for keep the family prevails over the individual’s rights: to life, to not be subjected to torture and ill-treatments, to safety, etc.<sup>3</sup> However, violence is a phenomenon which once aroused, will continue and most frequently, will escalate, leading to serious consequences or even to victim’s death.

Also, there is a lack of differentiation of violence based on gender, since in compliance with the globally available data and in the Republic of Moldova women are those most frequently affected by domestic violence. Unfortunately, the law does not take into account that domestic violence is one of the most serious forms of violence against women.<sup>4</sup>

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<sup>2</sup> Thus, one of the first draft laws was entitled “Law on family reunification».

<sup>3</sup> Bernadette Dunn Sewell, A history of abuse: Societal, judicial and legislative responses to the problem of wife beating, 23 Suffolk University Law Review 983 (1989).

<sup>4</sup> CEDFF Committee, General Recommendation No. 19, U.N. Doc. A/44/38 (1989), par. 23.



for the family and it is an important issue of public health and ensuring the equality of opportunities for women and men in exercising their right to a life free of violence. Thus, it is highlighted that domestic violence is not a private problem, determined by the frictions among family members or a vehicle for education of children, but represents a form of infringement of human rights, which should be prevented and combated.

The state and society have their share of responsibility in the process of promoting these values, having the obligation, in compliance with the Constitution and the relevant legal framework, to take all necessary measures for setting up efficient conditions and equal opportunities for women and men in political, economic, social and cultural environment, for helping and supporting the family to perform its obligations.

Recognising that women are exposed to a higher risk of gender-based violence than men, that domestic violence affects women disproportionately, the Council of Europe adopted in 2011 the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

Acting in compliance with provisions of Article 4 of the Constitution, the Government of the Republic of Moldova included into Action Plan for years 2012-2015 preparation measures for ratification of Convention. The goal of this Report is to check the compatibility of the national legal framework with the provisions of Istanbul Convention.

# CHAPTER I SUMMARY OF PROVISIONS OF THE EUROPEAN CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

*‘Violence against women is rooted in discrimination of women: in best scenario, men are frustrated when they lose control as a result of women’s emancipation, and in the worst scenario men continue to treat women as objects.’*

Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe

Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11th of May 2011, is the first binding European document on preventing, investigation and punishment of violent acts against women. Up to this moment,<sup>1</sup> the Convention has been signed by 25 Member states of the Council of Europe. In February 2013, Portugal became the third member state which has ratified the Convention, next to Turkey and Albania.

The Convention includes the obligation to adopt comprehensive and coordinated policies in preventing and combating all forms of domestic violence and

sets forth the creation of an international group of independent experts which shall monitor the implementation on the national level. States which ratify the Convention shall take urgent measures for prosecution and sanctioning of a number of crimes, such as rape, domestic violence, forced marriage, mutilation of genitals and sexual harassment. Convention contains 13 chapters and 81 articles.

Structure of this Convention is based on 3 “P’s” principle: prevention, protection of victims and prosecution of perpetrators. Convention contains the definition of violence against women, domestic violence and gender-based violence against women.

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<sup>1</sup> March 2013.

Convention forces member states to set up efficient mechanisms for prevention, elimination or at least diminishing violence against women and domestic violence. Thus, member states have the obligation to adopt necessary measures for elaboration of national policies on preventing and combating violence against women and domestic violence, allotting necessary financial and human resources for the adequate implementation of these policies.

Convention sets forth the obligation of the states to take necessary measures for rendering assistance and protection. After ratification of Convention, national authorities shall have the obligation to render a number of vital services to victims and their children, such as shelters, hot lines available 24 hours per day, legal consulting and medical assistance.

Convention also makes it mandatory for member states to adjust their civil, criminal and administrative legislation to ensure presence of sanctioning measures for aggressors and assistance to victims of violence. The Convention also stipulates the obligation of member states of immediate intervention for resolution of domestic violence cases, especially by adopting legislative measures for issuance of urgent, prohibitive, restrictive orders to ensure that the aggressor leaves joint living premises and to ensure the protection of the victim.

Also, the Convention sets up a monitoring mechanism for the implementation of its provisions, with independent experts with the task to elaborate evaluation reports on the degree of implementation of Convention by member states.

# CHAPTER II ANALYSIS ON COMPATIBILITY OF NATIONAL LEGISLATION WITH THE PROVISIONS OF LAW ON PREVENTING AND COMBATING DOMESTIC VIOLENCE

## CAHVIO CHAPTER I

# Goals, definitions, equality and non-discrimination, general obligations

Article 3 of the Convention – Definitions, contains a number of definitions applicable to the text of Convention, which shall be evaluated from the prospective of integration into national legislation.

### Article 3. Definitions

a *“violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of*

*gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;*  
b *“domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur with the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim;*

- c *“Gender” shall mean social roles, behaviour, activities and attributes, considered by a certain society as adequate for women and men;*
- d *“gender-based violence against women” shall mean violence directed against a woman because she is a woman or affects women disproportionately;*
- e *“Victim” shall mean any natural person, subjected to the treatment as set forth in paragraph a) and b);*
- f *Term „women” includes girls up to the age of 18.*

It is logical that Istanbul Convention contains the definition of “violence against women”, given the special goal of the Convention to ensure protection of women from all forms of violence and elimination of violence against women and of domestic violence.

Moldovan legislation does not emphasize specifically woman as victims of violence, using for such cases broader terminology, to include both women and men, such as –“person”, “human being”, “citizen”.

Thus, in compliance with the Constitution of the Republic of Moldova,<sup>1</sup> it is the foremost duty of the state to respect and protect the human being. The state declares the equality of all citizens of the Republic of Moldova (including women) before the law and public authorities, without any discrimination as to race, nationality, ethnic origin, language, religion, gender, opinion, political affiliation, personal property or social origin<sup>2</sup>. The state guarantees to each human being the right to life and to physical and mental integrity<sup>3</sup>, respect and protection of private, intimate and family life<sup>4</sup>, etc.

Constitutional provisions are further developed in organic and ordinary laws, in other normative acts. Thus,

1 Constitution of the Republic of Moldova, adopted on 29.07.1994, Official Monitor No. 1 from 12.08.1994.  
 2 Ibidem, art.16.  
 3 Ibidem, art.24.  
 4 Ibidem, art.28.

in compliance with the Law on ensuring equal opportunities for men and women<sup>5</sup>, the goal of the law is to ensure that women and men exercise their rights equally in political, economic, social, cultural and other spheres of life, with a view towards preventing and eliminating all gender-based forms of discrimination.

In compliance with the Law on preventing and combating family violence (hereinafter referred to as Law No. 45), preventing and combating of domestic violence shall be carried out based on principles of equality, protection and personal security of the victim, etc. The Law shall equally apply to citizens of the Republic of Moldova, foreign citizens and persons without nationality, living on its territory. The same approach is seen in the Law on ensuring equal opportunities<sup>6</sup>.

Violence against women means „any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, occurring in public or in private life”.<sup>7</sup>

In compliance with Beijing Platform for Action, adopted at the fourth World Conference on women from 1995, the term of „violence against women” means any act of gender-based violence, that results or may result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, occurring in public or private life.<sup>8</sup>

5 Art.1 of the Law on ensuring equal opportunities for men and women, No.5 from 09.02.2006 //Official Monitor 47-50/200, 24.03.2006  
 6 Law on ensuring equality, No. 121 from 25.05.2012 // Official Monitor 103/355, 29.05.2012  
 7 Declaration on the Elimination of violence against women, adopted by the UN General Assembly in December 1993.  
 8 United Nations Department of Public Information, the Fourth World Conference on women, Beijing, China, 4-15 September 1995;

However, the definition of violence against women is not present in the legislation of the Republic of Moldova, neither is it set forth in Law No. 5 on equality of opportunities for men and women, nor in the Law No. 45 on preventing and combating domestic violence.

Thus, in order to allow ratification of CAHVIO Convention by the Republic of Moldova, it is necessary that the definition of violence against women is set forth in national legislation, as follows:

#### Proposed amendments:

In Article 2 of the Law No. 5 on equal opportunities for men and women,<sup>1</sup> the following text shall be inserted:

**„Violence against women” - any act of gender –based violence that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, occurring in public or in private life.**

As to paragraph (b) of Article 3 of the Convention, Article 2 of the Law on preventing and combating family violence provides a definition of *„domestic violence” – any deliberate action or inaction, except for self-defence or defence of other persons, manifested physically or verbally, in the form of physical, sexual, psychological, spiritual or economic abuse, or by inflicting pecuniary or moral damages, committed by a family member against other family members, including against children, and against personal and shared property.*

As seen from the definition of the Convention, it provides a broader approach to the problem of domestic unit and subjects of domestic violence. Here are also included terms not used in national legislation, such as „domestic unit” or „partners”.

It is necessary to mention that the European Court for Human Rights also provides a flexible interpretation to the notion of „family life”, thus broadening the category of persons which may be considered victims or aggressors in cases of domestic violence. For example, in *Johnston v. Ireland* case, the Court has mentioned that unmarried couples, living together with children, enjoy family life in sense of the article 8 of the Convention, provided that the relationship is stable and not different from the traditional family based on marriage.

In the Report „Implementation of the legislation of the Republic of Moldova on domestic violence”<sup>2</sup>, authors qualify negatively addition into the Law 45 of some forms of violence (namely economic and spiritual violence), while welcoming the extension of protection also to the family of unmarried partners (concubines). However, authors regret that protection doesn’t also extend to current or former non-cohabiting partners. In this regard, they recommend „...expanding the list of subjects, by also including persons, currently or formerly in an intimate relationship, regardless of their present or former marital status, or cohabiting. In fact, current legislation of the Republic of Moldova also does not refer to non-cohabiting divorced persons or to non-cohabiting unmarried intimate partners. Also, it is recommended to exclude the term of „family violence” and use instead the term of „domestic violence”, for a clear insight that the law is meant to deal with the violence of an aggressor and not to blame the entire family...”.

We do not agree that substitution in the legislation of terms „family violence” with „domestic violence” should be a question of principle. And the aforementioned expert opinion may be perspectives of some persons. In fact, the term of „family violence” identifies a fact which is taking/took place within a family, and shall not necessarily mean blaming of all family members for created situation. The same is true for the term of „domestic violence”, which may also be

<sup>1</sup> Law on ensuring equality No.121 from 25.05.2012 // Official Monitor 103/355, 29.05.2012

<sup>2</sup> Developed by Advocates for Human Rights, Women’s Law Centre and Bulgarian Gender Research Foundation. Published in 2012, ISBN: 0-929293-71-1.

However, the need to amend the legislation to broaden the list of subjects is doubtless.

From the very beginning, it is necessary to mention that the national legislation lacks clear and complete definition of family. Article 48 of the Constitution offers some insight into the definition of family, however it was not included into the Family Code. The concubinage relationships are also not covered by legislation.

Meanwhile, the Convention mentions as subjects of domestic violence both current and former partners, including those without shared residence.

In order to include the partner of the victim into the list of subjects of domestic violence, it is necessary to initially define the term „partner”. Currently, given the evolution of the process of developing a legal framework for concubinage relationships, the solution to this problem seems uncertain.

However, even in such situation, we deem it necessary to elaborate proposals for amending legislation, with a view toward extending the list of subjects.

#### Recommended amendments:

Thus, it is proposed to amend Article 3 from the Law No. 45, as follows:

In Article 3: letter b), par. (2) the following wording is recommended:

*“b) in conditions of separate residence: persons in a relationship of marriage, their straight-laws, foster children, persons under guardianship, former husbands, persons currently or formerly in a relationship of concubinage.”.*

In the same time, it is necessary to ensure that Article 133<sup>1</sup> of the Criminal Code is also amended, as follows:

#### Article 133<sup>1</sup>:

At letter a) after the word “relatives” the text shall be supplemented by the phrase „and straight-laws” and shall read further according to the text.

Letter b) shall have the following version:

**“b) in conditions of separate living: persons in a relationship of marriage, relatives and their straight-laws, foster children, persons under guardianship, former husbands, persons currently or formerly in a relationship of concubinage.”.**

Thus, the new version shall also expand the list of subjects to also include ex-husbands and persons formerly in a relationship of concubinage, but which do not cohabit together. To the latter the term „partner” shall also apply, as defined in the Convention.

Lack of a legal framework for concubinage relationships may be compensated by the jurisprudence of the European Court of Human Rights regarding the interpretation of the notion “family life”: to unmarried couples (in this case, persons in concubinage) the definition of „family life” shall apply, in the sense of the Article 8 of Convention, on condition that the relationship is stable and not different from the traditional family, based on marriage.

Doubtlessly, the term „partners” envisaged in the Convention contains a broader meaning, with persons in short term current/former relationship also included. We believe that until the legislation provides a clear definition of the term „partners”, the victims of violence without a „...stable relationship, not different from the traditional family, based on marriage...” shall benefit from state protection, guaranteed for all persons on general conditions.

Also, the definition from CAHVIO identifies 4 forms of violence, namely: „physical, psychological, sexual and economic violence”. In national legislation, CAHVIO does not expressly stipulate this form of violence; this doesn’t mean a limitation for the states to set forth in their national laws also other forms of domestic violence. For example, in this regard in Romania the law sets forth 6 forms of violence: verbal, physical, sexual, psychological/psychic, social and spiritual violence.

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The current definition of family violence from the law No. 45 lists the forms of domestic violence and consequences which may result in „pecuniary and moral damages”. However, in the current definition, the consequences of domestic violence' acts are presented as a separate manifestation of acts of domestic violence, causing confusion. And it is obvious that the act manifested, for example, through physical violence is likely to result in certain harm to the health of the person. As a result, the person will need treatment, which involves certain financial expenditures – pecuniary damage, which shall be further claimed in a civil action from the perpetrator.

*In the same manner, the act of physical violence shall also inflict physical suffering/pain – moral damage, which shall also be further claimed in a civil action.*

#### Recommended amendments:

In the current version of the Law No. 45, in Article 2 the phrase *“or by causing pecuniary or moral damage”* shall be replaced with the phrase *„by which pecuniary or moral damage was caused”* in order to emphasise that these are the consequences of acts of physical, psychological, sexual or spiritual violence.

The current definition of domestic violence expressly envisages who may become the subjects of domestic violence *“committed by a family member against other family members, including against shared and private property”*.

Article 3 broadly lists all family members. We consider useless the wording at the end of the definition *“and also against shared and private property”*, because in the meaning of the law such a situation already covers the notion of economic violence (which may refer to destruction of joint property, prohibition to use

shared or private property). Thus, this phrase wording shall be excluded from the definition.

#### Recommended amendments:

In current wording of the Law No. 45, the phrase from the Article 2 *“... and also against shared and personal property”* shall be excluded.

As to Article 3 (c) of the Convention, the national legislation regulates under Law No. 5 on equal opportunities for women and men contains a similar text, defining the term „gender” as follows:

**“gender – the social aspect of relationships between men and women, expressed in all spheres of life;”**

As for Article 3 (d) of the Convention, it should be acknowledged that gender-based violence is the most brutal manifestation of social inequality. Victims of this phenomenon are women simply because their aggressors do not recognise their minimal rights to liberty, respect and decision-making. During the Fourth World Conference on Women in 1995, UN has recognised that violence against women is an obstacle to equality, development and peace and violates and impairs the fundamental human rights and freedoms. UN defines the phenomenon of violence as a manifestation of historically unequal power relationships between men and women.

Based on performed studies and surveys, in the Republic of Moldova approximately 90% of domestic violence' victims are women. Most frequently violence occurs between spouses (60%), between divorced couples (19%) or concubines (11%).

#### Recommended amendments

In the Article 2 of the Law No. 5 on ensuring equality of opportunities for men and women<sup>1</sup>, the following phrase shall be introduced:

<sup>1</sup> Law on ensuring equality No. 121, from 25.05.2012 //Official Monitor 103/355, 29.05.2012



*“gender-based violence against women” shall mean violence directed against a woman because she is a woman or affects women disproportionately.*

As for Article 3 (e) of the Convention, in the legislation of the Republic of Moldova, the term victim is defined generally, as an attribute of each person assaulted in the result of illegal behaviour, and also in the context of preventing and combating domestic violence.

Thus, the Law No. 45 provides the following definition of „victim” – *a person, adult or child, subjected to acts of violence in the family or concubinage;*”

We believe that if recommended amendments to Article 3 of the Law No. 45 are accepted (see recommendations presented in the analysis of Article 3 (b) of Convention), the current definition of the „victim” from the Law No. 45 shall acquire a different meaning, due to the expanding of the list of subjects of domestic violence. Thus, we consider that in such case the compliance of the text with the definition from the Convention shall be ensured.

In the same time, the offered explanation of the notion of „victim” in the Law No. 45 is unclear due to the separation of „concubinage” and its excessive emphasis, thus recognising this category within the definition of subjects from Article 3 of the Law. Taking note of proposed amendments to the category of „family members”, we consider as adequate the following amendments to the current definition of “victim”:

#### Recommended amendments:

The phrase “*in concubinage*” shall be excluded from the Law No. 45, Article 2, in the definition of victim.

Also, it is necessary to note that the Law No. 45 does not provide a relevant status to the victim of domestic violence, it does not ensure necessary guarantee to the victim, especially regarding the right to compensation

of moral and pecuniary damages, to exemption from judicial taxes, clear conditions of legal representation, etc., although these are the means to increase victim’s safety against violent acts and discrimination. Article 11 from the Law No. 45, which sets forth the means for ensuring protection of the victim of domestic violence, lacks provisions in this regard.

In this context, it is relevant to make reference to provisions from art.1398 of the Civil Code <sup>1</sup>, which sets forth that the person with deliberately illicit behaviour against another person, has the obligation to compensate pecuniary damages, and *in cases set forth in the law, the moral damage* caused by action or inaction. The amount of the compensation for moral damages shall be established by the court of law, based on the nature and severity of physical and moral sufferings caused to the plaintiff, on defender’s guilt, if the guilt is a condition of liability, and the extent to which this compensation shall provide satisfaction to the injured party. The nature and severity of physical and moral sufferings shall be appreciated by the court, based on circumstances in which the damage was done and the social status of the damaged party. <sup>2</sup>

Thus, to ensure effective implementation of provisions regarding victims of domestic violence of the civil law guaranteeing compensation of pecuniary damage and especially of moral damage, it is necessary to amend the Law No. 45, by expressly providing the right to compensation of pecuniary and moral damages, and to exemption from judicial expenses in civil litigations of the domestic violence’ victim.

#### Recommended amendments:

Based on the afore-mentioned, we consider as appropriate the following recommendations:

- 1 Civil Code. Book three – Obligations (art. 512-1431) 1107/06.06.2002, MO 82-86/661, 22.06.2002.
- 2 Article 1423 of the Civil Code. Book three - Obligations (art.512-1431) 1107/06.06.2002.

1 It is proposed to amend the Article 11 of the Law No. 45, by adding a new paragraph, paragraph (8), as follows:

“(8) The victim of family violence is entitled to solicit compensation from the perpetrator and/or state authorities, in conditions of the law, for pecuniary and moral damages caused by injury to bodily integrity and health, and as a result of the failure to provide adequate protection.”

2. Article 12 shall be supplemented with two new paragraphs, which become par.(2) and par.(3), as follows:

“(2) The request to issue a protection order, shall be filed by the victim personally or by the legal representative. In case of impossibility of the victim to file the request personally, the application for protective order, at victim’s request, may be filed by police, social worker or prosecutor, in the interests of the victim.

(3) The request to issue protection order on behalf of the child or disabled person, may be filed by the prosecutor or guardianship authority, whether or not there is a request from the victim or victim’s legal representative.

3. Article 13 par.(3) shall have the following content:

“(3) The application to the court of law for issuance of a protective order shall be exempted of the state tax. Also, the victim of domestic violence shall be entirely exempted of judicial expenses.”

In the same time, it is necessary to amend relevant provisions from the Civil Procedure Code and the Enforcement Code<sup>1</sup>:

1. In art. 77 CPC:

In par.(1) letter c), the phrase „art.304 and 316” shall be replaced by the phrase „art. 304, 316 and 3183”;

2. Article 92 shall be supplemented with a new paragraph, par.(3) in the new version:

<sup>1</sup> Enforcement Code of the Republic of Moldova No. 443-XVI from 24.12.2004 //Official Monitor No.34-35/112 from 03.03.2005).

„(3) The victim of family violence shall be exempted of expenses related to examining of the request for protection measures. All expenses in these cases shall be performed from the state budget.”

3. Article 256:

Paragraph (1) shall be supplemented with the letter e), as follows:

„ e) protection measures envisaged by the article 3184 par. (2) let. a1), e), e1) and f) from this Code.”;

4. Article 318 :

Paragraph (1) shall read as follows:

“(1) The request to issue a protective order shall be filed by the victim personally or by the legal representative. In case of impossibility for the victim to file the request, the application for issuance of protective order may be filed on behalf of the victim, at victim’s request, by police authority, social workers’ agency or prosecutor. The request to issue a protective order on behalf of the child or disabled person, may be filed by the prosecutor or guardianship authority, whether or not there is a request of the victim or victim’s legal representative.”;

5. Article 318<sup>3</sup> shall be supplemented with a new paragraph, par.(11) as follows:

„(11) For protection of victim’s interests during the trial, the court shall request from the coordinator of the territorial office of the National Council for State Guaranteed Legal Aid, to assign an attorney. In this case the legal aid is free of charge.”;

6. Article 318<sup>4</sup>:

Paragraph (5) shall be supplemented with the following phrase:

„Enforcement expenditures shall be paid by the perpetrator, as the debtor of the enforcement procedure.”.

7. Article 11 letter b) of the Enforcement Code shall be supplemented by the following phrase:

“, ordinances regarding the protection measures, set forth in the art.3184 par. (2) let. a1), e), e1) and f) from this Code.”.

The afore-mentioned proposals for amendment of the national legislation, are aimed to ensure broader protection opportunities to the victim of domestic violence, by also offering the discretion, upon necessity, on deciding the involvement of other persons to represent her, with the exception of cases limited exercise capacity or when the victim lacks the ability for independent decisions, with the state having a positive obligation to ensure efficient protection. However, ensuring efficient protection of the victim requires not only necessary assistance during the process itself, but also enforcement of adopted decisions.

At the general overview of the definition of the victim of violence, , i.e. in the context of violence outside the family, it is necessary to mention that in compliance with the legislation of the Republic of Moldova, acts of physical and sexual violence are considered as highly dangerous for society. As a result, these acts are contained in several articles of the Criminal Code<sup>1</sup> and Contravention Code<sup>2</sup>. Thus, the victim of physical, psychological and sexual violence offences, qualified as crimes or contraventions, has a well-established procedural statute, with procedural and substantive guarantees envisaged in the law.

In compliance with the Criminal Procedure Code <sup>3</sup>, criminal procedures are aimed to the protection of the person from crimes and protection of the person from illegal acts of official authorities, during their activity related to investigation of committed or alleged crimes, to ensure that each person committing a crime is sanctioned depending on his/her guilt.

Criminal procedure legislation recognises as victim each natural person, to which by crime was inflicted

1 Chapters I-IV; VIII; XIII; XV; XVI of the Criminal Code of the Republic of Moldova No. 985-XV from 18 April 2002 // republished in the Official Monitor No.72-74/195 from 14.04.2009.

2 Chapters VII; XVI; XVIII-XIX of the Contravention Code of the Republic of Moldova No. 218-XVI from 24 October 2008 // Official Monitor, 2009, No.3-6/15 from 16.01.2009.

3 Article 1 of the Criminal Procedure Code of the Republic of Moldova No. 122-XV from 14.03.2003, //Official Monitor, 2003, No. 104-110/447 from 07.06.2003.

moral, physical or pecuniary damage. With victim's consent, based on ordinance of the law enforcement body and after establishing grounds for rendering such procedural statute, the victim shall be immediately recognised as the damaged party, on who by crime was inflicted moral, physical or pecuniary damage. The juvenile to whom the damage was inflicted by crime, shall be considered without his/her consent as damaged party

. Within the criminal proceedings, the victim and the damaged party shall be entitled to guarantees, rights and obligations, as set forth in the articles 58-60 of the Criminal Procedure Code.

In compliance with the art. 387 of the Contravention Code, as victim shall be considered the natural person or the legal entity to which moral, physical or pecuniary damage was inflicted by the offence. The victim shall exercise her rights and obligations personally or through representatives, in compliance with the legislation.

If the victim is a juvenile or a person with limited capacity, her rights shall be exercised by her legal representatives. The victim has the rights, obligations and guarantees as set forth in the contravention legislation. The contravention procedure shall be applied in compliance with the provisions of the Criminal Procedure Code, with exceptions expressly provided in the contravention legislation.

The victim of the acts of physical and sexual violence, has the possibility to hold liable the offenders and to obtain compensation of damages cause by crime or contravention, in conditions set forth in national legislation. Upon the case, defending of rights may be performed by litigation<sup>4</sup>, within a separate trial, on grounds set forth in articles 1404-1408, 1418, 1420-1423, etc.

4 Idem, art.10.

Also, in compliance with the Article 45 of the Contravention Code, if damage was caused to the person, she has the right to assert her civil claims within a civil procedure. However, the competent authority is entitled to order, at victim's request, in a contravention procedure, compensation of damages inflicted in the course of an administrative offence, if there are no disputes regarding the amount of these.

The victim of economic and psychological violence, which are not considered as crimes in the legislation, may use the means of civil litigation to solve the claims in compliance with the civil procedure legislation. The civil legislation of the Republic of Moldova is based on recognition of inviolability of property, inadmissibility of immixture into private life, free exercise of civil rights, guarantees for re-establishing the violated rights of the person and possibility for judicial protection of these rights<sup>1</sup>, also by using as legal grounds the provisions set forth in articles 1404-1408, 1418, 1420-1423, etc.

Based on the afore-mentioned, we believe that the national legislation has the necessary means to ensure the protection of the victim from any acts of violence, other than those taking place in family environment.

The presence in Istanbul Convention of the afore-mentioned definition of „women”, is logical given the special objective of Convention to ensure the protection of women from all forms of violence and elimination of violence against women and domestic violence.

The legislation of the Republic of Moldova does not specifically emphasise women as victims of violence, using for such cases neutral terms, and thus the following amendments are appropriate.

#### Recommended amendments:

<sup>1</sup> Article 1 of the Civil Code, Book one – General provisions (art.1-283) 1107/06.06.2002 //Official Monitor 82-86/661, 22.06.2002.

Article 2 of the Law No. 5 on ensuring equality of opportunities for women and men<sup>2</sup>, shall be supplemented with the following text: “women” includes girls of the age of up to 18.

#### Article 4.

##### Fundamental rights, equality and non-discrimination

1. *Parties shall take the necessary legislative and other measures to promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere.*

(2) Parties condemn all forms of discrimination against women and take, without delay, the necessary legislative and other measures to prevent it, in particular by:

- *embodying in their national constitutions or other appropriate legislation the principle of equality between women and men and ensuring the practical realization of this principle;*
- *prohibiting discrimination against women, including through the use of sanctions, where appropriate;*
- *abolishing laws and practices which discriminate against women.*

(3) *The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.*

(4) *Special measures that are necessary to prevent and protect women from gender-based violence shall not be considered discrimination under the terms of this Convention.*

In the process of its constitution as plenipotentiary subject on the international arena, Republic of Moldova took concrete measures in order to implement international standards on the national level,

<sup>2</sup> Law on ensuring equality No.121 from 25.05.2012 //Official Monitor 103/355, 29.05.2012

including in the field of promoting and ensuring the rights of women. Adoption of the Constitution of the Republic of Moldova, that establishes the principle of universality, according to which all citizens of the Republic of Moldova shall enjoy the rights and freedoms granted to them by the Constitution and other laws and are assigned the duties provided by the Constitution, represents a starting point in the process of promoting fundamental human rights and freedoms in our society <sup>1</sup>. By developing the principle of universality, the Supreme Law of the state guarantees equality of all citizens of the Republic of Moldova before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin <sup>2</sup>, and the rights of the citizens of the Republic of Moldova to benefit from state protection both within the country, as well as abroad <sup>3</sup>, is also equal to the rights and duties of foreign citizens and stateless persons who are situated on the territory under jurisdiction of the state, with some exceptions established by the law <sup>4</sup>. The state assumed obligation to guarantee to each individual the right to life and physical and mental integrity, and not to admit acts of torture or other cruel, inhuman or degrading punishments or treatments. The capital punishment was abolished <sup>5</sup>.

In order to ensure effective protection of individuals against any actions that represent social danger, criminal and contravention legislation was adopted that aims at protecting all persons against crimes and offences, including their rights and freedoms, property, environment, peace and security of mankind, as well as the whole order of law, and prevent instances of committing new crimes and offences.

As a norm-guarantor for implementation of fundamental rights and freedoms of any individual, Article 54 of the Constitution is especially important. According to this Article, no laws can be adopted in

the Republic of Moldova that would undermine or diminish the fundamental rights and freedoms of individuals and citizens, but only those laws can be adopted that correspond to the unanimously recognized norms of international law and that are necessary for the interests of national security, of territorial integrity, of economical wealth of the country, of public order, in order to prevent mass disorders and crimes, protect the rights, freedoms and dignity of other persons, prevent disclosure of confidential information or guarantee the authority and impartiality of justice .

Republic of Moldova is continuously paying necessary attention to the problem of modernization of national legal framework and recognizes the importance of implementation of international standards in the field of promoting and ensuring human rights.

On 9 February 2006, Parliament of the Republic of Moldova adopted the Law of the Republic of Moldova on Ensuring Equality of Opportunities for Women and Men. The respective legislative act aims at preventing and eliminating all forms of discrimination according to the gender criteria and implementation in the society of the concept of equality of human gender in all spheres of public and private life. In this context, the Law requires complex approach in the field of equality between women and men, implementation of affirmative actions aimed at elimination of certain disadvantages and therefore at advancement of real equality between women and men. Therefore, according to Article 5 of the Law, women and men benefit of equal rights and freedoms in the Republic of Moldova, and equal opportunities of their exercise are guaranteed. Actions that limit or exclude under any aspect equal treatment of women and men are considered discriminatory and are forbidden, and legal acts that contain discriminatory provisions related to criteria of gender are declared null by the competent bodies. At the same time, the above-mentioned norm does not consider as discriminatory:

- a) measures for ensuring some special conditions for women during pregnancy, after giving birth and during breastfeeding;

1 Constitution of the Republic of Moldova, Article 15.

2 Idem, Article 16.

3 Idem, Article 18.

4 Idem, Article 19.

5 Idem, Article 24

- b) qualification requirements for those activities where gender specifics represent a determinant factor because of the specific conditions and the manner of carrying out the respective conditions;
- c) special announcements for employment of persons of certain gender for jobs where, because of the nature or particular conditions of work provided by the law, gender particularities are determinant;
- d) affirmative actions.

Article 24 of the Law of the Republic of Moldova on Ensuring Equality of Opportunities for Women and Men establishes the right of persons subjected to any discrimination form according to gender criteria to reparation of damage, as well as to liability of those responsible for discriminatory actions.

Starting with 01 January 2013, the Law on Ensuring Equality No. 121 from 25.05.2012 entered into force. This Law prohibits any acts of discrimination and offers a viable mechanism for combating discriminatory actions. This Law envisages <sup>1</sup> that any person who is considered a victim of discrimination is entitled to submit an action in court and is exempted from payment of state taxes when requesting one of the following:

- a) determining whether violation of his/her rights took place;
- b) prohibiting further violations of his/her rights;
- c) restoring the situation existing prior to violation of his/her rights;
- d) reparation of pecuniary and non-pecuniary damage caused to him/her, and recovery of court costs;
- e) a declaration of invalidity of the act that led to his/her discrimination.

During the court proceedings, the applicant has the duty to submit evidence supporting the assumption of a fact of discrimination. The burden of proving that the respective fact does not represent discrimination

belongs to the defendant, except for criminally liable deeds.

Criminal liability may follow for violation of citizens' rights and freedoms guaranteed by the Constitution and other laws on the grounds of sex, race, colour, language, religion, political, or any other opinions; national or social origin; association with a national minority; property; birth or any other situation committed by an official or resulting in considerable damage.<sup>2</sup>

We consider that in order to ensure proper implementation of the Convention requirements, it is necessary to amend the provisions of Article 176 of the Criminal Code to extend the list of subjects that may be convicted for committing actions indicated above. Currently, only official persons who, under conditions of the law, are decision making persons employed

by state structures, shall be subjected to criminal liability for violation of citizens' equality of rights. It is necessary to introduce criminal liability also for persons from non-state sector, including economic agents from private sector, social-political organisations, etc.

**Recommended amendments:**

Therefore, the proposal is to supplement paragraph (1), letter a) from Article 176 of the Criminal Code with the following provision "or by persons who manage a commercial, public or other non-state organization".

It is very important that together with regulations which aim at combating discriminatory actions, the above-mentioned legislative acts also offer necessary conditions for the authorities, for other subjects competent to carry out special provisional actions in favour of some beneficiaries, aimed at ensuring their natural development and effective implementation of their equality, elimination of and prevention from

<sup>1</sup> Law on Ensuring Equality, Article 18.

<sup>2</sup> Criminal Code, Article 176.



discrimination or disadvantages that result from attitudes, behaviours and existing structures (affirmative actions, positive measures).

Also, the case law of the European Court of Human Rights has expressly emphasized in a number of cases that domestic violence is a form of discrimination of women and that it is not sufficient for the law to incorporate the principle of equality. Essentially, it is necessary for this principle to be implemented in practice.

Recommended amendments:

In this context, we propose to supplement Article 5 of the Law Nr. 45 with a new principle: "Non-discrimination".

#### Article 5.

##### State obligations and due diligence

1. *(Parties shall refrain from engaging in any acts of violence against women and ensure that state authorities, officials, agents, institutions and other actors acting on behalf of the state, act in conformity with this obligation.*
2. *Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-governmental actors.*

According to the Constitution, Republic of Moldova is a democratic and governed by the rule of law state, in which human dignity, individuals' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values and shall be guaranteed. Citizens of the Republic of Moldova shall benefit of state protection both within the country and abroad. The State shall guarantee to everyone the right to life, to physical and mental integrity. No one shall be subjected to torture or other cruel, inhuman or degrading punishments or treatments. Individual freedom and security of person shall be inviolable. The State shall respect and protect the intimate, family and private life and guarantee inviolability of domicile, etc.

National legislation provides criminal liability for the following acts:

- deliberate infliction of pain or physical or mental suffering, that represents inhuman or degrading treatment, by a public person or by a person who, de facto, exercises duties of a public authority, or by any another person who acts in his/her official position or with express or tacit consent of such a person<sup>1</sup>;
- sexual harassment by a public or natural person<sup>2</sup>;
- violation of inviolability of private life, violation of the right to privacy of correspondence, violation of domicile<sup>3</sup>;
- abuse of power or abuse of official position, excess of power or excess of official authority, negligent performance of duties<sup>4</sup>.

Abuse of power or excess of official authority that does not include elements of crime, as well as protectionism actions, shall be sanctioned by Contravention Code.<sup>5</sup>

In order to ensure abstention of state officials or of other actors who act in the name of the state from illegal actions, the law also introduced civil responsibility (pecuniary) for damages caused by a public authority or an official person or by actions of criminal investigation bodies, of the prosecutor's office or courts of law, as well as the right of the state to recourse against officials from bodies of criminal investigation, preliminary inquiry, prosecutor's office or from the court of law<sup>6</sup>.

National legal framework does ensure measures of protection of victims against acts committed by non-governmental actors.

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1 Idem, Article 1661.

2 Idem, Article 173.

3 Idem, Article 177, 178, 179.

4 Idem, Article 327-329.

5 Contravention Code, Article 312-313<sup>1</sup>.

6 Idem, Article 1415.

Therefore, in accordance with the Law on Ensuring Equality, discrimination acts are subjected to disciplinary, civil, contravention and criminal liability, according to legislation in force.

In the same context, the Law on Preventing and Combating Family Violence establishes liability of the aggressor, in accordance with the legislation, for committing acts of domestic violence, as well as for violating the requirements of the protective order. When acts of domestic violence include elements of a criminal offence, sanctions regulated by the legislation in force shall apply, notwithstanding any applicable protective measures<sup>1</sup>.

National legislation also establishes criminal liability for actions that attempt on the life and health of persons, their freedom, honour and dignity, sexual life, family life and on minors, etc.<sup>2</sup>.

Contravention liability is established for actions that attempt on bodily integrity and health, freedom, honour and dignity of persons that do not include elements of a crime<sup>3</sup>.

Currently, domestic violence represents a criminal offence and is punished according to Criminal Code, Article 200/1 of the Code. At the same time, Republic of Moldova aligned with international recommendations concerning positive obligation to protect victims of domestic violence also in private environment. In this context, according to Article 276 paragraph 1 of Criminal Procedure Code, the crime of Domestic violence is an ex officio crime, therefore the law does not require the victim to submit a preliminary criminal complaint. Criminal investigation bodies may be notified through complaint or denunciation, or the crime may be directly discovered by the collaborators of the

criminal investigation body who have obligation to act ex-officio (Article 262 of the Criminal Procedure Code). According to provisions of Article 12 of the Law No. 45, the following persons are entitled to submit claims of family violence: the victim; family members; official persons and professionals who come into contact with the family; the guardianship authority.

The Criminal Procedure Code introduces obligation of the authorities to react in all situations when suspicions exist that a crime has been committed. According to Article 28 of the Criminal Procedure Code, the prosecutor and the criminal investigation body have the obligation, within the limits of their competence, to initiate criminal investigation in case when they are informed about the crime committed, in the manner provided by the Code, and to carry out necessary actions in order to establish criminal facts and identify the guilty person.

Therefore, in case a domestic violence act is committed, any person can inform authorities about the respective act, and authorities have positive obligation to react in all cases of violence. According to amendments from 27.12.2012 to Article 52 of the Criminal Procedure Code, prosecutor has the duties of criminal investigation body. This means that in all cases the prosecutor must react independently, even if subsequently the case is sent also to police bodies.

Despite these legislative provisions, one can notice that legislation in the field of preventing and combating domestic violence is not applied uniformly in practice. This fact is explained particularly by existence of some ambiguous legislative provisions, lack of knowledge about the mechanism of implementation of the law by representatives of law enforcement bodies and the high level of resistance of the representatives of law enforcement bodies in applying this law.

Respectively, at the legislative level, provision included in Article 276 paragraph 5 of the Criminal Procedure Code „in cases of domestic violence, the prosecutor or court of law shall examine whether the will for

<sup>1</sup> Law on Preventing and Combating Family Violence, Article 17.

<sup>2</sup> Criminal Code, Chapters II, III, IV, VII

<sup>3</sup> Contravention Code, Article 69, 70, 78, 354, 357, etc.



reconciliation of the victim is freely expressed, by ensuring that the victim had real access to assistance and protection” directly contradicts the regulations from the same Article, found in paragraph 1 of the Criminal Procedure Code. Reconciliation of the parties in cases of domestic violence is not allowed by law when these crimes are investigated ex officio, respectively reconciliation of the parties is allowed under conditions of the law in cases when crimes belong to the types of cases initiated on the basis of preliminary complaint of the victim.

Following the stereotypes and mentality concerning domestic violence that persists among the law enforcement bodies, they continue to diminish the gravity of these facts and avoid initiating criminal investigation in order to ensure criminal liability of the abusers. Therefore, they wrongly apply the norm included in Article 78 of the Contravention Code that refers to “Deliberate light bodily injury”. Difference between the offence regulated by Article 78 of Contravention Code and the crime of domestic violence regulated by Article 200/1 of the Criminal Code represents special active and passive subject of the offence. In case of domestic violence, both victim and offender are members of the same family, and in case of contravention regulated by Article 78 there are no special subjects! Therefore, we propose introducing the following amendments.

#### Recommended amendments:

1. Paragraph 5 of Article 276 from Criminal Procedure Code shall be excluded.
2. Contravention Code, Article 78, shall be amended by introducing the following text: „**this Article is not applicable to cases of domestic violence**”

Civil Code regulates the right of the victim of acts of violence to demand reparation of pecuniary and non-pecuniary damage both from public persons, based on grounds regulated by Article 1404-1405, as well as from private subjects under conditions regulated by Articles 1406-1410, 1414, 1418-1423, etc., including of the damage caused by incapable persons. For this purpose, national legislation offers a prescription

term of 3 years, which starts from the moment when the damaged person learnt or was supposed to learn about the existence of the damage and about the person who is obliged to repair the damage.

#### Article 6. Gender-sensitive policies

*Parties shall undertake to include a gender perspective in the implementation and evaluation of the impact of the provisions of this Convention and to promote and effectively implement policies of equality between women and men and the empowerment of women.*

The Law of the Republic of Moldova on Ensuring Equality of Chances between Women and Men defines institutional framework and responsibilities concerning the implementation and evaluation of policies related to promoting equality between women and men.

Thereby, Parliament of the Republic of Moldova has the competence to adopt the necessary legislative framework in order to ensure equality between women and men in all fields and monitor implementation of the principle of equality between women and men, in all directions and at all levels of the state policy.

Government has the task of ensuring integration of the principle of equality between women and men in the policies, strategies, programs, normative acts and financial investments. For this purpose, a Committee for Equality between Women and Men was set up within the Government, with the status of a consultative body, which aims at promoting equality between women and men in a complex manner, coordinating the activity of central and local public administration authorities in this field, developing collaboration with civil society, etc.

The central public authority competent to elaborate and promote policies in the field of equality between women and men is the Ministry of Labour, Social Protection and Family, which carries out its tasks under conditions of the law.

Some additional institutional structures were created with specific competences: Department of Policies for Ensuring Gender Equality and Prevention of Violence within the Ministry of Labour, Social Protection and Family, gender units within the ministries and inter-ministerial Coordination Council in the field of domestic violence. National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking extends its network of services also to the victims of violence.

Prevention and combating of discrimination and ensuring equality is attributed, under conditions of the Law on Ensuring Equality, to the Council for the Prevention and Elimination of Discrimination and Ensuring Equality, as well as to public authorities (through gender units).

The norm of the Law on Ensuring Equality of Chances between Women and Men has relevance in what concerns gender statistics. Therefore, according to Article 22 of the above-mentioned Law, National Bureau of Statistics must collect, process and generalize statistical data disaggregated based on gender criteria, received from central and local public administration authorities, parties, other social-political organizations, legal entities and private persons who carry out entrepreneurial activity.

In order to improve the mechanism of collecting statistical data, we consider that it is necessary to introduce the following amendments and additions to the Law No. 412-XV from 9 December 2004 on Official Statistics (Official Monitor of the Republic of Moldova, 2005, No. 1-4, Article 8 from 07.01.2005):

1. Article 4, paragraph (1) letter a) is formulated in the new version:

„a) collection, procession, systematization, centralization, analysis, current estimation of statistical data disaggregated based on gender criteria and its dissemination.“

2. Article 9, paragraph (2) is supplemented by letter c1) in the following version:

“c1) to ensure collection, procession and generalization of statistical data disaggregated based on gender criteria;“

3. Article 10, paragraph (2) is supplemented with letter a1) in the following version:

“a1) to elaborate methodology for collecting, processing and generalizing statistical data disaggregated based on gender criteria;“

4. Article 19 is supplemented with paragraph (3) in the following version:

“(3) Central and local public administration authorities, parties, other social-political organizations, legal entities and private persons who carry out entrepreneurial activities shall submit the necessary data disaggregated based on gender criteria to the official statistical bodies.“

The formulated proposals that incorporate new competencies of the National Bureau of Statistics aimed at ensuring collection, processing and generalization of statistical data disaggregated based on gender criteria, as well as regulate express obligations of central and local public administration authorities, legal entities and private persons who carry out entrepreneurial activities to submit necessary data disaggregated based on gender criteria to official statistical bodies, correspond to the Final Comments of the UN Committee on the Elimination of Discrimination against Women.

National Program on Ensuring Gender Equality in the Republic of Moldova for 2010-2015 provides a complex approach towards integration of the principle of equality between women and men in economical, political and social life in policy documents in all fields and at all levels<sup>1</sup>.

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<sup>1</sup> National Program on Ensuring Gender Equality in the Republic of Moldova for 2010-2015, approved by the Government's Decision No. 933 from 31.12.2009 // Official Monitor 5-7/27, 19.01.2010.

The necessity of the National Program arose from the need to create opportunities for ensuring de facto and de jure gender equality, which would be aware of and sensitive to gender dimension, and which would have as their pre-condition the purpose of ensuring participation of all members of the society, women and men, in all spheres of life, increasing the efficiency and channelling financial resources for implementation of different sector policies through the perspective of gender dimension.

This policy document identifies a larger spectrum of problems and foresees a number of measures in the field of prevention and combating of violence, including:

- amending and supplementing certain legislative acts in order to ensure implementation of the mechanisms of prevention and sanctioning of cases of violence based on gender criteria;
- consolidating capacities of the institutions responsible for preventing and counteracting violence with an emphasis on persons involved in the process of rehabilitation of victims and re-socialization of aggressors, taking into consideration gender dimension;
- elaborating educational programs, training modules, carrying out research, as well as organizing information campaigns concerning phenomenon of violence based on human rights and gender equality approach;
- consolidating social programs, rehabilitation and re-socialization measures addressed to the victims and violence aggressors;
- collecting, analyzing and distributing statistical data disaggregated based on gender criteria concerning cases of violence, etc.

In order to ensure proper implementation of the National Program on Ensuring Gender Equality in the Republic of Moldova for 2010-2015, an Action Plan was approved.

Another policy document, which we consider relevant in the context of the issue discussed, is the Concept concerning Decentralization Policies based on

Gender-Based Approach, Annex No. 3 to the National Decentralization Strategy<sup>1</sup>.

By recognizing equality between women and men as a precondition for democracy and development and promoting decentralization as a priority objective, the Government of the Republic of Moldova decided that promotion of gender equality should be an important element within the decentralization process.

An important instrument for integration of gender dimension is the carrying out of analysis from gender perspective, that helps to examine the differences in the lives of women and men, in order to apply the results of this analysis in the process of elaboration of local, sector and national policies and in providing public services, and ultimately ensure positive changes for women who are subjected to different forms of discrimination.

Another important instrument for promoting public policies sensitive to gender dimension is budgeting instrument sensitive to gender dimension, which represents such a form of planning, programming and budget allocation that would contribute to the promotion of gender equality and implementation of women's rights. Such a budgetary planning requires neither separate budgets for women nor aims at increasing expenses for programs specific for women. Instead, budgetary planning sensitive to gender dimension helps central and local public authorities to decide how to adjust public policies and where to reallocate resources in order to reduce gender inequalities. Gender disaggregated statistics represent a key for budgetary planning sensitive to gender dimension and, therefore, an improvement in the process of data collection and analysis is required.

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<sup>1</sup> National Decentralization Strategy and Action Plan for implementation of the National Decentralization Strategy for 2012-2015 was approved by the Law No. 68 from 05.04.2012 // Official Monitor 143-148/465, 13.07.2012.

Promoting the rights of women by extending empowerment of women refers to women's acquiring control over their own lives. Such approach implies carrying out of activities aimed at enhancing awareness, development of self-esteem, increase of opportunities, enhanced access and control over resources and actions aimed at transforming structures and institutions that consolidate and perpetuate gender discrimination and inequality.

The results anticipated from the application of gender dimension integration and of the approach based on women's rights aim at ensuring:

- institutional, transparent and responsible participation of women's groups, of persons specialized in the field of gender dimension, of NGOs and of women subjected to discrimination in the process of planning policies, budgetary planning and monitoring local and sector strategies;
- enhanced receptivity of local strategies and budgets to the needs and interests of women, in general, as well as to the needs and interests of disadvantaged women, particularly, especially of those subjected to some multiple forms of discrimination;
- increase of the effective capacity of women in general and of those subjected to discrimination in particularly to participate in the decision making process and in the process of promoting specific needs and interests; improved access to public services;
- enhanced commitment and enhanced capacities of the Government, of local public administration to carry out and implement policies sensitive to gender dimension, in order to reduce any form of gender discrimination;
- correlation of the National Decentralization Strategy and of sector strategies with the National Program on Ensuring Gender Equality in the Republic of Moldova for 2010-2015 and with the national legislation in the field of gender equality.

Therefore, we consider that policy documents that were adopted or that are in the process of being adopted emphasize the existence of political will and the capacity of the state to efficiently promote and

implement policies of equality between women and men and empowerment of women, and we ascertain that such activity has been already initiated.

# CAHVIO CHAPTER II

## INTEGRATED POLICIES AND

## DATA COLLECTION

### Article 7

#### Comprehensive and co-ordinated policie

1. *Parties shall take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer a holistic response to violence against women.*
2. *Parties shall ensure that policies referred to in paragraph 1 place the rights of the victim at the centre of all measures and are implemented by way of effective co-operation among all relevant agencies, institutions and organisations.*
3. *(Measures taken pursuant to this article shall involve, where appropriate, all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations.*

Pursuant to amendments from July 2010, the Law 45<sup>1</sup> was amended by supplementing it with a new paragraph (3) to Article 7, setting up an Inter-ministerial Coordinating Council within the Ministry of Labour, Social Protection and Family, for preventing and combating domestic violence, having in its structure both governmental representatives and members of civil society. This Council shall ensure coordination and cooperation between the ministries and other central administrative authorities in the field of preventing and combating domestic violence. In practice, the meetings of this Council are ineffective, lacking activity and initiative of governmental administrative authorities' representatives, responsible for preventing and combating domestic violence.

At policy level, ensuring conditions for protection to the individual against violence is a problem continuously present on the agenda of national authorities, also included into Action Program of the Government, and into other national and strategic planning documents. Thus, pursuant to the Decision of the Government No. 886 from 06.08.2007, the National Health Policy was adopted<sup>2</sup>, with primary objective to take care of the health of the population.

To prevent violence (neglect, abuse) and damages (physical, mental), a phenomenon which affects in a profoundly negative manner the society, the National Health Policy sets forth:

- *setting up of unified informational system for monitoring and evaluation of data regarding these social shortcomings and their consequences;*
- *studies on identification of causes and consequences of these vices, extent of national and international cooperation regarding the exchange of information on the problem of prevention and combating violence and injuries – at domicile, workplace, in society etc.;*
- *setting up groups of coordinators, with assistance of civil society, trained in combating and preventing of violence and damages, creation of a joint platform of action for intersectorial and multi-task activities on prevention of acts of violence and diminishing their consequences;*
- *extensive awareness raising campaigns for population on spread of violence in society and its consequences, convincing the population to get actively involved into activities for combating violence;*
- *education of population for establishing harmonious family relationships, based on respect and trust.*

1 Official Monitor 155-158/03.09.10

2 Official Monitor No.127-130/931 from 17.08.2007.

Alcohol abuse escalates significantly the potential for conflicts in the family and at the workplace, such as alcohol addiction, violence, non-deliberate injuries, hooliganism and criminal behaviour, criminality, risky sexual behaviour, seclusion and decrease of labour efficiency. Alcohol causes damages not only to those consuming it, but also to other individuals: in terms of street violence, domestic violence, waste of state resources, and, partially, to medical assistance and fight against crime and public order violations. Consequences of alcohol abuse may be seen at multiple levels and have economic and social impact <sup>1</sup>. The expected results of the implementation of the National Program on alcohol control for years 2012-2020 are to prevent the risks and eliminate conditions created by alcohol consumption, diminishing violence, hooliganism and criminal behaviour, crimes, resulting from alcohol abuse, etc.

National Development Strategy “Moldova 2020”<sup>2</sup> highlights, among other issues, the low rate of reporting from women-victims of violence and, as a result, low number of pending cases, given that one in three women experiences domestic violence, and that women in Republic of Moldova are more prone than men to fall victims to crimes. Unsolved remain issues regarding data collection on specific vulnerable groups and restorative role of judiciary, professional intervention into situation of vulnerable persons is not implemented so far.

In compliance with the Strategy, departments within the ministries responsible for analysis, monitoring and evaluation of public policies shall be particularly careful, in the process of implementation and operationalising of the Strategy, to interconnected aspects and namely, to gender issues, human rights, social inclusion etc.

1 National Program for Alcohol Control for 2012-2020, approved by Governmental Decision No. 360 from 06.06.2012 //Official Monitor 120-125/419, 15.06.2012.

2 National Development Strategy “Moldova 2020”, approved by the Law of the Republic of Moldova No.166 from 11.07.2012 //Official Monitor 245-247/791, 30.11.2012.

Raising the efficiency of the legislation and strengthening the institutional framework to ensure equality of opportunities between women and men, elimination of child abuse (including physical and mental violence), are also measures envisaged by the Human Rights Action Plan for 2011-2014<sup>3</sup>

.In a number of strategic planning documents <sup>4</sup>, the issue of preventing and combating domestic violence is of special concern. In the same vein, the National Strategic Program on Demographic Security of the Republic of Moldova (2011-2025) <sup>5</sup> highlights that albeit the consequences of domestic violence are not fully estimated so far, the negative impact of this phenomenon on demographic situation is doubtless. Given the conditions of our country, to diminish the demographic drop, along with interventions to encourage nativity and decrease mortality, especially of labour force, are necessary measures to diminish cases of unnatural death (due to injury, violence). In this regard, the Action Plan sets forth measures for preventing and fighting violence,

3 Human Rights Action Plan for 2011-2014, approved by Decision of the Parliament No.90 from 12.05.2011 //Official Monitor 118-121/331, 22.07.2011.

4 Section 79 of the National Program for implementation of the National Action Plan Republic of Moldova – European Union on visa liberalisation, with additional measures set forth in the Decision of the Government No.130 from 24.02.2012 //Official Monitor 42-45/158, 02.03.2012; Section 401-404 of the Action Plan of the Government for the years 2012-2015, adopted by Governmental Decision No. 289 from 07.05.2012 //Official Monitor 93-98/330, 18.05.2012; Sections 2.2.7., 3.1.4. of the National Plan for Preventing and Combating Trafficking in Human Beings for the period of 2012-2013, amended and supplemented by Governmental Decision No.559 from 31.07.2012 //Official Monitor 165/616, 07.08.2012; Section 14 of the Action Plan for implementing Final Conclusions of the Committee for Economic, Social and Cultural Rights, adopted in Geneva on 20 May 2011, regarding the Second Periodical Report of the Republic of Moldova on implementing International Covenant on Economic, Social and Cultural Rights, approved by Governmental Decision No. 974 from 21.12.2012//Official Monitor 270-272/1049, 25.12.2012.

5 National Strategic Program on Demographic Security of the Republic of Moldova (2011-2025), approved by Governmental Decision No. 768 from 12.10.2011 //Official Monitor 182-186/851, 28.10.2011.



abuse and discrimination in the family, at workplace, development of social services for psychological assistance of victims from rural areas (centres and offices), etc.

## Article 8. Financial Resources

*Parties shall allocate appropriate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the scope of this Convention, including those carried out by non-governmental organisations and civil society.*

The Strategy on National Referral System for protection and assistance of potential victims of trafficking in human beings<sup>1</sup> acknowledges the need for developing, at the national level, of a viable financing mechanism and services for protection and assistance of victims of violence, including domestic violence and effective expanding of the National Referral System for protection and assistance to victims and potential victims of trafficking in human beings and to victims of violence and discrimination.

Activities to ensure equality of opportunities between women and men, preventing and combating discrimination and domestic violence, including the activity of rehabilitation centres/services for victims and aggressors, in compliance with relevant national laws<sup>2</sup>, shall be financed from and within the limits of financial resources approved annually for the state budget and the budget of the territorial-administrative units, including other resources allowed by the law.

Based on the afore-mentioned, in compliance with

- <sup>1</sup> The Strategy on National Referral System for protection and assistance of victims and potential victims of trafficking in human beings and the Action Plan on implementation of the National Referral System for protection and assistance to victims and potential victims of trafficking in human beings for years 2009-2011 were approved by the Decision of the Parliament No. 257 from 05.12.2008 //Official Monitor 27-29/66, 10.02.2009.
- <sup>2</sup> Law of the Republic of Moldova on ensuring equality of opportunities for women and men, Article 23; Law on ensuring equality, Article 22; Law on preventing and combating family violence, Article 16.

the law on the budgetary system and procedure<sup>3</sup>, budgetary expenses shall be determined by subsidies envisaged by the law on the annual budget, including expenditures for accomplishment of development and other strategies and national and governmental programs as set forth in legislation; ensuring public order; transfers to budgets of territorial-administrative units, etc. The Law allows the budget executors to rank expenditures in order of priority.

By Governmental Decision No.756 from 02.07.2007, the Framework Paper on Medium Term Expenditures (2008-2010)<sup>4</sup> was approved, which sets forth as a priority the development of the system of social services in community by improving the quality of services rendered by social institutions, diversification of alternatives to social services. For the next few years it is planned to allocate resources mainly for activities with major impact for reaching the objectives of the National Development Program.

The Decision of the Government of the Republic of Moldova No. 129-d from 29 December 2011 approved the Medium Term Budgetary Framework Structure (2012-2014), which covers also expenditure strategies for the following sectors: education; health protection; social protection; culture and art; youth and sport; science and innovation; forestry and water management; transport and roads administration; environmental protection.

Distribution of resources in the Medium Term Budgetary Framework (2012-2014) shall be prioritised based on the policies of the Government for the envisaged period and on general objectives of policies for expenditures. Promoting observance of gender equality is one of the main priorities of the actions and policies in sectors included in the sectorial expenditures strategies for years 2012-2014.

In this regard, in compliance with the draft Action Plan for implementation during the period of 2013-2015 of the National Program for ensuring gender equality,

- <sup>3</sup> Article 10 of the Law on the budgetary system and procedure No. 847 from 24.05.1996 //Official Monitor 19-20/197, 27.03.1997.
- <sup>4</sup> Official Monitor 98-102/807 from 13.07.2007.

it is planned to implement special measures for integration of gender-based dimension into national policies in compliance to the relevant provisions of the international treaties, such as Convention for Elimination of all forms of Discrimination against Women, International Covenant on Economic, Social and Cultural Rights, revised European Social Charter and other legislative international documents to which Moldova is a party to, annihilation of domestic and gender-based violence, by promoting gender-sensitiveness in preventive and counteractive measures (legislative, political, social, educational and cultural), in particular regarding potential victims and victims, mainly women and girls, and potential aggressors; developing the concept/vision of gender-sensitive budgeting (further included into legislative and normative acts) of the budgetary process of the Republic of Moldova, etc.

In such conditions, we consider as necessary that relevant legislative acts contain clear objectives and functions of responsible actors, to determine them to request that the Law on the state budget envisages necessary financial resources for planned tasks.

#### Recommended amendments:

In this context, we deem as necessary the following additional provisions:

1. Law No.45-XVI from 1 March 2007 on preventing and combating family violence (Official Monitor of the Republic of Moldova No. 55-56/178 from 18.03.2008), with the amendments and additions as follows:

Article 16 shall be supplemented with a new paragraph, paragraph (11) in the following version:

“(11) The Ministry of Labour, Social Protection and Family shall finance programs of national interest for preventing and combating family violence, using allocations budgeted by state for this purpose, and other resources for:

a) financing centres/services for social assistance and protection of victims of family violence and rehabilitation services for aggressors. In case of limited resources, priority shall be given to allocation of funds for support of centres/

services for social assistance and protection of victims of family violence.

b) training of specialised personnel on performing activities for preventing and combating family violence;

c) development of tracking, reporting and management system of cases of family violence;

d) information and awareness raising for the population on the phenomenon of domestic violence;

e) performing researches of the family violence phenomenon”.

2. Law No.5 from 09.02.2006 on ensuring equality of opportunities between women and men (Official Monitor 47-50/200, 24.03.2006), with further amendments and additions, as follows:

Article 19 shall be supplemented with a new paragraph, paragraph (5), in the following version:

“(5) The Ministry of Labour, Social Protection and Family finances programs of national interest, relevant to the issue of equality of women and men, using funds allocated from the state budget in this purpose, and other resources for:

a) training of qualified personnel, gender-sensitive awareness raising campaigns for this personnel, ensuring integration of the principle of equality of opportunities between women and men into strategies, programs and financial investments;

b) promoting research and other activities to ensure equality between women and men, broadcasting these measures;

c) information and awareness raising of the public on the need to ensure equality between women and men;

d) development of activity of gender units;

e) carrying out jointly with non-governmental organisations, foundations, syndicates, patronage and international agencies activities to implement equality of women and men.”.

Meanwhile, for ensuring a viable financing mechanism of services for protection and assistance to victims of discrimination and violence, including domestic violence, are necessary improvements not only on central, but also local level.

The national decentralisation strategy, which is the main policy document in the field of local public



administration, shall determine the national mechanism in the field of decentralisation and ensure authentic local autonomy for local public administrative authorities. An increased attention in the Strategy is given to improvement of the current system of local public finances, in order to ensure financial autonomy of the local public administrative authorities, maintaining financial discipline, maximising efficiency and ensuring equity in allocation of funds. In this regard, it is necessary to strengthen the basis of incomes of the local public administration and of decision-making autonomy regarding these resources and reform of the system of transfers.

Presently, the Law on local public finances <sup>1</sup> stipulates that the budgets of administrative-territorial units shall foresee allocations necessary to ensure functioning of public institutions and public services from this administrative-territorial unit. Annual expenditures from the budgets of territorial-administrative units shall be approved by the appropriate representative and decision-making authority only within the limits of available financial resources. Contracting works, services, assets and making expenditures shall be performed by executors (ordinators) of the budget only pursuant to legislative provisions and within approved (adjusted) boundaries. Representative and deliberative authorities of the administrative-territorial units are responsible for prioritising budgetary expenses of the respective unit.

As seen in the afore-mentioned legal provision, local authorities are entitled to contract works and services, including those in the field of counteracting discrimination and violence, only in compliance with the legal provisions and within approved boundaries. However, the legislation sets forth that the budgets of the administrative-territorial units shall envisage (only!) allocations necessary to ensure functioning of public institutions and public services in the respective administrative-territorial unit, and the Law on local public finances mentions nothing about the allocations for contracting works and services, including in the public-public partnerships. Thus, the current law does not give opportunities to local

public administration to include into local budget allocations for contracting works and services, other than those allowed by the law – allocations necessary for the functioning of public institutions and services from the respective territorial-administrative unit. Moreover, legal provisions establishing limits of authority in making public expenditures mention nothing of relevance, since the activity for counteracting discrimination and violence is not listed in the expenditures financed from local budgets of the first or second level.

Also, neither does the Law on local public administration <sup>2</sup> provide a clear regulation of the jurisdiction of local authorities regarding counteracting of discrimination from the perspective of gender-based and domestic violence criteria, nor on the issue of organising and performing of proper actions and ensuring financing of such activities. The afore-mentioned Law only provides in the Article 29, in a more concise version, the function of the mayor to coordinate the activity of social assistance to families subjected to intrafamily violence and on the proposal to approve the list of goods and services of local public interest for concluding public-private partnerships, monitoring and supervision of implementation of public-private partnerships with the participation of the local public administrative authority as a public partner. Similar provisions regarding private-public partnerships are also contained in Article 53 of the Law regarding functions of the chairman of the rayon. However, these norms have a merely declarative nature, given the lack of relevant provisions both in the Law on local public administration and in the provisions establishing functions of representative authorities of the first and second level, and due to the lack of relevant regulations in the Law on local public finances.

#### Recommended amendments:

Based on afore-mentioned statements, there is a need to perform certain amendments and bring additions to relevant legislative acts, to improve the national mechanism for protection and assistance for the victims of discrimination and violence, as follows:

<sup>1</sup> Article 7 of the Law on Local Public Finances No.397 from 16.10.2003 // Official Monitor 248-253/996, 19.12.2003.

<sup>2</sup> Law No.436 from 28.12.2006 on local public administration // Official Monitor 32-35/116, 09.03.2007.

1. In Law No.45-XVI from 1 March 2007 on preventing and combating family violence (Official Monitor of the Republic of Moldova No. 55-56/178 from 18.03.2008), with subsequent amendments and additions, the following amendments are proposed:

**Article 8:**

In paragraph (2), letter c) shall read as follows:

"c) shall organise and ensure financing of the centres/services for assistance and social protection of victims of family violence and rehabilitation services for aggressors. In case of limited resources, priority shall be given to allocation of funds for support of the centres/services for social assistance and protection of the victims of family violence. Also, it shall ensure the access of the victims to opportunities for getting a profession and a job, and to social residence upon leaving the centres/services of assistance and protection."

In paragraph (2), letter d) shall read as follows:

"d) shall help counteract family violence by including the issue of preventing and combating family violence into local development programs; cooperation at implementation of the system for tracking the cases of family violence; allocation in the local budget of financial means for organising assessments and awareness raising campaigns to fight domestic violence, for supporting social services and other measures for the assistance of the victims of family violence, including by supporting related expenses for issuing forensic documents, in serious cases";

2. To Law No. 5 from 09.02.2006 on ensuring the equality of opportunities for women and men (Official Monitor 47-50/200, 24.03.2006), with subsequent amendments and additions, are proposed amendments as follows:

Article 20 shall be supplemented with a new paragraph (11), which shall read as follows:

"(11) Expenditures for performing duties foreseen in the paragraph (1) of this Article shall be made from allocations indicated for this purpose in the local budget, within the limits of available financial resources, from funds allocated from the state budget for this, and also from other resources not prohibited by the law."

3. In the Law on local public finances No. 397 din 16.10.2003 //Official Monitor 248-253/996, 19.12.2003, with subsequent amendments and additions, the following amendments are proposed:

**Article 7:**

Paragraph (1) after the phrase "public institutions and public services" shall be supplemented with text " ,and allocations for contracting works and services, as necessary" and further as in the text.

4. In the Law on local public administration No.436-XVI from 28 December 2006 (Official Monitor, 2007, No.32-35/116 from 09.03.2006), with subsequent amendments and completion, the following amendments are proposed:

**1. Article 14:**

Paragraph (2) shall be supplemented with the letters y1), y2), y3) in the following version:

"y1) approves development programs for social services, as needed in the community and determines necessary financial sources, making them a priority during the adoption of the local budget;

y2) decides on setting up non-profit organisations for providing primary social services in the local region;

y3) approves conditions for contracting services provided by private social services' providers, envisages their functions, in compliance with the legislation; "

**2. Article 29:**

Paragraph (1) shall be supplemented with letters i1), i2), i3), i4), as follows:

"i1) organises studies on the types of social services needed in the community, develops and proposes for the approval of the local council programs for the development of social services, based on identified needs;

i2) identifies financial resources necessary for development and functioning of the social community services, at the elaboration of the local budget;

i3) ensures enforcement of decisions of the local council for setting up non-profit organisations for rendering primary social services, supports, in conditions set forth by the law, the activity of private non-profit organisations for providing social services in the community;

i4) develops and presents to the local council for approval conditions for contracting services provided by private social services contractors, ensures procurement of services, pursuant to conditions established by the council;

Paragraph shall be supplemented with letters j1), p1) and p2) in the following version:

“j1) approves programs for development of social services, in compliance with the needs of the rayon and determines necessary financial sources;

p1) decides to set up non-profit organisations within the territorial-administrative unit to provide qualified and highly-qualified social services;

p2) approves conditions for contracting services provided by the social services providers, foresees facilities for these, in compliance with the legislation;”

#### 4. Article 51:

Paragraph (2) shall be supplemented with letters b1 and b2) in the following version:

“b1) ensures examining of the needs of the rayon for social services and develops drafts programs for development of social services, in compliance with the identified needs;

b2) elaborates conditions for contracting services provided by private social services providers;”

#### 5. Article 53:

Paragraph (1) shall be supplemented with letters c1), c2), c3), c4), k1) in the following version:

“c1) organise examining of types of social services required in the rayon, proposes for the approval of rayonal council the program for development of social services, in compliance with the identified needs;

c2) identifies necessary financial resources for development and functioning of rayonal social services, giving priority to these expenditures, at elaboration of the rayonal budget;

c3) ensures enforcement of the decisions of the rayonal council to set up public institutions for rendering social services in the territorial-administrative unit, facilitates and supports , in conditions set forth by the law, the activity of private non-profit organisations for rendering social services;

c4) ensures elaboration and approval of conditions of the rayonal council for contracting services provided by social services providers, ensures procurement of services, pursuant to the decision of the council;

k1) coordinates and controls the activity of public institutions for rendering social services, has the responsibility for ensuring their activity;

6. Article 77 shall be supplemented with paragraph (31) in the following version:

“(31) Providers of social services (primary, specialised, highly qualified), and the applicants which are intending to provide in respective administrative-territorial unit such social services, have priority at procurement of goods in conditions set forth in paragraphs (2) and (3) of this article”.

#### Article 9.

##### Non-governmental organisations and civil society

*Parties shall recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil society active in combating violence against women and establish effective co-operation with these organisations.*

In order to contribute to attracting private investments for performing public interest projects, to increase the efficiency and quality of services, public works and other public activities and efficient use of public patrimony and finances, the Law on public-private partnership has been adopted <sup>1</sup>, establishing the basic principles of the public-private partnership, forms and possibilities for implementation, procedure for initiating and functioning of it, rights and obligations of the public and private partners. In compliance with the law, the public-private partnership functions according to the principle of equal treatment, impartiality and non-discrimination. The public partner shall ensure to all bidders equal treatment at each stage of the procedure for selection of the private partner.

In all cases, selection criteria of the private partner should be clear and non-discriminatory. In the process of establishing and realisation of the public-private

<sup>1</sup> Law on public-private partnership No.179-XVI from 10.07.2008 //Official Monitor No.165-166/605 from 02.09.2008.

partnership, the public partner is entitled to take or request from the private partner to take only actions which are necessary and are related to the objective of the public-private partnership. In case of unilateral breach by the public partner of the obligations assumed in the public-private partnership, the private partner is entitled to request compensation of all inflicted damages, including compensation of any lost income, to be covered by the budget of the public partner.

The public partner provides assistance to the private partner in obtaining authorisations, permissions and other documents related to carrying out of the public-private partnership, envisaged in the legislation or contract. The public partner does not have the right to decline without legal grounds issuance of permits, authorisations, or other documents related to realisation of the public-private partnership initiated by him, in case issuance takes place in the conditions of the law.

In the field of public-private partnership, the Government is entitled to approve policy documents on development of public-private partnership, list of assets in the state property and works and services of the public national interest, proposed for the public-private partnership. The Government shall designate the public authority entitled to conclude contracts with private partners within public-private partnerships initiated by the Government or central public administrative authorities.

On the local level, carrying out of activities in the field of the public-private partnership is given into the jurisdiction of the local or rayonal council, as applicable. Signing of contracts on public-private partnership and ensuring monitoring and control on implementation of the public-private partnership within the jurisdiction of respective administrative-territorial unit shall be assigned to the mayor or the chairman of the rayon.

Besides Government, in compliance with the law, the National Council for Public-Private Partnership shall

be set up, being a functional structure with general authority, without the statute of a legal entity, for evaluation of state policies in the field of public-private partnership, for identifying priorities and strategies for implementation of the private-public partnership in the Republic of Moldova.

As object of public-private partnership may be any good, work, public service or function performed by the public partner, except for those expressly prohibited by the law. The public-private partnership shall be achieved based on the contracts for works/services, trust management, lease contracts, concession, corporation or civil contract or by other contracts not prohibited by the law.

Thus, though not expressly provided, the Law on public-private partnership does not prohibit organising within public-private partnership of rendering services in the field of prevention/combating of discrimination, domestic violence, advancing equality of opportunities, human right etc.

To note, in the same time, that the law lacks provisions for ensuring availability of local authorities to use own financial resources for services necessary in the locality, which may be provided within a public-private partnership. In this regard, amendments to the legislation, as mentioned in Article 8 of the Convention, could be a remedy to the problem.

#### Article 10 . Co-ordinating body

1. *Parties shall designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by this Convention. These bodies shall co-ordinate the collection of data as referred to in Article 11, analyse and disseminate its results.*
2. *Parties shall ensure that the bodies designated or established pursuant to this article receive information of a general nature on measures taken pursuant to Chapter VIII.*
1. *Parties shall ensure that the bodies designated or established pursuant to this article shall have*

*the capacity to communicate directly and foster relations with their counterparts in other Parties.*

The Law of the Republic of Moldova on ensuring the equality of opportunities for women and men, foresees setting up as an advisory body within the Government of the governmental Commission on equality between women and men, coordinating the activity of the central and local public administrative authorities in this field, developing cooperation among the state agencies and civil society.<sup>1</sup>

For enforcement of provisions from the Law on ensuring equality of opportunities for women and men, the Government of the Republic of Moldova has set up a governmental Commission on equality between women and men. By the same governmental act, the Decision of the Government No.74 from 2 February 1999 on setting up the Commission for women issues was abrogated. The Chairman position is held by one of the deputy Prime-ministers, and the minister of Labour, Social Protection and Family holds the position of the deputy chairman of the Commission. The Commission is composed of representatives of the Ministries, other central administrative authorities (of the deputy ministers/deputy chairmen level), National Confederation of Syndicates, National Confederation of Patronages, non-governmental organisations active in this field, university representatives and mass-media. Civil society representatives are included into Commission by the decision of the latter for one year term.

The governmental Commission on equality between women and men<sup>2</sup> performs coordination activities for ensuring strategic and organisational framework, instruments and mechanisms for influencing and enforcement of the state policy on ensuring rights and providing equal opportunities for women and

men. In this regard, the Commission coordinates the activities of state agencies, monitors the observance of the principle of equality of women and men; evaluates the level of implementation and observance of the legislation at central and local levels; promotes development of gender statistics, carrying out of assessments, multidisciplinary analyses in the field and studying of aspects of equality and equity between women and men; contributes to awareness raising and information of women and men, and of the society as a whole, on the need to eliminate all the forms of gender-based discrimination, including domestic violence, promotes positive role-models to reflect the role of women and men in the society, based on democratic values; informs the public on the evolution of the situation regarding the observance of the principle of gender equality; cooperates with non-governmental organisations on the implementation of the principle of equality of opportunities between women and men, in compliance with the international standards in this field.

In compliance with the Article 7 of the Law No. 45-XVI from 1 March 2007 on preventing and combating family violence, within the Ministry of Labour, Social Protection and Family shall be set up the Interministerial Coordinating Council in preventing and combating domestic violence, having in its structure representatives of central authorities, civil society and other stakeholders. The Coordinating Council is responsible for ensuring co-ordination and collaboration between the ministries and other central administrative authorities, competent in the field of preventing and fighting family violence. The Regulation of the Interministerial Coordinating Council is approved by the Decision of the Government.

In order to enforce provisions of the Law No. 45, the Interministerial Coordination Council in preventing and combating family violence was set up<sup>3</sup> and the Regulation on the Activity of the Interministerial Coordinating Council in preventing and combating

<sup>1</sup> Article 18 of the Law on ensuring equality of opportunities for women and men.

<sup>2</sup> Decision of the Government No. 350 from 07.04.2006 on setting up the governmental Commission on equality between women and men // Official Monitor of the Republic of Moldova No.59-62/392 from 14.04.2006.

<sup>3</sup> Decision of the Government No. 72 from 07.02.2012 on the Interministerial Coordinating Council in preventing and combating domestic violence// Official Monitor 30-33/94 from 10.02.2012.

domestic violence was adopted. The Coordinating Council is set up in order to ensure coordination of the activities between responsible ministries, other central administrative authorities competent in this area, specifically to coordinate the activity of the state agencies in this field, to monitor observance of the best interests of the victims of domestic violence, promoting multidisciplinary approach to the aspects of preventing and combating the phenomenon of domestic violence in the national policies and national and sectorial plans; examining problematic areas/ shortcomings of the legislation on mechanisms of implementation of the normative framework in this field; methodological coordination of organising and carrying out thematic campaigns on preventing/ informing and generating a non-violent culture of population.

The activity of both afore-mentioned structures is ensured by the Ministry of Labour, Social Protection and Family, through the Department on policies for ensuring gender equality and preventing violence.

Therefore, it is necessary to note that the Republic of Moldova has necessary legal and infrastructural framework, able to carry out the task set forth by this provision of Istanbul Convention. The problems which remain in this field are merely related to the efficiency of these institutions, and namely of the governmental Commission on the equality of women and men, having jurisdiction also in the area of counteracting discrimination and gender-based violence.

#### Article 11 . Data collection and research

*(1) For the purpose of the implementation of this Convention, Parties shall undertake to:*

*a. collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention;*

*b. support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention.*

*(2) Parties shall endeavour to conduct population-based surveys at regular intervals to assess the prevalence of and trends in all forms of violence covered by the scope of this Convention.*

*(3) Parties shall provide the group of experts, as referred to in Article 66 of this Convention, with the information collected pursuant to this article in order to stimulate international co-operation and enable international benchmarking.*

*(4) Parties shall ensure that the information collected pursuant to this article is available to the public.*

The Law on ensuring the equality of opportunities for women and men contains provisions regarding gender-based statistics. Thus, in compliance with the Article 22 of the Law, the National Statistics Bureau has the obligation to collect, analyse and generalise disaggregated statistical gender-related data, received from central and local public administrative authorities, other social-political organisations, legal entities and natural persons which perform entrepreneurial activity.

For improvement of the mechanism for collecting statistical data, above were proposed some amendments and completions to the Law No. 412-XV from 9 December 2004 on official statistics. Article 8 of the Law No. 45 assigns to the Ministry of Labour, Social Protection and Family, Ministry of Education, Ministry of Health, Ministry of Internal Affairs, Ministry of Justice elaboration and promoting of the policy on preventing domestic violence, on offering protection and assistance to victims and aggressors; setting up procedures for identifying, registration and reporting of cases of domestic violence, in compliance with the statistical principles, disaggregated on genders, etc.

On the local level, the bodies of internal affairs shall identify, register and report cases of domestic violence and ensure nominal tracking of aggressors, shall monitor and investigate, jointly with social workers, cases of domestic violence on the territory in their jurisdiction, shall update the database with necessary information, cooperates with responsible authorities, with the civil society in this field.



Sections/departments of social assistance and family protection are in charge for updating the database, regarding the phenomenon of domestic violence on the territory, jointly with the responsible authorities and in cooperation with the non-governmental organisations active in this field, implement informational programs for preventing domestic violence.

For enforcement of the provisions of the Law No. 45, the Government has approved the Concept of the automated case tracking system „State Registry of domestic violence cases”<sup>1</sup> and the Plan of Actions for elaboration and implementation of the Automated Case Tracking System “State Registry of domestic violence cases” . Ministries and other central administrative authorities and local public administrative authorities, within the limits of their authority, shall ensure enforcement of provisions of the Concept of the Automated Case Tracking System „State Registry of domestic violence cases”, in the limits of the financial allocations from respective budgets. The function of supervision of the implementation process was assigned to the Ministry of Labour, Social Protection and Family. The State Registry of the cases of domestic violence is a state informational resource, which is a systemised set of documents containing information on cases of domestic violence and software and hardware tools, informational and organisational, systems for transmission and use of data, methodology for achieving informational support.

This automated informational System is designed for collecting, storage and analysis of data on the phenomenon of domestic violence, informing of central public authorities and local public administrative authorities, natural persons and legal entities about the agencies and services of the system for protection of the victims of domestic violence, on services and programs for rehabilitation of aggressors and the beneficiaries of the system. Also, the System is designed for multi-level approach to the phenomenon of domestic violence, ensuring informational support to professionals from various fields for a proper

completion of the stages, necessary for resolution of domestic violence cases.

The owner and keeper of the Registry is the Ministry of Labour, Social Protection and Family, the latter also acting as the registrar of provided information, within the Automated Case Tracking System, by the Ministry of Education, Ministry of Health, Ministry of Internal Affairs, Ministry of Justice, local authorities responsible for prevention and combating of domestic violence. Unfortunately, up to the moment of writing of this Report, this Automated Case Tracking System was not put into practice.

The activity of departments for identifying and registration of cases of domestic violence, methods of interaction with other authorities and institutions competent to prevent and counteract domestic violence are foreseen in Methodology Guidelines.<sup>2</sup>

Record and collection of data on domestic violence cases outside the family is ensured by the automated Integrated Case Management System for the record of criminal offenses, criminal cases and persons which committed crimes, set up by the Law No.216 from 29.05.2003<sup>3</sup>. This System has functions of collecting, accumulation, analysis, storage and updating of information regarding criminal offences, ensuring at the state level unified tracking of crimes and offenders (including the residents of the Republic of Moldova which committed crimes on the territory of other states), and sanctions applied, etc. Operational and statistic information collected into Integrated

1 Decision of the Government No.544 from 09.09.2009 // Official Monitor No.143/629 from 16.09.2009.

2 Methodology Guidelines on intervention of interior affairs bodies for preventing and combating domestic violence cases, approved by the Order of the Minister of Internal Affairs No. 275 from 14.08.2012; Guidelines on intervention of sections/departments of social assistance and protection of the family, in cases of domestic violence, approved by the Order of the Minister of Labour, Social Protection and Family No. 22 from 09.02.2012; Guidelines on performing by the local public administration of functions in the field of preventing and fighting domestic violence, approved by the Order of the Minister of Labour, Social Protection and Family No.105 from 02.08.2012, etc.

3 Official Monitor No. 170-172/695 from 08.08.2003.

Case Management System is used as necessary by country's leadership, ministers and interested departments, by criminal prosecution authorities, for elaboration and implementation of policies, also for the exchange of information with the similar authorities from other countries. The keeper of the central database is the Ministry of Internal Affairs, which ensures registration and centralised record of information and issues in generalised statistical reports. Financing of setting up, operation and development of the System is performed from allocations envisaged in the state budget.

Currently, we could only mention that the automated Integrated Case Management System for tracking of crimes, criminal cases and offenders is functioning.

As to the Integrated Automated System State Registry of domestic violence cases, it is just being set up. Meanwhile, pursuant to the National Program for ensuring gender equality for years 2010-2015, the current statistical data system on cases of domestic violence, does not adequately reflect the phenomenon, and does not take into consideration gender dimension, which hinders development of adequate policies.

In compliance with the National Action Plan on Human Rights for years 2011–2014, approved by the Decision of the Parliament No. 90 from 12.05.2011, the creation of the Integrated Automated Case Management system „State Registry of domestic violence cases” is planned for the years 2011-2014, within allocated funds from the budget. Nonetheless, it is not yet clear when this problem will be solved, since it is known that in the following years no financial resources were foreseen for this purpose.



# CAHVIO CHAPTER III

## PREVENTION

### Article 12.

#### General obligations

1. *Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.*
2. *Parties shall take the necessary legislative and other measures to prevent all forms of violence covered by the scope of this Convention by any natural or legal person.*
3. *Any measures taken pursuant to this chapter shall take into account and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre.*
4. *Parties shall take the necessary measures to encourage all members of society, especially men and boys, to contribute actively to preventing all forms of violence covered by the scope of this Convention.*
5. *Parties shall ensure that culture, custom, religion, tradition or so-called "honour" shall not be considered as justification for any acts of violence covered by the scope of this Convention.*
6. *Parties shall take the necessary measures to promote programmes and activities for the empowerment of women.*

In compliance with the Constitution of the Republic of Moldova, the citizens are entitled to be protected by the state on the territory of the country and abroad. The state guarantees to every individual the right to life and physical and psychic integrity, respect and protection of intimate, family and private life.

In order to prevent illegal actions, the national legislation shall also stipulate, apart from criminal or administrative

sanctions, the possibility to receive reparation of damages inflicted by the public authority or official person, or by non-governmental entities or natural persons.

Thus, in compliance with the Law on ensuring equality, acts of discrimination may be subjected to disciplinary, civil, contraventional and criminal liability, in compliance with the legislation in force.

In the same context, the Law on preventing and combating domestic violence sets forth the liability of the aggressor, in compliance with the legislation, for committing acts of violence in the family, and violation of requirements of the protection order. In case of domestic violence which constitutes a crime, the punishment set forth in current legislation, irrelevant of the established protective measures<sup>1</sup>, shall apply.

The national legislation provides for criminal sanctioning of actions, which undermine the life and health of the individual, freedom, honesty and dignity of the individual, sexual life, family life and juveniles, etc. 2.

Contraventional liability is established for actions that cause injury to bodily integrity and health of the person, liberty, honour and dignity of the person and which does not constitute a crime 3.

The Civil Code stipulates the right of the victims of violence to claim compensation of moral and material damages both from public persons, on grounds set forth by articles 1404-1405, and from private individuals in conditions set forth in articles 1406-1410, 1414, 1418-1423, etc., including the damage caused by disabled persons. For this, the legislation provides for a limitation period of up to 3 years.

<sup>1</sup> Law on preventing and combating domestic violence, art.17.

<sup>2</sup> Criminal Code, Chapters II, III, IV, VII

<sup>3</sup> Contravention Code, articles 69, 70, 78, 354, 357, etc.

However, preventive measures are not limited to sanctioning of violent acts against the individual, including domestic violence. The national legal framework contains also strategic documents, normative acts which promote policies aimed towards changing of some traditions and stereotypes regarding the role in the society and in the family of women and men.

\For example, in compliance with the National Program for ensuring gender equality for 2010-2015, in the educational system was mentioned gender-based attitude of teachers towards pupils both in the process of teaching and evaluation, and also regarding the involvement of students into extracurricular activities and vocational orientation. The persistence in the educational system of gender-based stereotypes leads to reproduction of traditional feminine and masculine role-models, often ignoring the individual differences and personal abilities of girls and boys. Feminisation of the educational system is a consequence of persistence of the stereotype that namely women are responsible for raising and education of children.

In the area of violence, one notices an insufficient level of awareness of society on the problem of domestic violence as a violation of human rights; the low level of training of specialists from different domains regarding identification, registration and referral of cases of domestic violence; insufficient human and financial resources to provide qualified assistance to victims of domestic violence and to work with aggressors; lack of mechanisms for identification, tackling and resolution of the phenomenon of sexual harassment; insufficient services of assistance and protection of victims; imperfection of the mechanism for monitoring and evaluation of violence. Some experts notice the persistence of manifestation of violence against girls and that frequently domestic violence becomes a cause of trafficking of women/girls.

It is welcomed that in mass-media appear a large variety of gender-based materials. In the same time, there are more and more materials with biased, discriminatory and sexist content. Due to insufficient knowledge in the field, but especially implicitly due to a certain degree of gender insensitivity, workers

in publicity sphere continue to create questionable, stereotyped and discriminatory images. Another explanation of their persistence is also the interest of the public namely for such publicity stands.

Notwithstanding the noted progress in the gender-based media message in Moldova, the conclusions are not encouraging: sustained campaigns for continuous promoting of women's rights and of the principle of equality of opportunities are lacking; information/studies/analysis regarding the principle of equality of chances are few and existing data refer in general to a limited and often even to specialised public; training of media representatives in this area is insufficient.

In order to identify and create opportunities, conditions and means for efficient implementation of gender equality in society, the National Program established as a general objective the integration of the principle of equality between women and men in the policies in all fields and levels of decision-making and implementation; ensuring efficient management of implementation of gender equality at national and local levels; awareness raising of the public regarding prevention and elimination of biased, gender stereotypes and conditions generating discriminatory situations; encouraging inter/transdisciplinary analytical activities in the field of gender equality; development of dialogue and partnerships between public authorities, civil society and other interested counterparts.

For achievement of proposed objectives it was planned to take certain measures for the awareness raising of the public, especially regarding analysis, studying and reflecting the dimension and gender problems in mass-media, involvement of men in promoting the principle of equality of opportunities for women and men, etc.

By the Decision of the Parliament No. 90 from 12.05.2011 was adopted the National Plan of Actions in the field of human rights for the years 2011–2014<sup>1</sup>.

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<sup>1</sup> Official Monitor No.118-121/ 331 from 22.07.2011.

In compliance with the document, notwithstanding that the right to life and to physical and psychic integrity of the individual are natural rights, inherent to every human being, part of the category of inviolable rights, there are cases when these rights are impaired. The Republic of Moldova continues to be confronted with such social negative inter-related phenomena, as torture, other cruel, inhuman or degrading treatments or punishments, domestic violence, which affects the most vulnerable social categories of population.

Because the most vulnerable and exposed to the risk of ill-treatment are persons held in custody, the Parliament adopted the Law on civil monitoring of observance of human rights in detention institutions, extending to NGOs working with legal aspects the possibility to evaluate the degree of observance of human rights of detained persons, detention conditions and treatment of detainees. The need to eliminate the problem of torture determined the involvement of the civil society into the process of monitoring of places of detention, by setting up of the national mechanism for preventing torture, which consists of an ombudsman and the Advisory Board of the Human Rights Centre.

In order to promote, observe and safeguard the rights of the persons affected by domestic violence, for the development of each family member in a violence-free environment, it is necessary to strengthen the institutional framework of the social assistance services system in the field of preventing and combating domestic violence. Preventing of violence by active measures and involvement of all social actors is one of the goals of current policies. Strengthening further the mechanisms for implementation of the legal framework in the field of preventing and combating of these phenomena is necessary.

In this regard, the National Plan of Actions on Human Rights contains a series of activities for the consolidation of the national institutional framework in the area of preventing of domestic violence, preventing and combating discrimination, including:

- elaboration of studies on forms of manifesting of domestic violence, vulnerable groups and/or domains of manifesting;

- organising of information and education campaigns for population and awareness raising of the public opinion regarding the severity of the domestic violence phenomenon;
- conducting national campaigns for promoting non-discrimination, including editing of publications, organising thematic TV and radio broadcasts;
- performing studies on forms of discrimination, evaluation of practices for investigation of these cases, etc.

Some measures provided in the Plan of Actions, namely those regarding informative and awareness raising campaigns, education of the population, are permanent.

#### Article 13 . Awareness-raising

1. *Parties shall promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women's organisations, where appropriate, to increase awareness and understanding among the general public of the different manifestations of all forms of violence covered by the scope of this Convention, their consequences on children and the need to prevent such violence.*
2. *Parties shall ensure the wide dissemination among the general public of information on measures available to prevent acts of violence covered by the scope of this Convention.*

In compliance with the Law on ensuring equality of opportunities between women and men, the Ministry of Labour, Social Protection and Family, as the central public authority with the function to elaborate and promote policies in the area of equality of women and men, shall exercise through the specialised Department, the coordination of implementation of programs and organising of broadcasting, research campaigns and other actions to ensure the equality of women and men.

The Law on ensuring equality, sets forth as the function of the Council for preventing and eliminating of discrimination and ensuring equality, the activity of informing and awareness raising of society on the elimination of all forms of discrimination in the context of democratic values.

In the same context, the Law on preventing and combating domestic violence, sets forth that the public central authorities, namely the Ministry of Labour, Social Protection and Family, Ministry of Education, Ministry of Health, Ministry of Internal Affairs, Ministry of Justice, have the function to promote the policies for consolidation of the family, cooperation with non-governmental organisations, natural persons and legal entities involved in activities for prevention and combating of violence, including by coordination of related activities of the decentralised/disconcentrated structures.

The local public authorities have a better defined jurisdiction in the area, being entitled by the law to organise information campaigns, studies, to develop social partnerships with non-governmental organisations, international bodies on prevention of domestic violence.

Legal provisions are implemented through the elaborated policy documents. Thus, the National Plan of Actions on Human Rights for years 2011-2014, sets forth a series of activities, some with permanent character, for consolidation of the mechanism for preventing of domestic violence, for prevention and combating of discrimination, including also:

- elaboration of assessments on the forms of manifestation of domestic violence, vulnerable groups and/or domains of manifestation;
- organising informative and educational campaigns and awareness raising of the public on the severity of the phenomenon of domestic violence;
- conducting national campaigns to promote non-discrimination, including publication of materials, organising thematic interactive TV and radio broadcasts;
- performing assessments of manifestation of discrimination, evaluation of the practices for examining of such cases, etc.

In this regard, measures stipulated in the National Program for ensuring gender equality for 2010-2015, are also relevant, including actions of:

- elaboration and implementation of the strategy for communication with the Government on promoting gender equality with active participation of men and boys, as a vehicle for continuing to develop a policy of gender equality, in the context of a dynamic society;
- organising information and awareness raising campaigns for the public, especially from rural areas, regarding the right of women and men to equal treatment on the market of labour forces and in economy;
- organising informative campaigns at national and local levels for promoting role-models of fathers, in the context of ensuring equal accountability between parents in the family;
- promoting „non-traditional” professions for women and men on the labour market, in order to redress gender-based segregation of jobs;
- organising information campaigns for the population regarding factors which influence the widening of the gap in life expectancy of women and men;
- organising informative and awareness raising campaigns for the large public, on the problem of violence against women, girls and boys, as a human rights violation, etc

Lately, the Republic of Moldova has an active role in organising awareness raising campaigns in the field of preventing and combating of domestic violence. However, in spite of these awareness raising campaigns, a vast majority of the population and namely women, are informed insufficiently. The study entitled „Violence against women in the families from the Republic of Moldova”<sup>1</sup> revealed that not all women, potential victims of the phenomenon, know about the Law No. 45/2007, that domestic violence is a crime,

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<sup>1</sup> The Study on Violence against women in the families of the Republic of Moldova, Chisinau 2011, National Bureau for Statistics and UNDP Moldova, [http://www.statistica.md/public/files/publicatii\\_electronice/Violenta/Raport\\_violenta\\_fam.pdf](http://www.statistica.md/public/files/publicatii_electronice/Violenta/Raport_violenta_fam.pdf)

about available services, where to seek assistance, about protection orders etc. Specifically, about the protection order are not informed women most affected by violence, those unemployed or freelancers, especially working in agriculture and from rural areas.

From the total number of interviewed women from this study, out of those living in the urban areas only 42 stated that they know about the Law 45/2007, and women from rural areas were less informed, in proportion of only 36,2 .

#### Recommendations:

- Enhancing the degree of information and education of the population on domestic violence and sexual abuse, through constant informational campaigns;
- Awareness raising campaigns and events shall be tailored specifically for women from rural areas, working in agriculture, elderly women, those unemployed;
- Varying and raising the efficiency of means for communicating informative messages in an accessible manner to beneficiary' groups. In this regard, it is obvious that events like: sports competitions, drawing contests and theatre performances are less accessible for the population in the rural areas or are less visited by elderly persons.

#### Article 14 . Education

1. *Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.*
2. *Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.*

Taking into consideration that attitudes, beliefs and role-models of behaviour of persons are all established at the very early stages of their lives, the Convention recommends the member states to promote gender equality, non-violent models for conflict resolution in inter-personal relationships from the early stages of development of the personality, by emphasising the enhanced role of parents, of educational institutions with the objective to promote these values. In this context, in compliance with the Explanatory Report of the CAHVIO are necessary:

- elaboration of didactic materials for all levels of the educational process, adequate for their level of understanding,
- didactic materials shall be approved and included into official educational curriculum, available to all teachers and contain not only occasional lessons, taught in different manners in schools, depending on the school policy adopted by the respective educational institution,
- obligation to promote equality between women and men, gender roles within the unofficial educational system, and in sport, cultural and leisure activities, mass-media,
- including mass-media into measures for promoting principles of gender equality.

In compliance with the Law on preventing and combating family violence, central public authorities, and namely the Ministry of Labour, Social Protection and Family, Ministry of Education, Ministry of Health, Ministry of Internal Affairs, Ministry of Justice, have functions to promote policies for consolidation of the family, prevention and combating of violence, also by coordinating the related activities of decentralised/ disconcentrated structures. In this respect, the general Departments of education, youth and sport ensure informing and training of didactic personnel on identification of acts of domestic violence and notification of competent authorities; implementing, jointly with the competent authorities of educational curriculums for parents and children on prevention and combating of domestic violence.

Ensuring of conceptual-strategic gender education in the Republic of Moldova is accomplished also through the following national instruments: Law on education; Concept paper on education in the Republic of Moldova (2000); National Strategy „Education for all” 2004-2015, approved by the Governmental Decision No. 410 from 4.04.2003; Law on ensuring equality of opportunities for women and men (2006); Efficient standards of learning, elaborated by the Ministry of Education of the Republic of Moldova in 2012.

In compliance with the provisions of the Article 13 from the Law No. 5/2006 on ensuring the equality of opportunities for women and men, the educational institutions ensure the equality between men and women both regarding the access to education and training, and during the educational or training process.

Law 45 on preventing and combating family violence makes the Ministry of Education and rayonal education departments accountable for ensuring information and training of didactic personnel in the field on application of means for prevention and notification of competent authorities, and the obligation to elaborate related educational curricula for parents and children.

In compliance with some researches in this area, the following problems were identified:

- "Feminisation" of didactic personnel in the primary and secondary educational system;
- in general, the curriculum and school textbooks specifically, are not gender-sensitive.
- Persistence of gender-stereotypes in the educational system and process; etc.

These problems have been also emphasised in the National Program for ensuring gender equality in the Republic of Moldova for the years 2010-2015, approved by the Governmental Decision No. 933 from 3 December 2009. In the same time, in the aforementioned Program the Government recognised as a problem the insufficient level of acknowledging by society of the problem of domestic violence, as an infringement of human rights, poor level of training

of specialists from various domains related to identifying, registration and referral of cases of domestic violence; lack of qualified human resources and financial resources to provide assistance to victims of domestic violence and work with aggressors; lack of mechanisms for identification, tackling and solving of the problem of sexual harassment; insufficient services of assistance and protection to victims; lack of resocialisation services for domestic aggressors; imperfection of the mechanism for monitoring and evaluation of the violence and trafficking of human beings domains.

In order to implement legislative provisions in the area of ensuring the equality of opportunities for women and men, and in the context of promoting of policies for strengthening of families, preventing and combating of violence, the National Program for ensuring gender equality for the years 2010-2015 was adopted and sets forth:

- implementing of recommendations of relevant international treaties on strategies and national plans from the educational sector;
- revising the national curriculum from a gender-based perspective;
- integration of the gender perspective into initial and continuous training of teachers in the context of human rights;
- elaboration of educational programs and training courses for specialists involved in the intervention on behalf of the victims of violence at national level (judiciary, health, education, social assistance, police, etc.), from a gender-based perspective;
- promoting the gender-dimension in the development of human resources at all levels of education, based on international studies and practices;
- promoting „non-traditional" professions for women and men on the labour force' market, with the goal to redress the gender-based vocational segregation;
- encouraging girls and boys to get involved into less traditional vocational areas, from the gender perspective, etc.



#### Recommendations:

- Permanent integration of the gender-dimension into official educational policies at the stage of elaboration, implementation and monitoring, including from a human rights perspective and the equal treatment of boys and girls;
- Consolidation of capacities for integration of gender-dimension into the educational system, including the elaboration of training courses, curriculums, educational standards, subjects, training and learning resources;
- Performing gender expertise of the textbooks, didactic materials and curriculum of the pre-university, vocational and higher educational system.
- Organising informative and awareness raising campaigns from gender perspective within the educational system;
- Institutionalising gender education at the level of the system;
- Organising broader information campaigns in the ranks of didactic personnel, on topics relevant to gender education;
- Including into training modules (initial and continuous) of didactic personnel of topics on education and gender equality.

#### Article 15 .

##### Training of professionals

1. *Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.*
2. *Parties shall encourage that the training referred to in paragraph 1 includes training on co-ordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases of violence covered by the scope of this Convention.*

The Law on preventing and combating family violence stipulates that it is in the jurisdiction of the central public authorities, namely of the Ministry of Labour, Social Protection and Family, Ministry of Education, Ministry of Health, Ministry of Internal Affairs, Ministry of Justice, to strengthen the capacities of human resources in the field of preventing and combating of domestic violence.

#### Recommended amendments:

Taking into consideration the lack in the Law No. 45 of other similar provisions, we believe some additions to this law are commendable, as follows:

The Law No. 45-XVI from 1 March 2007 on preventing and combating family violence (Official Monitor of the Republic of Moldova, 2008, No. 55-56/178 from 18.03.2008), with further amendments and completions, shall be supplemented as follows:

#### Article 8:

In par. (1), letter e) shall be completed with the phrase “, ensure their training and continuous training;”;

Article 16 shall be completed with a new paragraph, par. (11) in the following version:

“(11) The Ministry of Labour, Social Protection and Family shall provide financing to the programmes of national interest in the field of preventing and combating family violence, using state subsidies allotted for this purpose and other resources for:

- a) training of specialised personnel in performing activities for preventing and combating family violence;
- b) development of the system for tracking, reporting and management of the cases of domestic violence;
- c) information and awareness raising of the public on phenomenon of domestic violence.”.

National legislation contains legal provisions aimed to protection of persons against the acts of aggressors in and outside the family, of persons rendering social services, caregivers and other persons they are in contact with.



In compliance with the Law on social assistance <sup>1</sup>, the social assistance in the form of social services is available to persons and families that, due to economic, physical, psychological or social factors, lack the possibility to prevent and overcome difficulties on their own and also families affected by intrafamily violence etc.

In compliance with the Law on social services <sup>2</sup>, in order to request social services, every person which considering himself/herself as being in a situation of social risk or any person/family in unfavourable/abuse conditions, shall initially file a written or oral request to the social assistance unit within the jurisdiction of their domicile or directly to a person rendering social assistance services. The request regarding rendering of social services to the person/family, may be filed by the members of community or other interested persons, which shall mention the reason why the person himself/herself or the legal representative of the envisaged person may not file the request personally. The workers of the educational institutions, medical-sanitary public institutions, those rendering social services, police and other competent authorities, which have information regarding the need of social services to a person/family, have the obligation to inform without delay, within 24 hours, the local social assistance unit of the person/family.

The beneficiaries of social services shall be protected from any forms of violence, injury or ill-treatments, with respect for their dignity and personal privacy .

The key-regulation for organising and functioning of the rehabilitation centres for victims of family violence approved by the Governmental Decision No.129 from 22.02.2010 , sets forth that the objective of the Centre is to provide during a period of not longer than 3 months, specialised free social services, in compliance with the minimum quality standards to beneficiaries

1 Law on social assistance No. 547 from 25.12.2003, //Official Monitor 42-44/249, 12.03.2004.

2 Article 14 of the Law on social services No.123 from 18.06.2010, //Official Monitor 155-158/541, 03.09.2010.

(persons which are victims of violence – couples of mother-child/children, father-child/children), by elaborating jointly with the beneficiary the individual protection plan against any form of intimidation and discrimination; to provide support to the couples of parent-child/children, for developing their autonomy, to favour his/her reintegration into the family and/or community.

Minimum quality standards of the social services provided to victims of family violence, condemn family violence in all its forms. Victims which request the assistance of the Rehabilitation Centre are not required to present evidence of being subjected to violence. It is important to offer them trust and treat them without a biased attitude. The personnel shall be trained to ensure the confidentiality and adherence to professional ethics standards. No data shall be made available for the third parties by the personnel of the Centre without the consent of the beneficiary. Exception make only cases when the life and health are endangered (suicide attempts, children abuse by the beneficiaries, etc.)<sup>3</sup> . The beneficiary of the Centre shall be protected from abuses of personnel. Beneficiaries are encouraged to inform about any form of abuse from personnel, from other persons employed by the Centre and outside of it.

The manager of the Centre shall take immediate measures for protection and assistance needed by the beneficiary and shall sanction the personnel which use forms of abuse against beneficiaries. Situations of abuse shall be recorded into written minutes <sup>4</sup>.

3 Minimum quality standards regarding the social services to the victims of domestic violence, approved by the Governmental Decision No. 1200 from 23.12.2010, //Official Monitor 259-263/1320, 31.12.2010).

4 Idem, Standard XVI.

Requirements regarding the non-admissibility of the abuse and violence against the beneficiaries of social assistance are also set forth in other relevant laws <sup>1</sup>

Regarding this issue, the National Program for Ensuring Gender Equality for 2010-2015 sets forth:

- elaboration of training materials for combating violence in educational institutions and programs for professional training of teachers and officials;
- consolidation of the capacities of members of the Governmental Commission on equality for women and men, and of gender units within central and rayonal authorities (such as integration of gender perspective, gender analysis, use of statistical data and monitoring mechanisms, use of budget in a gender sensitive manner etc.);
- consolidation of capacities of judicial authorities to ensure observance/complete implementation of the international instruments and of legislative provisions to ensure the equality of opportunities, prevention and combating of family violence;
- elaboration of educational programs and training courses for professionals involved into activities for protection of victims of violence at national level (judiciary, health, education, social assistance, police etc.), from gender perspective;

- training of medical personnel for rendering of quality services in the field of reproductive health of women and men, especially of the youth, and regarding the health issues related to violence, HIV infection, etc.;
- elaboration and organisation of the training courses for officials of the key-ministers regarding gender sensitive budgets, etc.

#### Article 16

##### Preventive intervention and treatment programmes

1. *Parties shall take the necessary legislative or other measures to set up or support programmes aimed at teaching perpetrators of domestic violence to adopt non-violent behaviour in interpersonal relationships with a view to preventing further violence and changing violent behavioural patterns.*
2. *Parties shall take the necessary legislative or other measures to set up or support treatment programmes aimed at preventing perpetrators, in particular sex offenders, from re-offending.*
3. *In taking the measures referred to in paragraphs 1 and 2, Parties shall ensure that the safety of, support for and the human rights of victims are of primary concern and that, where appropriate, these programmes are set up and implemented in close coordination with specialist support services for victims*

<sup>1</sup> Minimum quality standards on care-giving, education and socialising of children in the residential institutions, approved by the Governmental Decisions No. 432 from 20.04.2007, Official Monitor 60-63/468, 04.05.2007, prohibit the use by professionals of the beatings and any other aggressive forms as method for disciplining the child. The Director of the institution is held accountable for emergency examining of the cases of abuse and neglect inside the institution; Minimum quality standards regarding social services provided within maternal centres, approved by the Governmental decision No. 1019 from 02.09.2008, // Official Monitor 171-173/1028, 12.09.2008, stipulate the need to ensure within maternal centres procedures for preventing, identifying, notification, evaluation and solving of cases of violence and abuse against the mother-child couple. Children and mothers are encouraged to report any form of abuse from personnel, other persons from the Centre and outside of it. Suspected and identified cases of abuse shall be reported to the Director of the Centre, which shall take immediate measures for protection and apply sanctions to the personnel which uses any form of abuse against the child, mother, other persons (Standard 15).

In compliance with the Law on ensuring equality of opportunities for women and men, the Ministry of Labour, Social Protection and Family, as the central public authority with the function to promote the policies in the field of equality of women and men in strategies, programmes and financial investments, shall coordinate the implementation of the programmes and researches in this area. At the local level, monitoring of implementation of the programmes regarding equality of women and men is the responsibility of local public authorities, which shall exercise it through gender units<sup>2</sup>.

In order to prevent family violence, the relevant authorities of the central public administration,

<sup>2</sup> Articles 19-20 of the Law on ensuring equality of opportunities between women and men.

represented by the Ministry of Labour, Social Protection and Family, Ministry of Education, Ministry of Health, Ministry of Internal Affairs, Ministry of Justice and local public administrative authorities, in compliance with the Article 8 of the Law No. 45, shall ensure, within the limits of their jurisdiction, elaboration and promoting of policies to provide assistance to perpetrators, shall coordinate, evaluate and monitor the activity of centres/services of rehabilitation of aggressors, through decentralised/deconcentrated structures.

In this respect, sections/directions of social assistance and family protection cooperate with the internal affairs bodies in the activity of identification of persons inclined to committing domestic violence; shall facilitate, at the request of law enforcement authorities, access of the perpetrator to rehabilitation programmes; shall determine the necessity to create services/centres for rehabilitation of perpetrators, ensure methodological and informational support to these centres/services; shall monitor and coordinate the professional activities for resocialising of offenders, performed by social workers, employees of city halls. Medical institutions of all types and levels shall initiate and implement programmes and services for perpetrators; ensure implementation of the programmes for treatment from alcohol and toxics addictions, psychotherapeutic treatment, as necessary with the financial support from finances of offenders or, depending on the case, from the funds of mandatory medical insurance. The internal affairs bodies, shall ensure nominal tracking of offenders; shall ensure for perpetrators, including to those in administrative custody, access to rehabilitation services.

In compliance with the Article 10 of the Law on preventing and combating family violence, the services/centres for rehabilitation of perpetrators may be created by the Government, at the proposal of the Ministry of Labour, Social Protection and Family; by local public administrative authorities, at the proposal of the Commission for social problems; by international and non-governmental organisations, with the informing of the Ministry of Labour, Social Protection

and Family; by the public administration authorities and non-governmental or private organisations, based on agreement of joint activity. Expenses related to the activity of the centre shall be covered from the joint budget of funders.

Organising and functioning of the centre may be subsidized financially also by economic agents and entrepreneurs based on the Law on philanthropy and sponsorship.

The rehabilitation services for offenders shall provide psychological, social assistance to the perpetrator, implement correctional programmes and specialised alcohol dependency treatment, detoxification programmes, psychotherapeutical treatment; organising in cooperation with institutions, non-governmental organisations, training and continuous training of aggressors, for their employment; informing responsible authorities on ceasing the measures for protection and reintegration into the family of the perpetrator; studies and generalisations on the causes and conditions of the acts of violence in the family, etc.

#### Recommended amendments:

In order to strengthen the mechanism for re-socialisation or the perpetrator, we believe as pertinent supplementing of the Law No. 45-XVI from 1 March 2007 on preventing and combating family violence, as follows:

To the Law No. 45-XVI from 1 March 2007 on preventing and combating family violence (Official Monitor of the Republic of Moldova No. 55-56/178 from 18.03.2008), with subsequent amendments and additions, the subsequent amendments are proposed, as follows:

#### Article 2:

Definition of perpetrator shall be supplemented with a new phrase, as follows:

„ In case of complaints from several family members, the perpetrator shall be identified taking into consideration the following conditions: which person, from those involved, has acted for the own protection or protection

of another person; the probability for arousal of a critical was considered by the court as necessary to diminish or terminate violence. situation for each person; seriousness of injuries caused to each person; previous complaints regarding family violence, other circumstances directing to the instigator of violent acts;”;

Article 11 shall be supplemented with a new paragraph, par.(8), as follows:

“(8) Victim of family violence is entitled to request from the perpetrator and/or state, compensation, in conditions set forth in the law, of pecuniary and moral damages, caused by bodily harm or injury to the health, and as a result of inadequate protection.”;

Article 15:

Par.(6) shall be supplemented as follows:

“Withdrawal of protection measures may be ordered only if the perpetrator has completed a specially tailored treatment or counselling programs, and does not considered to be a real danger to the victim or family members.”.

The Law 45 stipulates that the court shall issue, within 24 hours from the receipt of the request, a protection order by which shall be offered assistance to the victim, by applying to the perpetrator of some obligations, including: the obligation to participate in a special treatment and counselling programme, if such an action

Taking into consideration that often domestic violence perpetrators use excess of alcohol, the provisions of other laws on treatment of such persons, namely of the Law on control and preventing of abusive consumption of alcohol, illicit drugs consumption and other psychotropic substances No. 713 from 06.12.2001 shall apply. This law does not refer only to consented treatments (anonymous, stationary or outpatients within the medical institutions of the Republic of Moldova), but also to mandatory forced treatments, applied in compliance with the conditions set forth in the judicial decision.

The beneficiaries of the mandatory treatment from alcohol or drug addiction may be persons who consume abusively alcoholic beverages, or take illicit

drugs or other psychotropic substances, which affects financially the families or lead to conflicts in the family or in public, notwithstanding the fact that they've been previously sanctioned or warned repeatedly by the law enforcement agencies. Application of forced treatment in compliance with the law, may be performed only in case of medical –narcological conclusion regarding the degree of alcoholic or drug addiction, by which shall also be determined the type of medical institution to render prescribed assistance<sup>1</sup>. In case their addiction to alcohol or drugs is confirmed, these persons may be ordered to comply with mandatory treatment (outpatient or in the hospital) within narcologic institutions or general medical institutions of the Ministry of Health for a period that shall not exceed 43 days, based on a judicial decision, with the possibility to extend the treatment for up to three months<sup>2</sup>. In compliance with the legislation, the legal action may be filed by the Commission for social problems or by the prosecutor.

Thus, aggressors which in the same time consume abusively alcoholic beverages or drugs may be subjected to mandatory treatment in compliance with several provisions. The first possibility is to make them comply in a mandatory manner to the protection order, issued in the conditions of Article 15 of the Law No. 45. The second possibility is set forth in Articles 13-16 of the Law No. 713/2001 and the Regulation on narcological institutions of the Ministry of Health and the Regulation on Medical Detoxification Centre from the medical institutions within the Ministry of Health, approved by the Decision of the Government No. 1433 from 07.11.2002.

To note, the provisions from the Law No. 45 on mandatory treatment of the perpetrator from alcohol and drug addiction, are not sufficiently clear.

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1 Article 13 from the Law No.713 on control and preventing of abusive consumption of alcohol and illicit consumption of drugs and other psychotropic substances from 06.12.2001, Official Monitor No. 036, from 14 March 2002.

2 Article 15 par. 2 of the Law No. 713/2001

Thus, for example, the law does not contain regulations regarding the necessity to present in the court of law certain documents prior to completing of the mandatory treatment, as follows:

- medical conclusion on the degree of alcoholic or drugs addiction of the person and the need to apply to this person such treatment;
- notification of the type of the prescribed medical institution;
- evidence that this person has been warned or sanctioned repeatedly by the law enforcement agencies for the infringement of public order or for the conflicts in the family;
- evidence that the person was proposed and has refused previously wilful medical treatments suggested by Commissions of addiction;
- medical recommendation on the term of the treatment;
- treatment duration in both laws is different, in case of Law 45 the protective measures may be issued for a term of up to 3 months and extended further for up to 6 months, and in the case of Law 713/2001, forced treatment shall be limited to 43 days, and based on the advisory note of the medical commission may be extended for only up to 3 months;
- procedures for extension of the duration of treatment are completely different in case of protection orders, at the request of the victim the order may be extended or withdrawn, in case of the treatment imposed in compliance with the Law No. 713/2001 the extension of the term shall be performed only at the notice of the medical commission, which shall establish this need;
- - the persons which may request forced treatment in case of protection order, may be the victim or, with his/her consent, the social worker, prosecutor, police or foster authority, and in case of the Law No. 713/2001 the request on application of forced treatment may be made only by two entities: the commission on social problems and the prosecutor.

It goes without saying that in conditions of Article 15 of the Law 45, in compliance to which the protection order shall be issued within 24 hours, fulfilling of all

conditions required by the law to send the person to forced treatment is not possible. Thus, this protection and restrictive measure imposed on the offender becomes impossible.

In the same time, we need to mention the different approach on the subject of two important players in preventing and combating domestic violence, namely of the Ministry of Health and Ministry of Labour, Social Protection and Family.

In general, the Ministry of Health regards the legal provisions which require the persons to be subjected to forced treatment from alcohol addiction, as an infringement of the patient's rights on these grounds:

- Law on the rights and responsibilities of the patient No. 263 from 27.10.2005 in compliance to which no treatment (forced/mandatory/coercive) shall be allowed without the informed consent of the person;
- Convention on Human Rights and Biomedicine (Oviedo, effective for the Republic of Moldova from 01.03.2003 ) guaranteeing in Chapter II, Article 5-9, mandatory informed consent for all medical procedures;
- international case law, giving as example the *Grobet v. Moldova* case examined by the ECtHR, which stated the violation of the Article 3 of the ECHR, as a result of medical assistance provided without consent, even for the therapy, being equalled to "ill-treatments" or even "torture" <sup>1</sup> .

Thus, being aware of the legislative inconsistencies in this field, it is necessary to perform a detailed analysis of legal provisions regarding forced treatment applied to an individual, in order to prevent these treatments to be considered as "ill-treatments" in compliance with the Article 3 of the ECHR, and the methods of coercion and their duration shall be unified.

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<sup>1</sup> To see the Informative Note of the Ministry of Health, on the draft law on amending and supplementing of some normative acts, [www.ms.gov.md](http://adevarul.ro/moldova/social/tratamentul-fortat-pu-tea-disparea-1_50aee7c47c42d5a663a195a3/index.html) and articles from the newspaper [http://adevarul.ro/moldova/social/tratamentul-fortat-pu-tea-disparea-1\\_50aee7c47c42d5a663a195a3/index.html](http://adevarul.ro/moldova/social/tratamentul-fortat-pu-tea-disparea-1_50aee7c47c42d5a663a195a3/index.html)

As a result of these non-uniform legislative provisions, in the last years there are no known cases when the decisions of courts of law for forced treatment from alcohol and drug addiction, in conditions set forth in Law No. 713 from 2001, and protection orders issued in compliance with the Law No. 45, imposing also the measure set forth in the Article 15, paragraph (h) – obligation to participate in a special treatment program, were enforced.

In our opinion, the measure of forced treatment of the perpetrator, envisaged in Article 15 of the law No. 45, shall be included into a separate provision from this law. Thus, the courts of law shall have an additional real instrument to intervene into the resolution of domestic violence cases, observing in the same time the recognised rights of the offender – as the patient of such forced treatments.

For the implementation of the Law No. 45, the Government of the Republic of Moldova made a commitment to solve the problem of setting up counselling services for aggressors, as a result the Ministry of Labour, Social Protection and Family elaborated the Concept Paper on rehabilitation services for family offenders, and currently the normative framework of this type of services is being drafted (Framework Regulation and Minimum quality Standards), and starting with 2011, the State Budget envisaged special financial resources for opening of the Centre for Perpetrators in Drochia rayon. The Centre for assistance and counselling for family offenders from city Drochia was officially opened at the end of 2012, and there are no results of its activity yet.

In compliance with the par. (2) from the Article 16 of the CAHVIO Convention, parties shall take necessary legislative or other measures to set up or support treatment programmes aimed at preventing sentenced perpetrators, in particular sex offenders, within and outside the penitentiaries, from re-offending. Their final objective shall be: preventing of re-offending and successful reintegration of perpetrators into community.

Article 103 of the Criminal Code stipulates the possibility to apply constraint medical measures for alcohol and drug addicts, or their transfer to a guardianship authority, when the sanction is non-custodial. The Enforcement Code also envisages the need for special re-education and re-socialising programmes for detainees during their imprisonment, including their psychological counselling for preventing re-offending. In the same time, Article 19 of the Enforcement Code sets forth expressly the need for setting up within the detention institution forced medical treatment, assigned by the courts for arrested or detained persons, when established that they suffer of alcohol, drug and toxics addiction.

Also, the Law on probation stipulates that probation<sup>1</sup> is a series of measures, with elements of psycho-social assistance and counselling for the person in conflict with the criminal law, which enhances the implementation of judicial decisions, by mandatory use of all opportunities and existing in the community. Respectively, the main role of the Probation Offices, and namely of the probation officer, is to organise the social reintegration process. In compliance with the Law on Probation, the notion of probation is as follows: psycho-social evaluation, control of persons in conflict with the criminal law and their re-socialisation, adaptation of liberated persons, in order to prevent re-offending<sup>2</sup>.

With the exception of medical treatment from alcohol, drug and toxics addiction and forced psychiatric treatments, imposed by the law for detainees as a supplement to criminal punishment, both in the penitentiary system and probational system, special treatment programs with the goal to provide psychological counselling to detainees for the change of aggressive behaviour and their predisposition to violent acts are not known.

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1 Law of the Republic of Moldova No.8- XVI on probation from 14 February 2008, published on 13.06.2008 in the Official Monitor No. 103-105

2 Law of the Republic of Moldova No.8-XVI on probation from 14 February 2008, published on 13.06.2008 in the Official Monitor No. 103-105



With the exception of medical treatment from alcohol, drug and toxics addiction and forced psychiatric treatments, imposed by the law for detainees as a supplement to criminal punishment, both in the penitentiary system and probational system, special treatment programs with the goal to provide psychological counselling to detainees for the change of aggressive behaviour and their predisposition to violent acts are not known.

The provisions of the article 103, par. 5 of the Criminal Code are also formal, pursuant to which the coercive medical measures shall be applied to alcohol and drug addicts jointly with the criminal punishment and shall be continued within medical institutions if a non-custodial sentence was issued on behalf of the offender, with the latter being placed under guardianship during this period of time.

#### Article 17

##### Participation of the private sector and the media

1. *Parties shall encourage the private sector, the information and communication technology sector and the media, with due respect for freedom of expression and their independence, to participate in the elaboration and implementation of policies and to set guidelines and self-regulatory standards to prevent violence against women and to enhance respect for their dignity.*
2. *Parties shall develop and promote, in co-operation with private sector actors, skills among children, parents and educators on how to deal with the information and communications environment that provides access to degrading content of a sexual or violent nature which might be harmful.*

Development of the civil society sector is crucial for fundamental, democratic and pluralistic values of any country, but also to encourage social activity of citizens in development process. The development of associative sector leads to the improvement of living standards and the quality of social life, these being the results of intense cooperation with governmental institutions. The civil society organisations (CSO), are a

part of the social system, a form of expression of civil initiatives, thus facilitating active participation in the management of public processes. Support of the civil society is a method to encourage social cohesion and creation of a sustainable social capital.

The Republic of Moldova has the interest to sustain the development of associative sectors, to develop favourable policies and a framework for these. As confirmation of this may serve the recently adopted Strategy for the development of civil society for the years 2012-2015.<sup>1</sup>

The Strategy has the goal to create a favourable framework for development of active civil society, capable for progressive contributions to democratic development of the Republic of Moldova, to stimulate its social cohesion and develop social capital. This document of policies provides also the definition of the term “civil society”, which was lacking at the national level. As basis was used the definition provided by the United Nations Organisation: “*not-for-profit, voluntary citizens' groups, which is organized on a local, national or international level to address issues in support of the public good. Task-oriented and made up of people with common interests, NGOs perform a variety of services and humanitarian functions, bring citizens' concerns to governments, monitor policy and programme implementation, and encourage participation of civil society stakeholders at the community level.*”<sup>2</sup>.

##### The Strategy for the development of civil society has as general objectives:

- strengthening the framework of civil society' participation at developing of and monitoring the implementation of public policies;
- promoting and strengthening financial sustainability of the civil society;
- development of active civil initiatives and volunteer services.

1 The Strategy for Development of the Civil Society for years 2012-2015 and Action Plan for implementation of the Strategy have been endorsed by the Law No. 205 from 28-09-2012 // Official Monitor 1-5/4, 04.01.2013.

2 <http://www.ngo.bham.ac.uk/Definingfurther.htm>.



Having the goal to identify and provide opportunities, conditions and methods for effective achievement of gender equality in the society, the National Program for ensuring gender equality for the years 2010-2015, has set as general objectives the mainstreaming of the gender equality principle in all areas and all levels of adoption and implementation of decisions; raising public awareness on prevention and elimination of gender bias, stereotypes and conditions generating cases of gender discrimination; development of the dialogue and partnership with public authorities, civil society and other stakeholders.

For reaching proposed objectives, new measures have been planned, as follows:

- supplementing the Ethics Codes of journalists with the gender prospective, with emphasis on use of non-sexist language and presenting non-stereotyped images of women and men and elimination of violent and disrespectful materials, etc.;
- strengthening the capacity of journalists and decisions-makers from mass-media regarding gender equality principles, as basis of human rights;
- identifying and diminishing current practices in mass-media organisations which continue to violate human dignity and use negative images of women and men in mass-media and publicity;
- campaigns for information, promoting and strengthening of capacities, aimed towards promoting by mass-media of adequate and balanced gender image, etc.

By the Decision of the Parliament No. 90 from 12.05.2011 the National Action Plan on Human Rights for years 2011–2014 has been approved, in order to promote, observe and safeguard the rights of individuals, including those affected by domestic violence. To achieve this, the National Action Plan regarding Human Rights contains a series of activities for preventing domestic violence, preventing and combating discrimination, including campaigns for promoting non-discrimination, education and information of the

population and awareness raising of the population on seriousness of the domestic violence issue, by active involvement of the society and mass-media into organising interactive topical TV and radio broadcasts.

The Broadcasting Code of the Republic of Moldova<sup>1</sup> guarantees morality and ensures witness protection, by expressly prohibiting broadcasting programs, especially programs containing pornography, unrated violence or language, publicity and teleshopping which may seriously inflict physical, mental or moral development of juveniles, including by stimulating immoral or indecent behaviour.

Recently, a series of amendments to Broadcasting Code were developed,<sup>2</sup> aimed to introduce such new notions as prohibition of sexist publicity, sexist language and violent or degrading images of women and men, etc.<sup>3</sup>

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1 Articles 6, 19, 37-38 of the Broadcasting Code of the Republic of Moldova No. 260 from 27.07.2006, Official Monitor 131-133/679, 18.08.2006.

2 Codului audiovizualului al Republicii Moldova nr. 260 din 27.07.2006, Monitorul Oficial 131-133/679, 18.08.2006

3 Proiect de lege privind completarea unor acte normative privind asigurarea egalității de gen, Martie 2013.

# CAHVIO CHAPTER IV

## PROTECTION AND SUPPORT

### Article 18. General obligations

(1) Parties shall take the necessary legislative or other measures to protect all victims from any further acts of violence.

(2) Parties shall take the necessary legislative or other measures, in accordance with internal law, to ensure that there are appropriate mechanisms to provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities, as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims and witnesses of all forms of violence covered by the scope of this Convention, including by referring to general and specialist support services as detailed in Articles 20 and 22 of this Convention.

(3) Parties shall ensure that measures taken pursuant to this chapter shall:

- be based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim;
- be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment;
- aim at avoiding secondary victimisation;
- aim at the empowerment and economic independence of women victims of violence;
- allow, where appropriate, for a range of protection and support services to be located on the same premises;
- address the specific needs of vulnerable persons, including child victims, and be made available to them.

(4) The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.

(5) Parties shall take the appropriate measures to provide consular and other protection and support to their nationals and other victims entitled to such protection in accordance with their obligations under international law.

According to the legislation of the Republic of Moldova, the acts of violence, especially physical and sexual violence, are recognized as acts with an increased level of social danger, and therefore these actions are included in several provisions of the Criminal Code and Contravention Code. In this way, the victim of acts of violence that touch upon his/her physical, psychological or sexual integrity and that represent crimes or administrative offences, has a well-established procedural status, and benefits of procedural and material guarantees, under conditions of the law.

According to the Contravention Code, the victim is any individual or legal entity to whom moral, physical or pecuniary damages were caused through a contravention. The victim shall exercise his/her rights and execute his/her obligations, under conditions of the law, personally or through legal representatives in case of a juvenile or a person in a state of irresponsibility. The victim enjoys the rights, obligations and guarantees provided by the contravention legislation. Provisions of the Criminal Procedure Code are applied to the contravention procedure in a corresponding manner, with express exceptions established by the contravention law.

According to the Criminal Procedure Code,<sup>1</sup> the goal of the criminal procedure is to ensure protection of individuals against crimes, as well as protection of individuals against illegal acts committed by officials investigating or trying the alleged or committed crimes, so that any individual who committed a crime is punished according to his or her guilt. According to the criminal procedural legislation, a victim is any individual who, by a crime, was caused moral, physical or pecuniary damages, and who enjoys the established procedural guarantees, rights and obligations during criminal procedure.

In case a victim is caused, by a consequence of a crime, a moral, physical or pecuniary damage, he/she receives procedural classification of a damaged party, with his/her consent, and by an ordinance issued by the criminal prosecution bodies.

According to Articles 58-59 of the Criminal Procedure Code, victim/damaged party is considered to be any individual or legal entity, to whom, by a consequence of a crime, a moral, physical or material damage was caused. They have practically equal rights and obligations, however, after receiving the procedural classification of the damaged party, the victim can renounce any time on this procedural classification.

In certain cases, when private life of a damaged party can be damaged, it will be prohibited to the defendant accused for committing a sexual crime and to his/her defence counsel to submit evidence about the alleged character or personal history of the victim, except the case when the court provides such permission. The defendant's request concerning the submission of evidence about the alleged character or personal history of the damaged person will be settled in a closed hearing, and the president of the court hearing will establish the limits for the administration of such evidence and for addressing questions.<sup>2</sup>

Bodily examination, as well as collecting of the samples from bodily discharges or of other biological

samples from the damaged party without his/her consent, can be carried out only with authorization of the investigation judge. These actions cannot be however carried out in places or under circumstances where there is a risk of traumatizing the damaged party or the risk of violating his/her human rights.

Victim/damaged party is heard in the conditions provided for hearing of the witness<sup>3</sup>. Should sound evidence exist that life, physical integrity or liberty of a witness (respectively of the victim/damaged party), or of a close relative to him/her, is in danger in connection with the statements that he/she makes in a criminal case concerning a serious, extremely serious and exceptionally serious crime, provided that there exist adequate technical means, then the instruction judge, or as the case may be, the court may allow to hold the hearing of the respective witness without his/her physical presence in the place where the criminal proceeding is carried out or in the courtroom, through a television network, with his/her image and voice being distorted in such a way that he/she may not be recognized. Statements made by a witness are recorded on a videotape and integrally entered in the minutes drafted in accordance with the law conditions.

Juvenile victim/damaged party or witness younger than 14 years shall be heard in criminal cases related to sexual or domestic violence crimes, as well as in other cases where the interests of the justice or of the juvenile require, under special conditions. They are heard by the investigation judge in premises specially arranged for this purpose, equipped with audio/video recording means, through a psycho-pedagogue<sup>4</sup>. The juvenile and the psycho-pedagogue shall be placed in a separate room from the investigation judge and the other parties who take part in the respective procedural action, and the latter are entitled to ask questions through the investigation judge.

1 Criminal Procedure Code, Article of the 1.

2 Criminal Procedure Code, Article 111 of the CPC

3 Idem, Articles 58-59, 109-110 of the Criminal Procedure Code.

4 Idem, Article 1101 of the Criminal Procedure Code.

and the other parties who take part in the respective procedural action, and the latter are entitled to ask questions through the investigation judge. All declarations are recorded through audio-video means and are integrally incorporated in the minutes drafted in accordance with the procedural norms.

If there are sufficient grounds to believe that damaged party, witness, other participants in the proceedings or members of their families could be or are threatened with death, violence, deterioration or destruction of their goods, or other illegal acts, the criminal investigation body and the court must take measures regulated by the Law on the Protection of Witnesses and *Other Participants to the Criminal Proceeding*<sup>1</sup>. Protective measures may be applied alone or jointly, including together with urgent measures and/or with assistance measures under conditions of the law. Information about real identity of the protected person or other information about the protected person is kept in conditions of maximum safety of confidentiality. Disclosing data about the protected person is subject to contravention<sup>2</sup> and criminal<sup>3</sup>

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1 The Law on the Protection of Witnesses and Other Participants to the Criminal Proceeding, No. 105 from 16.05.2008 Official Monitor 112-114/434, 27.06.2008.

2 Article 325. Disclosing Data about Security Measures

(1) Disclosing data about security measures applied to a person or his/her close relatives, if such action does not constitute a crime, shall be sanctioned by a fine from 80 to 100 conventional units.

(2) The disclosure by an official person from the body that ensures state protection of victims, of witnesses and of other persons who benefit from state protection or the disclosure of data about state protective measures, if such action does not constitute a crime, shall be punished by a fine from 100 to 150 conventional units with or without the deprivation of the right to practice certain activities for 3 months to 1 year.

3 Article 316. Disclosing Data about Security Measures Applied to a Judge and Participants in a Criminal Case

(1) The disclosure of data about security measures applied to a judge, bailiff, damaged party, witness or other participants in a criminal case, as well as to their close relatives, provided that such an act was committed by a person to whom such data was entrusted by virtue of his/her professional duties shall be punished by a fine in the amount of 200 to 400 conventional units or by imprisonment for up to 2 years, in

liability. Persons who take part in the protection programme shall sign a declaration of confidentiality in this regard.

The circle of the victims of domestic violence is indicated in Article 3 of the Law No. 45. Considering that according to criminal legislation, the forms of physical, psychological and sexual violence against the members of the family represent crimes, procedural guarantees and rights of the victim mentioned above are also applicable to the victims of domestic violence. In addition, Article 2151 of the Criminal Procedure Code establishes protective measures for the victims of domestic violence and the procedure of their applicability. Therefore, according to paragraphs (1) and (2) of this norm, the complaint of the victim of domestic violence addressed, within criminal proceedings, to the criminal investigation body, prosecutor or court regarding threats with death, violence, deterioration or destruction of goods or other illegal acts shall be examined by the court, which must take measures to ensure protection of the victim against the suspect, accused or defendant member of the family by issuing a protective order. When submitting their complaint to the criminal investigation body or the prosecutor, they shall submit immediately a request to the court, through an application, in order to have it examined.

Being essentially a beneficial remedy for ensuring protection of the victim of domestic violence within criminal proceedings, the respective norm has also a disadvantage, and namely the fact that it allows involvement of competent bodies in ensuring protection of the victim, exclusively upon his/her request.

In order to consolidate the mechanism of protection of the victim of domestic violence,

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both cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for up to 2 years.

(2) The same action that causes severe consequences shall be punished by a fine in the amount of 300 to 600 conventional units or by imprisonment for up to 5 years with (or without) the deprivation of the right to hold certain positions or to practice certain activities for up to 3 years.

we consider that this regulation needs to be reviewed, in order to maintain the possibility of the victim to submit a request to the criminal investigation body or prosecutor to ensure efficient protection and, at the same time, to offer competent bodies the possibility to intervene ex officio, when necessary, in order to ensure protection of the victim who, for various reasons, does not manifest the initiative in this respect. For this purpose, the following amendments to the Criminal Procedure Code are proposed.

#### Recommended amendments:

Criminal Procedure Code of the Republic of Moldova No. 122-XV from 14.03.2003, //Official Monitor, 2003, No. 104-110/447 from 07.06.2003//, with subsequent amendments and completions, shall be amended and supplemented as follows:

##### Article 2151:

paragraphs (1) and (2) shall be formulated as follows:

(1) In case within criminal proceedings it is established that the victim of domestic violence is in danger of being subjected to violence or other illegal actions, including through destruction of his/her goods, criminal investigation body or prosecutor shall promptly request application of protective measures.

(2) The request for protective measures may be submitted by the criminal investigation body or prosecutor also based on the request of the damaged party.”

In the context of the provisions of the Istanbul Convention, it is necessary to amend legislation and extend the list of subjects of domestic violence. For this purpose, necessary proposals were formulated within the analysis of Article 3 (b) of the Convention. In case the proposals will be accepted, as evoked, the definition of the “*victim*” from the Law No. 45 will have another meaning, based on the extension of the list of subjects of domestic violence. We consider that in this way, the definition of the “*victim*” from the Law will be in compliance with the text of the definition from Convention.

By developing the subject of protection of the victims of domestic violence, it is necessary to

establish that, according to Recommendation 19 of the UN Committee on the Elimination of All Forms of Discrimination against Women, concerning the need to introduce criminal sanction for acts of domestic violence in order to ensure security and safety of victims of domestic violence, Criminal Code of the Republic of Moldova was supplemented by Article 2011 “Domestic Violence”<sup>1</sup>. Or, criminal punishment for domestic violence needs to be proportional to the social danger of such actions. Usually, the victim of domestic violence suffers much more from the actions of the aggressor, who is a close person, than the victim of a violent act committed outside the family, by an unknown person. This happens because the act of violence by a family member causes not only physical suffering, but also mental suffering. Moreover, usually, victim of domestic violence does not have another refuge, and aggressor is constantly alongside the victim, the fact that perpetuates hostile relations among family members. Ultimately, the tensed atmosphere in the family affects its integrity as social institution and integrity of each family member, individually. These circumstances, as well as other circumstances, indicate on the increased social danger of domestic violence. Respectively, punishment for domestic violence should not be lighter than for similar actions committed in respect of other persons than family members.

#### Recommended amendments:

In this sense, the proposal is to introduce amendments to the provisions of some articles of the Criminal Code, in order to counteract violent actions against family members in a more efficient manner and, most importantly, in order to increase the existing sanctions, which are lighter than sanctions from other Articles of the Criminal Code that establish sanctions for similar actions committed under general conditions. Therefore,

Criminal Code of the Republic of Moldova No. 985-XV from 18 April 2002 (republished in the Official Monitor No. 72-74/195 from 14.04.2009), with subsequent

<sup>1</sup> Article 2011 was introduced in the Criminal Code by the Law No.167 from 09.07.2010, in force since 03.09.2010.

amendments and additions, shall be amended and completed as follows:

1. Article 145:

paragraph (2) shall be supplemented with letter e1) with the following content:

“e1) on a family member;”

2. Article 2011:

provision of paragraph (1) shall be formulated in the following version:

“(1) Intentional action committed by a family member against another family member, manifested by:

- a) ill-treatment, beatings, other violent actions, which result in physical pain or light injury of bodily integrity or health;
- b) deprivation of liberty, isolation, following, in order to impose a will or personal control on the victim;
- c) deprivation of the primary living means or of the most essential objects, if it causes physical or mental suffering shall be punished by community service for 180 to 240 hours or by imprisonment for 1 to 3 years.”;

paragraph (2) is formulated in the following version:

“(2) Actions indicated in paragraph (1):

- a) committed against two or more members of the family;
- b) committed in connection with the request for protective measures;
- c) committed by a person who previously committed similar actions;
- d) that caused less severe bodily or health injury shall be punished by community service for 180 to 240 hours or by imprisonment for 3 to 6 years.”;

paragraph (3) ) is formulated in the following version:

“(3) The same actions that:

- a) caused severe injury of the bodily integrity or health;
- b) incited suicide or an attempt at suicide shall be punished by imprisonment for 6 to 12 years.”;

Article is supplemented by paragraph (4) and paragraph (5) in the following version:

“(4) Violent actions against a family member that led to the victim’s death

shall be punished by imprisonment for 8 to 15 years.”

Consolidation of the mechanism of protection of the victim of domestic violence within criminal proceedings requires, in parallel, improvements also on the

segment related to ensuring adequate legal assistance. Criminal procedural legislation that establishes conditions for mandatory participation of the defence counsel within criminal proceedings is unfortunately limited only to the conditions for ensuring mandatory participation of the defence counsel for defence of the suspect, the accused and the defendant, and nothing is mentioned about the victim. Therefore, victim is placed in the position of having to find a defence counsel on its own. We consider that this situation is disadvantaged for the victim, especially when the victim is a juvenile or was subjected to domestic violence, because the victim in such situations is clearly placed in a vulnerable position.

Recommended amendments:

In order to eliminate this handicap, the proposal is to amend criminal procedural legislation in the following manner:

Criminal Procedure Code of the Republic of Moldova No. 122-XV from 14.03.2003, //Official Monitor, 2003, No. 104-110/447 from 07.06.2003//, with subsequent amendments and completions, shall be amended and supplemented, as follows:

Article 69:

paragraph (1) is supplemented with point 13) and point 14) as follows:

„13) damaged party is a juvenile;

14) received the status of the damaged party in a case of domestic violence.”

paragraph (2) is supplemented with point 4) as follows:

„4) was recognized damaged party – in the case regulated by paragraph (1) points 13)-14).”

Article 70:

paragraph (3) point 2) after the words „and suspect, accused, defendant” is supplemented with the words „damaged party” and the existing text follows subsequently.



According to the provisions of the Law No. 45-XVI from 1 March 2007 on Preventing and Combating Family Violence, a specialist responsible for the prevention and combating of family violence shall be appointed within the rayon section/department for social assistance and family protection. Other local-level public services (general education, youth and sports departments; health protection bodies; administrative bodies of the interior) shall appoint persons responsible for prevention and combating of domestic violence, for coordination of specific activities within their institutions and for ensuring collaboration in the process of carrying out joint activities at the level of administrative-territorial unit, based on established collaboration procedures in the field of prevention and combating of domestic violence cases.

For this purpose, the Law No. 45 tasked local public administration authorities to create multi-disciplinary teams in order to ensure cooperation in the field of protection and support of victims against all forms of violence and of other persons involved, meaning other members of the family affected by violence.

In order to carry out the envisaged tasks, the Law No. 45 establishes concrete responsibilities for the competent structures, by taking into consideration their functional competencies and, at the same time, insisting on the need to ensure cooperation of efforts aimed at offering a consolidated answer to such provocations.

Therefore, according to Article 8 of the Law, social assistance and family protection sections/departments collaborate with the administrative bodies of the interior to identify persons inclined to commit acts of domestic violence, conduct psychological and psycho-social counselling of victims by their own means or by referring the case to the specialists of rehabilitation centres, carry out informational programs to prevent domestic violence, jointly with other empowered authorities and in collaboration with non-governmental organizations in the field. General education, youth

and sports departments, jointly with other authorities with competence in the field and in collaboration with field non-governmental organizations, conduct educational programs for parents and children on preventing and combating domestic violence, notify competent authorities, guardianship authorities and police about cases of domestic violence, including cases of domestic violence against children. Medical institutions of all types ensure medical counselling and assistance for victims, carry out programs and services for aggressors; including for treatment of alcoholism, detoxification, psycho-therapeutic treatment, etc. The administrative bodies of the interior examine requests and notifications submitted by citizens, medical institutions, forensic centres and other institutions that deal with conflicts within families, acts of violence, death threats or the immediate danger of the same, explain the victim's rights to the victim and, at the victim's request, assist them with placement in a rehabilitation centre, inform the victim of their right to free legal assistance, obtain a protective order from the court in emergency situations, based on the victim's request or notification of the case; ensure the enforcement of the protective order.

According to the Report "Implementation of the Republic of Moldova's Domestic Violence Legislation" elaborated by the Advocates for Human Rights, Women's Law Centre and Bulgarian Gender Research Foundation, Moldova's multi-disciplinary teams and unique National Referral System, which was officially expanded in 2008 to also serve victims of domestic violence, have great potential to promote victim safety. Therefore, after an initial meeting of the victim with a social assistant, the National Referral System assigns a multi-disciplinary team to a victim depending on her specific needs. The multi-disciplinary team is chosen from a standing commission made up of the social assistance directorate representative, an employment agency representative, a civil documents agency representative, a medical representative, the police, a prosecutor, a lawyer, a psychologist, and a teacher. Depending on the circumstances of the case, a multi-disciplinary team for a particular victim is formed, consisting of one to three relevant professionals. The multi-disciplinary teams meet about the case more



frequently when the case is active, sometimes several times per week.

Regretfully, multi-disciplinary teams have been created at the village and rayon level only in five pilot areas, but in other areas, multi-disciplinary teams exist only at the district level. Some multi-disciplinary teams are mobile and travel to domestic violence cases in remote villages. Even so, there were revealed numerous examples of positive responses within the multi-disciplinary teams.

Despite the positive results of the National Referral System and the multi-disciplinary teams, limited resources and bureaucracy make them sometimes inaccessible, the fact that diminishes their potential effectiveness.

The community centres, capable of providing social assistant services, psychological and medical services, etc. and a location for the multi-disciplinary teams to work separately with victims and perpetrator, function only under projects, and their number is extremely limited at the country level. For this reason, victims must often travel to larger cities for specialized help. On the other hand, multi-disciplinary teams are inexistent or are less effective and active in the larger cities.

According to Article 8 paragraph (6) letter e) from the Law 45, the administrative bodies of the interior are responsible to perform activities aimed at preventing repeated acts of domestic violence. These provisions are usually interpreted by the police collaborators in detriment of the principle related to prompt and aggressive reaction, aimed at sanctioning the aggressor. According to the established practice, when a case of domestic violence is registered for the first time, and sometimes also subsequently, police collaborators limit themselves only to prophylactic discussions with aggressors, warn them that acts of violence will not be accepted in future, then leave, and thus victims are left in conditions of potential danger that violence will happen again.

#### Recommended amendments:

In order to ensure a more efficient involvement of the specialists appointed within competent local structures in cases of domestic violence, we consider opportune to supplement legislation, in order to detail their tasks and responsibilities when examining such cases.

The Law No. 45-XVI from 1 March 2007 on Preventing and Combating Family Violence (Official Monitor of the Republic of Moldova, 2008, No. 55-56/178 from 18.03.2008), with subsequent amendments and completions, shall be supplemented and amended as follows:

#### Article 8:

in paragraph (2), letter b) the text “in the field” is replaced with the phrase “, whose activity is coordinated by the responsible specialist from the social assistance and family protection section/department”;

The Article is supplemented with new paragraphs, paragraph (7) and paragraph (8), in the following version:

“(7) Persons appointed under conditions of Article 7 paragraph (4) and paragraph (5) from the current law shall:

- a) identify potential families affected by violence and ensure registration of cases of domestic violence from the respective region;
- b) identify situations of risk and direct victims of domestic violence to specialised services;
- c) ensure exchange of information with other persons involved in the examination of the case;
- d) report about the identified case and the measures taken to the social assistant, and notify cases of violence against children to the guardianship authority;
- e) offer necessary support in the process of criminal investigation of cases of domestic violence to police bodies;
- f) offer legal, psychological, psychiatric services to the victims and aggressors, as well as provide services integrated into centres for rehabilitation of victims and services aimed at rehabilitation of aggressors;
- g) upon request, offer the results of the findings related to the cases of domestic violence to the judicial bodies and law enforcement bodies, as well as to the parties who are in conflict or their representatives;

- h) monitor the observance by aggressor of the measures aimed at victim protection;
- i) carry out other actions, according to their competence, aimed at preventing and combating the acts of violence, ensuring efficient protection of the victims of domestic violence.

(8). Being a member of the multi-disciplinary team, specialist:

- a) is responsible for the results of the carried out work;
- b) ensures confidentiality of information concerning the identity and private life of the victim;
- c) efficiently collaborates with the members of the team;
- d) participates during the meetings of the team;
- e) performs the assigned work in due time.”.

According to Article 11 of the Law No. 45, the defence of the rights and legitimate interests of the victim of domestic violence is guaranteed, including of the right to assistance for physical, mental and social recovery; to private life and confidentiality of information; to primary and qualified free legal assistance according to the legislation on state guaranteed legal aid; to medical assistance in accordance with the Law on Mandatory Medical Assistance Insurance.

Official persons, other persons who are aware about the existence of a danger for the life and health of a potential victim must communicate this fact to the competent authorities responsible for prevention and combating of domestic violence. Competent authorities responsible for prevention and combating of domestic violence must react promptly to any notification and inform the victims about their rights, about authorities and institutions responsible for prevention and combating of domestic violence; about the type of services and organizations where they can ask for help; about the assistance available to them; where and how they can submit a complaint and receive protection; to what extent and under what conditions they have access to legal consultancy or assistance; about cancelation of the protective order, etc.

Legal references stating that providing of protective services and assistance to the victim is not conditioned by his/her desire to make declarations and participate during proceedings related to judicial prosecution of the aggressor are relevant here.

Nevertheless, legal provisions mentioned above continue to be, to a certain extent, declarative, in the part concerning providing adequate conditions for an efficient protection of the victims of violence, both at the segment of medical assistance, because of the lack in special legislative acts of certain concrete regulations at this chapter, as well as concerning ensuring primary and qualified legal assistance.

According to the Report “Implementation of the Republic of Moldova’s Domestic Violence Legislation”, despite efforts to provide legal assistance to victims of domestic violence, victims are not receiving adequate legal assistance. Free legal aid is limited, especially because state financial support for legal assistance is not adequate. Despite guarantees provided for by the Law No. 45, domestic violence victims rarely receive free legal assistance, and the main reasons are requirement for applicants to meet financial eligibility requirements, paralegals are not yet linked to the National Referral Mechanism <sup>1</sup>, as well as other organizational and financial problems.

Very often, victims of domestic violence do not have medical insurance and cannot afford to pay for medical services, because Government covers only a small part of the respective costs. It can be also difficult for victims to benefit of forensic examination. The costs of such an examination are cumbersome for victims,

<sup>1</sup> According to Article 19 paragraph (2) of the Law on State-Guaranteed Legal Aid No. 198 from 26.07.2007//Official Monitor 157-160/614, 05.10.2007//, qualified legal assistance can be requested any time, at any stage of criminal proceedings, and in civil cases, also before initiating the proceedings, however this hardly happens in practice.

especially for those coming from rural areas, who have to also cover additional transport costs.

#### Recommended amendments:

In order to improve the mechanism for protection of the victims of domestic violence it is recommended to amend certain legislative acts, as follows:

Law No. 45-XVI from 1 March 2007 on Preventing and Combating Family Violence (Official Monitor of the Republic of Moldova, 2008, No. 55-56/178 from 18.03.2008), with subsequent amendments and additions, is supplemented and amended as follows:

#### Article 8:

in paragraph (2), letter d) shall be formulated as follows:

“d) contributes to the prevention of domestic violence by including the issue of preventing and combating domestic violence in local development programs; collaborating during implementation of the system related to registration of cases of domestic violence; reserving resources from the local budget for organization of studies and informational campaigns aimed at combating domestic violence, supporting social services and other measures aimed at providing assistance to the victims of domestic violence, including bearing the costs related to receiving documents on forensic examination, in serious cases”;

Article 11 is supplemented with a new paragraph, paragraph (8), which shall have the following text:

“(8) Victim of domestic violence is entitled to request from the aggressor and/or state authorities, under conditions of the law, reparation of the pecuniary and moral damage caused by injury inflicted to the bodily or health integrity, as well as by the failure to ensure necessary protection.”

Article 13, paragraph (3) shall be formulated as follows:

“(3) Court fees shall not be paid for applications submitted to the court concerning issuance of the protective order. Victims of domestic violence are also fully exempted from payment of court costs.”

The Civil Procedure Code of the Republic of Moldova No. 225-XV from 30 May 2003 (Official Monitor of the Republic of Moldova, 2003, No. 111-115/451 from 12.06.2003), with subsequent amendments and additions, is supplemented as follows:

#### Article 77:

in paragraph (1) letter c) the phrase „Articles 304 and 316” is replaced with the phrase „Articles 304, 316 and 3183”;

Article 92 is supplemented with a new paragraph, paragraph (3), in the following version:

“(3) Victim of domestic violence is exempted from paying the costs related to the examination of the request concerning application of protective measures. All payments in these cases are carried out from the budget.”;

Article 3183 is supplemented with a new paragraph, paragraph (11), in the following version:

“(11) In order to defend the interests of the victim during court examination of the case, the court shall ask the coordinator of the territorial office of National Council for State-Guaranteed Legal Aid for appointment of a lawyer. Legal assistance in such cases is provided for free.”

#### Article 19 Information

*Parties shall take the necessary legislative or other measures to ensure that victims receive adequate and timely information on available support services and legal measures in a language they understand.*

According to the legislation, during criminal proceedings and examination of civil cases <sup>1</sup>, a person who does not speak the state language has the right to get acquainted with all the documents and the materials of the case, as well as to speak before the criminal prosecution body and the court through an interpreter. Also, victim/damaged party have the right to be informed by the criminal prosecution body, and the court through an interpreter. Also, victim/damaged party have the right to be informed by the criminal prosecution body, prosecutor, or, by the court, about settlement of his/her complaint, about all decisions adopted with reference to his/her rights and interests, to get, at his/her request, free copies of these decisions, as well as of the decisions concerning

<sup>1</sup> Criminal Procedure Code, Article 16; Civil Procedure Code, Article 24.

cessation or dismissal of the proceedings in the respective case, non-initiation of criminal prosecution, a copy of the sentence, of the decision or of other final court judgment.

Also, according to the Law No. 45-XVI on Preventing and Combating Family Violence, authorities and institutions responsible for preventing and combating family violence, shall conduct psychological and psycho-social counselling of victims, inform the victim of their right to free legal assistance, react promptly to any such notification and inform victims about their rights, about authorities and institutions responsible for preventing and combating family violence; about type of services and organizations where they can address for help; about assistance available for them; where and how they can submit a complaint; about the procedure that follows after submitting complaint and their role after such procedures; how they can receive protection; to what extent and under what conditions they have access to consultancy or legal assistance; if there is a danger for their life and health in case of release of the detained or convicted person; if protective order was cancelled, etc.

Departmental activity of informing victims of domestic violence about the ways of interacting with competent authorities and institutions in order to receive the necessary assistance and counselling services is regulated through Instructions<sup>1</sup>.

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<sup>1</sup> Methodological Instructions concerning intervention of internal affairs bodies in prevention and combating of domestic violence cases, approved through the Order of the Minister of Internal Affairs No. 275 from 14.08.2012; Instructions concerning intervention of social assistance and family protection sections/departments in cases of domestic violence, approved through the Order of the Minister of Labour, Social Protection and Family No. 22 from 09.02.2012; Instructions concerning exercise by local public administration of legal duties in the field of preventing and combating domestic violence, approved through the Order of the Minister of Labour, Social Protection and Family No.105 from 02.08.2012, etc.

## Article 20.

### General support services

1. *Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.*
2. *Parties shall take the necessary legislative or other measures to ensure that victims have access to health care and social services and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services.*

According to the provisions of the Law No.45-XVI from 1 March 2007 on Preventing and Combating Family Violence, authorities responsible for preventing and combating family violence (social assistance and family protection rayon sections/departments, general education, youth and sports departments, healthcare organizations; internal affairs bodies) shall designate persons responsible for preventing and combating family violence, responsible for coordination of specific activities within its institution and for collaboration in carrying out joint activities at the level of administrative territory, based on the procedures established through cooperation in preventing and combating cases of domestic violence. Competent structures have concrete well-established tasks, which depend on the functional competencies aimed at offering a consolidated answer in order to combat domestic violence.

Therefore, according to Article 8 of the Law, social assistance and family protection sections/departments collaborate with the internal affairs bodies to identify persons inclined to commit acts of family violence, conduct psychological and psycho-social counselling of victims, by their own means or by referring the case to the specialists from rehabilitation centres. General education, youth and sports departments jointly with other authorities with competence in the field and

in collaboration with field non-governmental organizations, conduct educational programs for parents and children on preventing and combating family violence. Medical institutions of all types and levels ensure medical counselling and assistance to the victims, carry out programs and services for aggressors; including psycho-therapeutic treatment, etc. Internal affairs bodies assist victims with placement in a rehabilitation centre, inform the victim of their right to free legal assistance, etc.

Article 10 of the Law on Preventing and Combating Family Violence regulates conditions and procedure for establishment of centres for victim rehabilitation, determining that the costs of the centre's activity are to be covered from the founder's general budget and from other sources. Centres for victim rehabilitation ensure protection and accommodation for the victim, until the resolution of the family situation, but for no more than 3 months; offer psychological, pedagogical, social and legal assistance and medical care for the family members who are or might become victims; in emergency cases, when the isolation of the aggressor is necessary as a protective measure, undertake, at the victim's request, the placement of the victim in the centre for victim rehabilitation; study and summarize the causes and circumstances of the acts of family violence, etc.

According to Article 11 of the Law No. 45, protection of legitimate rights and interests of the victim of domestic violence shall be guaranteed, including the right to assistance aimed at physical, mental and social rehabilitation, the right to privacy and confidentiality of information, to free of charge primary and proficient legal assistance, in accordance with legislation on free legal aid guaranteed by the state and on medical assistance.

Official persons and other persons who are aware of the threat or danger posed to the life or health of a potential victim must notify this fact to the authorities responsible for preventing and combating domestic

violence. Bodies responsible for prevention and combating of domestic violence must react promptly to any request and inform victims about their rights, etc.

A Framework-Regulation for the Organization and Functioning of the Centres for Rehabilitation of Victims of Domestic Violence was approved through the Decision of the Government No. 129 from 22.02.2010<sup>1</sup>. The Framework-Regulation defines the Centre for rehabilitation of victims of domestic violence as a specialized institution that offers temporary placement and assistance to the victims of domestic violence, in accordance with the legislation in force and with the minimum quality standards<sup>2</sup>. The aim of the Centre is to offer temporary placement, for a period up to 3 months, assistance to the victims of domestic violence, socialization and reintegration in the family and/or community. The Centre's object of activity is to offer, free of charge, specialized social services, and answer to the real and specific needs of each assisted person: ensure sheltering, protection and temporary placement to victims of domestic violence; offer legal, social, psychological and urgent medical assistance; offer informational support for finding a dwelling, a pre-school institution or a pre-university institution; facilitate access and inform the beneficiary about the social protection system, etc. The referral of the beneficiary to other specialized community services and reintegration in the family and/or community shall be coordinated with the multidisciplinary team. The quality of services provided by the Centre shall be evaluated on a regular basis by the body responsible for accreditation of social services. After withdrawal of the beneficiary from the Centre, the conciliation, accompanying and emotional support services are left at the discretion of the beneficiary until his/her full integration in the family and/or community.

<sup>1</sup> Official Monitor No. 30-31/176 from 26.02.2010.

<sup>2</sup> Minimum Quality Standards on Social Services provided to the Victims of Domestic Violence were approved through the Decision of the Government No. 1200 from 23.12.2010 // Official Monitor No. 259-263/1320 from 31.12.2010.

Nevertheless, current normative framework remains inefficient in what concerns offering adequate conditions for an efficient protection of the victims of violence. In many cases, victims have to return back to their families after the assistance offered by the Centres for assistance and rehabilitation, because of the lack of a social housing where they could live independently, and therefore they are not able to support themselves when they do not have a job.

In order to improve management of domestic violence cases, a number of recommendations for amendment and completion of legislative framework have been formulated.

On the other hand, we need to mention that in order to eliminate psychological consequences of the acts of abuse and violence, it is necessary to develop a network of services aimed at re-socialization and rehabilitation of victims, which are currently provided mainly by non-governmental organizations that offer professional psychological support and assistance, also accompanied by temporary placement of the people in difficulty.

#### Article 21.

##### Assistance in individual/collective complaints

*Parties shall ensure that victims have information on and access to applicable regional and international individual/collective complaints mechanisms. Parties shall promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints.*

Violence was always part of human condition, and its impact is visible everywhere in the world. Or, because domestic violence occurs in a private environment, proportions of violence are very hard to estimate.

A number of important documents have been elaborated and adopted on international level, and a number of actions aimed at combating domestic violence have been carried out generally and against women in particular.

For instance, the Recommendation 12/1992 of the UN Committee that monitors application of the

Convention on the Elimination of all Forms of Discrimination against Women mentions the need to take measures in order to ensure protection of women against any form of violence that happens in the family, at the workplace or in the society.

In its Recommendation 1582/2002, Council of Europe calls on the member states to intervene necessarily in order to prevent, investigate and punish all acts of domestic violence, if they were committed by the state authorities or private persons, and to provide protection to its victims.

Republic of Moldova is a party to the UN Convention from 1979 on the Elimination of all Forms of Discrimination against Women (CEDAW) from 1 July 1994. The UN Committee on the Elimination of *Discrimination against Women*, set up based on CEDAW, monitors application of the Convention by the UN member states, adopts general recommendations and decisions on communicated cases. However, it does not have an enforcement mechanism.

Optional Protocol to CEDAW Convention from 1999, ratified by the Republic of Moldova on 28 February 2006, invests the UN Committee on the Elimination of Discrimination against Women with the right to receive and examine complaints addressed against states for violation of the Convention provisions.

When a complaint is addressed, Committee has the competence to formulate recommendations concerning consolidation of national initiatives for preventing violence against women. Recommendations of the Committee may be used before local national courts as a source of judicial practice.

It should however be mentioned that we are not aware of any case where citizens of the Republic of Moldova would request involvement of the UN Committee on the Elimination of *Discrimination against Women*.

We cannot, however, tell the same about the European Court of Human Rights, which is often addressed by the citizens of the Republic of Moldova with the request to decide on the alleged infringements by the authorities of certain rights (right to life (Article 2);



protection against acts of torture (Article 3); protection of private life and family (Article 8), etc.) proclaimed by the European Convention for the Protection of Human Rights and Fundamental Freedoms from 1950, that entered into force for the Republic of Moldova on 12 September 1997.

Judgments of the European Court on Human Rights represent an integral part of the national legislative framework and their enforcement is mandatory for the Republic of Moldova.

Lately, a number of applications were submitted to the European Court on Human Rights against the Republic of Moldova on the issue of domestic violence, which were already communicated to the Government of the Republic of Moldova <sup>1</sup>.

#### Article 22. Specialist support services

1. *Parties shall take the necessary legislative or other measures to provide or arrange for, in an adequate geographical distribution, immediate, short- and long-term specialist support services to any victim subjected to any of the acts of violence covered by the scope of this Convention.*
2. *Parties shall provide or arrange for specialist women's support services to all women victims of violence and their children.*

In accordance with the provisions of Article 11 of the Law No. 45-XVI from 1 March 2007 on Preventing and Combating Family Violence, the right of the victim to benefit from counselling activities for the physical, psychological and social rehabilitation is guaranteed. In this regard, Article 10 of the Law on Preventing and Combating Family Violence establishes conditions and procedure for setting up centres for rehabilitation of victims. The centre for rehabilitation of victims provides protection and accommodation to the victims, offers psychological, pedagogical, social and legal assistance, as well as medical care to the members of the family who are or who can be victims, etc.

<sup>1</sup> See the case T.M and C.M v. Moldova, Mudric v. Moldova, Eremia v. Moldova, Munteanu v. Moldova, and others.

Framework-Regulation for the Organization and Functioning of the Centres for Rehabilitation of Victims of Domestic Violence defines the Centre for rehabilitation of victims of domestic violence as a specialized institution that offers temporary placement and assistance to the victims of domestic violence, in accordance with the legislation in force and with the minimum quality standards. The aim of the Centre is to offer assistance to victims of domestic violence, socialization and reintegration in the family and/or community. The Centre's object of activity is to offer, free of charge, specialized social services, and answer to the real and specific needs of each assisted person: ensure sheltering, protection and temporary placement to victims of domestic violence; offer legal, social, psychological and urgent medical assistance, etc. The quality of services provided by the Centre shall be evaluated on a regular basis by the body responsible for accreditation of social services.

Currently, there is a need to develop a network of services aimed at re-socialization and rehabilitation of victims, at present these services are mainly provided by non-governmental organizations that provide professional support and assistance, accompanied also by the temporary placement of people in difficulty.

In order to ensure quality and efficiency of the system of social services, Government adopted, through its Decision No. 1512 from 31.12.2008, a National program on creating an integrated system of social services 2008-2012 <sup>2</sup>, that regulates a comprehensive policy concerning support of people in difficulty by providing efficient and high quality social services. These services aim at offering short-term and long-term support to people, in order to satisfy their social needs and reduce their social exclusion. The program regulates the need to create an integrated system of social services. Regrettably, the objectives set were not implemented yet, and the main reason for this is the lack of financial coverage, as well as insufficient stimulation of the partnership between state and civil society.

<sup>2</sup> Official Monitor No.7-9/25 from 20.01.2009.



In order to overcome this situation, it was envisaged to develop a mechanism concerning procurement of social services, establishment of various partnerships between local public authorities and civil society and private sector, oriented towards development of new social services, etc.

### Article 23. Shelters

*Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.*

According to the Framework-Regulation for the Organization and Functioning of the Centres for Rehabilitation of Victims of Domestic Violence <sup>1</sup>, the Centre for rehabilitation of victims of domestic violence is a specialized institution that offers temporary placement and assistance to victims of domestic violence, in accordance with the legislation in force and with the minimum quality standards <sup>2</sup>. The Centre's object of activity is to offer, free of charge, specialized social services, and answer to the real and specific needs of each assisted person: ensure sheltering, protection and temporary placement to victims of domestic violence; offer legal, social, psychological and urgent medical assistance; offer informational support for finding a dwelling, a pre-school institution or a pre-university institution; facilitate access and inform the beneficiary about the social protection system, etc.

According to the Minimum Quality Standards for social services rendered to victims of domestic violence (Standard II), the Centre shall be located in settlements that may be accessed by transport, allow the organization of outside activities and provide access

<sup>1</sup> Official Monitor No. 30-31/176 from 26.02.2010.

<sup>2</sup> Minimum Quality Standards for social services rendered to victims of domestic violence were approved through the Decision of the Government No. 1200 from 23.12.2010 // Official Monitor No. 259-263/1320 from 31.12.2010.

to various community services: social, legal, medical, educational, professional, cultural, leisure etc.

Centre operates according to a special schedule (24/24 hours), based on the needs related to the placement, assistance, rehabilitation and reintegration of victims of domestic violence. In order to guarantee the safety and security of the beneficiaries, the whereabouts of newly created Centres shall not be known to the general public.

Admission of the victims of domestic violence to the Centre is performed based on the principle of non-discrimination (Standard IV). Nevertheless, placement of persons with infections in active forms (tuberculosis, malaria, contagious intestinal diseases and other contagious diseases) is prohibited, and persons with physical or mental disabilities shall be admitted to the Centre at the decision of the coordinator of the case and of the Centre manager, only after a preliminary evaluation and only if existing conditions fit the specific care needs.

Admission to the Centre is accomplished upon submission of the beneficiary's personal file by the territorial social assistance body and the internal affairs body. Beneficiary's referral by other local public administration authorities and other competent institutions is also allowed. In emergency cases, beneficiaries shall be accepted at any time.

Nevertheless, according to the Report "Implementation of the Republic of Moldova's Domestic Violence Legislation" elaborated by the Advocates for Human Rights, Women's Law Centre and Bulgarian Gender Research Foundation, a victim in crisis may become stalled in bureaucracy. Confusion over National Referral System procedure can delay a victim's acceptance into a shelter and access to services. Some social assistance departments consider themselves to be the only subject that can refer victims to the shelter through the National Referral System. The social assistant refuses to send a victim to the maternal centre without a time-consuming official placement. Therefore, difficulties in placement of the victim in emergency cases in the shelter sometimes persist,

and these situations need to be excluded by improving current procedures.

According to the findings of the same Study, there is only one NGO shelter in Moldova dedicated directly to the needs of domestic violence victims, and it is placed in Chişinău. The eight maternal centres in the Republic of Moldova primarily serve mothers with very young children who have no place to live, and not victims of domestic violence. Yet, these centres may be the nearest place of refuge for many domestic violence victims from the rayon. There is no common standard of assistance in the eight maternal centres, thus services available to domestic violence victims vary by location. In addition, some maternal centre employees lack knowledge about the specific needs of domestic violence victims.

The capacity of all types of shelters is very limited in the Republic of Moldova, and the capacity of the two national shelters is of only 36 beds. The total capacity of maternal centre in the country is approximately 106 beds for the entire Republic of Moldova. According to the United Nations, one dedicated shelter should exist for every 10,000 citizens.

#### Article 24. Telephone helplines

*Parties shall take the necessary legislative or other measures to set up state-wide round-the-clock (24/7) telephone helplines free of charge to provide advice to callers, confidentially or with due regard for their anonymity, in relation to all forms of violence covered by the scope of this Convention.*

Round-the-clock telephone helplines that provide qualitative protection and counselling services to the victims could represent an important remedy in the process of prevention and combating violence against victims. According to the legislation of the Republic of Moldova, victims of the acts of violence have the possibility to call round-the-clock only the police guard section that must intervene effectively in each case and ensure necessary protection in accordance with the legislation.

Currently, a hot line “Trust Line for Women” is operating within the International Centre “La Strada”, which can be accessed only 12 hours per day. Often, however, the need to access an urgent telephone helpline arises when the helpline is already closed.

Regretfully, state central and local public authorities established no hot line that could offer assistance and counselling services to the victims or potential victims, especially assistance and counselling to the victims of domestic violence.

In this regard, in order to improve national mechanism for protection of victims against ill-treatment, it is necessary, both within the family and outside the family, first of all to amend the relevant legal framework in order to regulate the need of establishing telephone hot lines, electronic networks, etc., and secondly to solve the problem of instituting the respective service, and thus offer opportunity to the victims or other persons who hold information to notify cases of violence, in order to involve police, as well as social assistance and protection bodies, and other relevant institutions.

It should be mentioned that the need to develop such services is also mentioned in the National Strategic Programme on Demographic Security of the Republic of Moldova (2011-2025)<sup>1</sup>. The respective policy document emphasizes specifically the need for governmental authorities to implement programs related to the education for family life, to prevention and intervention in cases of abuse and violence, including domestic violence that implies setting up of shelters, programs concerning management of victims of rape, telephone helplines, etc.

#### Recommended amendments:

Following the above-mentioned, we welcome the supplementation of Article 7 of the Law No. 45 with a norm that would imperatively establish the need

<sup>1</sup> National Strategic Programme on Demographic Security of the Republic of Moldova (2011-2025) was approved through the Decision of the Government No. 768 from 12.10.2011 // Official Monitor 182-186/851, 28.10.2011.

to set up telephone helpline/helplines for notification of cases of abuse and violence, as follows:

“(6) Central public authority responsible for promoting policies in the field of preventing and combating domestic violence shall ensure operation of free of charge round-the-clock telephone helpline, for identification of cases of violence. The respective service shall receive all calls, including anonymous calls. All appellants shall benefit from confidential counselling.

Emergency telephone helplines for notification of cases of violence can also be instituted by non-governmental organizations, including with support from state institutions, based on public-private partnership.”

#### Article 25. Support for victims of sexual violence

*Parties shall take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims.*

Legislation of the Republic of Moldova, as well as national institutional framework, does not regulate functioning of a network of public or private institutions specifically specialized to provide assistance to the victims of rape or other sexual violence acts committed within the family. The Law No. 123 on Social Services and the Law No. 45 on Preventing and Combating Family Violence also do not regulate this issue.

Framework-Regulation for the Organization and Functioning of the Centres for Rehabilitation of Victims of Domestic Violence establishes conditions and unique procedure of access to the assistance services for the victims of domestic violence, including of the victims of rape and other actions of sexual violence that happen within the family.

It should however be mentioned that the above-mentioned legal acts offer possibility to the beneficiaries to receive assistance according to an individual program

elaborated and established, as necessary, with participation of the victim.

Therefore, according to Minimum Quality Standards, assistance to the beneficiary is provided based on an individualized assistance plan that establishes the methodology of intervention and services adequate to the case. The individualized assistance plan, elaborated with direct participation of the beneficiary, is based on complex evaluation of the needs of the beneficiary and, when necessary, it can be reviewed in order to be adapted to the new social needs. The right of the beneficiaries to privacy and private life shall be ensured.

The centre shall offer only first aid in emergency situations. Primary and specialized medical assistance services shall be provided to the beneficiaries, as necessary, by territorial medical institutions, and medical assistance in emergency situations shall be provided by emergency services. In case of emergency admission, the beneficiary shall be placed in the centre through an isolator, where the initial examination and medical surveillance shall take place and necessary investigations shall be performed (Standard VII).

Psycho-social services shall be offered by a psychologist/social assistant/psychologist-pedagogue and shall include psychological counselling, psychological support and social support offered to the victims of domestic violence, with a view to ensure psychological rehabilitation and overcoming crisis (Standard VIII).

At the same time, considering conditions of admission in the centre (Standard IV) placement of persons with infections is prohibited. These provisions could however be interpreted as a legal ground for refusing placement in the Centre of victims infected with a venereal disease, as a result of rape or other sexual actions.

#### Article 26. Protection and support for child witnesses

*(1) Parties shall take the necessary legislative or other measures to ensure that in the provision of protection*

*and support services to victims, due account is taken of the rights and needs of child witnesses of all forms of violence covered by the scope of this Convention.*

*(2) Measures taken pursuant to this article shall include age-appropriate psychosocial counselling for child witnesses of all forms of violence covered by the scope of this Convention and shall give due regard to the best interests of the child.*

According to the Law on Child Rights No. 338-XIII from 15.12.94, protection of the child by the state represents a primary political, social and economical concern in the Republic of Moldova. The Law regulates the obligation of the state to ensure physical and spiritual health of the child, and to provide social protection to children who are placed in disadvantageous or extreme conditions. State shall also protect the inviolability of child's personality, protecting him/her from physical and mental violence, including from parents or their legal representatives.

The Criminal Procedure Code establishes a special way for hearing witnesses under the age of 14 in criminal cases related to sexual crimes, trafficking of children or domestic violence crimes, as well as in other cases where interests of justice or minor require. Therefore, in order to avoid any negative effect on the mental condition of the witness under the age of 14, the hearing in criminal cases from the category mentioned supra shall be carried out by the investigation judge in special places, equipped with the means of audio-video recording, through a psycho-pedagogue. When necessary, psycho-pedagogue has the right to reformulate the questions, in case they are formulated in a way that might traumatize the minor witness.

According to the Framework-Regulation for the Organization and Functioning of the Centres for Rehabilitation of Victims of Domestic Violence, the Centre's beneficiaries are, among others, mother-child/ children or father-child/children couples. The Centre's object of activity is to offer, free of charge, specialized social services, and answer to the real and specific needs of each assisted person, in accordance with the legislation in force and with the minimum quality standards. By offering non-formal education aimed

at assimilating the knowledge and skills necessary for social integration, the Centre is guided in its activity, among others, by the principle of respect for the superior interest of the child and his/her rights, as well as by the principle of respect for the child's opinion. The Centre shall offer, in the limits of its competence and depending on the needs of the beneficiaries, access of children to community educational services (school, kindergarten etc.) provided by the educational institutions from the community. Employees of the Centre shall ensure educational assistance to children during preparation of their homework.

Placement of children in the Centre is carried out in case of an imminent danger for their life and health and only when they are accompanied by their parent or their legal representative. Individual placement of children is not allowed.

#### **Article 27.** **Reporting**

*Parties shall take the necessary measures to encourage any person witness to the commission of acts of violence covered by the scope of this Convention or who has reasonable grounds to believe that such an act may be committed, or that further acts of violence are to be expected, to report this to the competent organisations or authorities.*

Concerning commission of the acts of family violence, the Law on Preventing and Combating Family Violence establishes that, any person who is aware of a danger to life or health for a potential victim must notify this fact to the authorities responsible for preventing and combating family violence. Authorities tasked with the prevention and combating of family violence shall be bound to react promptly to any request and to inform victims about their rights, about where and how can they lodge a complaint and obtain protection, etc. Except victims, claims of family violence may also be submitted, according to Article 12 of the Law No. 45, by family members, as well as by other persons who are aware of an imminent threat of or potential for acts of violence or of the occurrence of such acts.

As we can see, the Law No. 45 offers the possibility of communicating information about cases of violence to any person. Or, the current formulation of the norms evoked does not offer the necessary clarity and flexibility to motivate witnesses of acts of violence to communicate this information to the competent bodies. Provisions related to the need to submit a claim about occurrence of violent acts impose conditions, whose respect require additional effort and time, and at the same time, it does not offer confidentiality guarantees, the fact that also does not stimulate active civic behaviour.

In such conditions, we welcome amendment of the Law No. 45 by instituting some express regulations about the need to report information about the committed acts of violence or about imminent danger of their commission to the competent bodies. Moreover, we consider that it is not necessary to specify details about submission of the request and leave the way of communication under witness' discretion, either by submitting a request or by telephone, etc.

Recommended amendments:

Therefore, we welcome the following regulation in the Law No. 45:

**Any person who holds information about occurrence of acts of domestic violence or about an imminent threat of a potential act of violence, shall communicate this fact to the competent authorities responsible for preventing and combating family violence.**

Actions of violence, including those committed outside the family, with an increased degree of social danger, are regulated by several Articles of the Criminal Code. According to the provisions of the Criminal Procedure Code, the criminal prosecution body may be informed about commission or preparation for committing a crime regulated by the Criminal Code, through denunciation or complaint submitted by an individual or a legal entity. The person who submits denunciation shall be warned about criminal liability in case of slanderous denunciation. The complaint can be submitted both by the victim, as well as by one of the spouses for another spouse or by the adult child for

his/her parents. Victim may declare that a complaint does not belong to him/her.

Criminal prosecution body must receive complaints and denunciations referring to the committed, prepared crimes or crimes in the stage of preparation, even if the case does not fall in the competence of this body. The refusal of the criminal prosecution body to receive the complaint or the denunciation can be challenged immediately to the investigation judge, but not later than 5 days from the moment when the refusal occurred. In case when a criminal prosecution officer, collaborator of the verification bodies or prosecutor discovers a crime or finds reasonable grounds to believe that a crime has been committed, they shall immediately order registration of ex-officio start of criminal prosecution.

#### **Article 28.** **Reporting by professionals**

*Parties shall take the necessary measures to ensure that the confidentiality rules imposed by internal law on certain professionals do not constitute an obstacle to the possibility, under appropriate conditions, of their reporting to the competent organisations or authorities if they have reasonable grounds to believe that a serious act of violence covered by the scope of this Convention, has been committed and further serious acts of violence are to be expected.*

Concerning the commission of the acts of family violence, Article 11 of the Law on Preventing and Combating Family Violence establishes that responsible persons who are aware of a threat or danger to the life or health of a potential victim must notify the case to the authorities responsible for preventing and combating family violence. Bodies tasked with the prevention and combating of family violence shall be bound to react promptly to any request and to inform victims about their rights, about where and how they can lodge a complaint and obtain protection, etc. According to Article 12 of the Law No. 45, claims about commission of acts of family violence might be submitted by responsible persons and professionals who come into contact with the family, the guardianship

authority, other persons who are aware of an imminent threat of or potential for acts of violence or of the occurrence of such acts.

According to the Framework-Regulation for the Organization and Functioning of the Centres for Rehabilitation of Victims of Domestic Violence, the personnel of the Centre can inform competent authorities about commission of acts of family violence only with the consent of the victim who shall be preliminary informed.

According to the Minimum Quality Standards for social services rendered to victims of domestic violence, when cases of family violence are notified, centres shall work together with territorial police bodies, in accordance with effective legislation. Information obtained is deemed confidential and may be transmitted by the manager to the authorities outside the institution only with the express consent of the beneficiary. Cases when the beneficiaries' life and health is in danger or when non-disclosure of such information shall represent a disadvantage to the beneficiaries shall be treated as exceptions.

#### Recommended amendments:

Specifications from governmental normative acts mentioned supra are not found in the Law No. 45, the fact that requires introducing some amendments in the respective law, in the following manner:

Responsible persons and professionals who have an obligation to ensure confidentiality must report about commission of the acts of family violence dangerous for victim's life and health or about imminent danger of occurrence of such serious acts of violence to the competent authorities. In all other cases, reporting shall be done only with the victim's consent.

All cases of violence against children must be reported, and consent of the victim or guardianship authority is not necessary.

The respective amendments ensure corroboration with similar regulations from other relevant legislative acts vis-à-vis the subject addressed.

Therefore, the Law on Social Services<sup>1</sup> requires collaborators of instructive-educational, public medical-sanitary institutions, as well as institutions providing social services, police and other competent bodies that hold information about the necessity of providing social services to a person/family, to immediately inform, within 24 hours, the social assistance unit located at the person's/family's place of residence.

According to the Law on Patient's Rights and Responsibilities<sup>2</sup>, all information concerning the identity and condition of the patient, his/her diagnosis and treatment shall be deemed confidential and need to be protected also after his/her death. Confidentiality of information concerning a request for medical assistance, as well as examination and treatment shall be ensured by the doctor and specialists involved in providing health services, as well as by other persons to whom the respective information became known as a result of exercising their professional and service duties. Information which is considered confidential may be disclosed only with the explicit consent of the patient or when the law expressly requires such a disclosure. Presentation of confidential information without the consent of the patient or his/her legal representative is allowed only upon motivated request of the criminal prosecution body and the court in relation to carrying out criminal investigation or trial, according to the legislation; and when there are justified reasons to believe that damage inflicted to person's health resulted from illegal or criminal actions, in such case information follows to be submitted to the competent law bodies.

1 Article 14 of the Law on Social Services No.123 from 18.06.2010 //Official Monitor 155-158/541 from 03.09.2010.

2 Article 12 of the Law on the Patient's Rights and Responsibilities No. 263 from 27.10.2005 //Official Monitor 176-181/867 from 30.12.2005.

According to the law on Personal Data, No. 133 from 08.07.2011<sup>1</sup>, processing of personal data is carried out with the consent of the subject to whom personal data belongs. The consent of the subject to whom personal data belongs is not required in cases when processing is necessary for carrying out an obligation of the operator according to the provisions of the law; as well as for protecting life, physical integrity or health of the subject to whom personal data belongs, etc.

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<sup>1</sup> Law on Protection of Personal Data No. 133 from 08.07.2011 // Official Monitor 170-175/492 from 14.10.2011.



# CAHVIO CHAPTER V

## SUBSTANTIVE LAW

### Article 29.

#### Civil lawsuits and remedies

1. *Parties shall take the necessary legislative or other measures to provide victims with adequate civil remedies against the perpetrator.*
2. *Parties shall take the necessary legislative or other measures to provide victims, in accordance with the general principles of international law, with adequate civil remedies against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers.*

Civil legislation of the Republic of Moldova is based on the recognition of the need to freely exercise civil rights, to guarantee remedy of violated rights and judicial protection of the person <sup>1</sup>.

According to Article 1398 of the Civil Code <sup>2</sup>, a person who commits an illegal and imputable act against another person is bound to compensate him/her for patrimonial damage caused, and, in cases provided by law, also for the moral damage caused by action or omission.

Civil Code establishes liability for damage caused by bodily injury or other injury to health, in case of death of injured person, as well as establishes the manner of paying compensation for damage caused <sup>3</sup>.

Therefore, in case of bodily injury or other injury to health, the author of the damage is bound to offer

<sup>1</sup> Article 1 from the Civil Code. Book one – General Provisions (Article 1-283) 1107/06.06.2002 // Official Monitor 82-86/661, 22.06.2002.

<sup>2</sup> Civil Code. Book three – Obligations (Article 512-1431).

<sup>3</sup> Ibidem, Article 1418-1421.

compensation to the injured person for salary or income lost as a result of loss or reduction of the work ability, as well as for costs incurred in relation to health injury – treatment, additional food, prosthesis, care, procurement of a special vehicle, professional retraining etc. In case of death of the person as a consequence of grave bodily injury or other injury to health, the right to compensation belongs to persons who are not able to work and to whom the deceased provided maintenance or who, on the date of his/her death, were entitled to maintenance, as well as other to persons under conditions of the law. The payment of compensation for damage caused by bodily injury, by other health injury or by death shall be made in monthly instalments. Compensation for costs to be incurred due to bodily injury or other health injury may be set beforehand, based on the conclusion of the competent medical body, including payment in advance for necessary goods and services, such as sanatorium ticket, travel tickets, special transportation means etc. Upon request of the person entitled to receive compensation for the damage caused by bodily injury, by other health injury or by death, the court may establish payment of compensation as a lump sum for a maximum period of 3 years, when there are justified reasons and having regard of the possibilities of the liable person. Such reasons may represent: departure of the creditor or debtor abroad for a longer period of time, difficult financial situation of the damaged person, receiving non-constant income by the debtor etc. Where, due to bodily injury or other health injury, the work capacity decreased later as compared to the work capacity, which the injured person had at the moment of awarding compensation, the person is entitled to demand an according increase in compensation amount. Amounts owed as compensation for damage caused by bodily injury, by other health injury or by death, shall be indexed in accordance with the law.

of the material situation of the injured person and of the author of the damage, as well as of other circumstances, the court is entitled to bind the latter to compensate the damage in whole or in part. The author of the damage however shall not be liberated from liability if he/she was responsible of getting into such condition due to consuming alcohol, drugs or other substances affecting mental functions or due to any other cause.

Civil Code also establishes liability for damage caused by public authority or by official, as well as liability of the state for damage caused by actions of bodies of criminal investigation, preliminary inquiry, prosecutor's office and courts<sup>1</sup>.

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<sup>1</sup> Article 1404. Liability for Damage Caused by Public Authority or by Official

- (1) Damage caused by an illegal administrative act or by non-solving of a request within the legal term by the public authority or an official from that authority shall be compensated for in whole by the public authority. The official shall be jointly and severally liable in case of wilful conduct or gross negligence.
- (2) Natural persons are entitled to demand compensation for moral damage caused by actions shown at paragraph (1).
- (3) The obligation to compensate for the damage does not arise inasmuch as the injured person omitted, wilfully or by gross negligence, to remove the damage through legal means.
- (4) Where the public authority has an obligation imposed by an act adopted with a view to ensuring protection against the danger of causation of certain damage, the authority shall be held liable for damage of this kind, caused or not prevented by failure to perform the obligation, save for cases when the public authority proves that it attempted to perform with reasonable diligence.
- (5) The public authority does not bear liability for damage caused by adoption of a normative act or omission to adopt it, or by omission to put a law into application.

Article 1405. State's Liability for Damage Caused by Actions of Bodies of Criminal Investigation, Preliminary Inquiry, Prosecutor's Office and Courts

- (1) The damage caused to the natural person by illegal conviction, illegal imputation of criminal liability, illegal application of preventive measures under the form of preventive arrest or written declaration not to leave the respective locality, by illegal application of arrest or correctional labour as administrative sanction, shall be compensated for entirely by the state, regardless of the fault of officials from the bodies of

According to Article 1422 of the Civil Code, where the person were inflicted moral damage (mental or physical suffering) by acts that attempted to his/her extra-patrimonial rights, as well as in other cases provided by law, the court is entitled to bind the liable person to compensate the damage in monetary equivalent. The moral damage shall be compensated regardless of the existence and extent of material damage. Compensation for moral damage caused by violation of patrimonial rights is admitted only in cases expressly regulated by law. The right to pecuniary compensation for moral damage belongs both to persons directly damaged, as well as to persons close to them. It is also possible to award pecuniary compensation for affective moral damage caused to third persons who are close to the damaged person, or who have affective or family relationship with the damaged person.

The amount of compensation for moral damage shall be determined by the court contingent on the type and gravity of mental and physical suffering caused to the injured person, the degree of the guilt of the author of the damage where the guilt is a condition of liability, and the extent to which such compensation may bring satisfaction to the injured person. The type and gravity of mental or physical suffering shall be assessed by the court, having regard of the circumstances under which the damage was caused, as well as the social status of the injured person<sup>2</sup>.

The court establishes the type of compensation contingent on the circumstances<sup>3</sup>. When adopting the decision regarding compensation for damage, the court will bind the author of the damage to repair the entire damage caused through an equivalent amount, contingent on the extent of the damage on the date of judgement issuance

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criminal investigation, preliminary inquiry, prosecutor's office or courts.

- (2) The state shall be exonerated from liability where the injured person wilfully and voluntarily contributed to the damage by confession.

<sup>2</sup> Civil Code. Book three, Article 1423.

<sup>3</sup> Ibidem, Article 1416.

(the author of the damage is bound to cover not just the real damage, but also the benefit lost by the damaged person). The damaged person may ask for additional compensation for damage that arose after delivery of the respective judgment. The compensation for damage in monetary equivalent shall be made by collection of a lump sum in favour of the injured person or by establishing a periodical payment.

The Law No. 45 does not adequately regulate the necessary guarantees for the victim of family violence concerning implementation of the right to reparation of pecuniary and moral damage, which could enhance his/her safety against violent and discriminatory acts. Article 11 of the Law No. 45, related to the ways of ensuring the right to protection of the victim of family violence, does not indicate anything in this regard.

In order to ensure efficient application of civil legislation that guarantees the right of victims of family violence to reparation of patrimonial damage, and especially moral damage, it is necessary to amend the Law No. 45 in order to expressly establish their right to reparation of pecuniary and moral damage, caused by actions of the aggressor or following omissions in the activity of state authorities.

#### Recommended amendments:

Following the above-mentioned, it is recommended to amend Article 11 of the Law No. 45, by supplementing it with a new paragraph, paragraph (8), as follows:

**“(8) Victim of family violence shall be entitled to request the aggressor, or, when necessary, and/or authorities of the state, for reparation, under conditions of the law, of the material and moral damage caused by acts of violence and/or resulting from failure to ensure the necessary protection”.**

#### Article 30.

##### Compensation

1. *Parties shall take the necessary legislative or other measures to ensure that victims have the right to claim compensation from perpetrators for any of the offences established in accordance with this Convention.*

2. *Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health, to the extent that the damage is not covered by other sources such as the perpetrator, insurance or State-funded health and social provisions. This does not preclude Parties from claiming regress for compensation awarded from the perpetrator, as long as due regard is paid to the victim's safety.*
3. *Measures taken pursuant to paragraph 2 shall ensure the granting of compensation within a reasonable time.*

According to Article 1418 of the Civil Code, in case of bodily injury or other injury to health, the author of the damage is bound to offer compensation to the injured person for salary or income lost as a result of loss or reduction of the work ability, as well as for costs incurred in relation to health injury – treatment, additional food, prosthesis, care, procurement of a special vehicle, professional retraining etc. The invalidity pension established to the injured person in relation to the bodily injury or injury to health, as well as other allowances or amounts paid as part of social state insurance, shall not be taken into account while calculating the lost salary (income). The amount of compensation pertaining, in accordance with this Article, to the injured person may be increased by law or contract.

When the injured person has insurance from the social state insurance, he/she is entitled to receive invalidity pension. However, invalidity pension paid to the injured person shall not be considered as compensation, and shall not aim at reparation of the damage inflicted, because its amount depends on invalidity degree, and not on the degree of the damage. Respectively, the injured person has the possibility to add the compensation received from the person responsible for causing damage to the invalidity pension, to the allowance related to inability to work or other amounts paid based on social state insurance. Compensation needs to be established depending on the damage suffered by the injured person. The amount of reparation by money

equivalent needs to be established depending on the value of the damage inflicted at the date of delivering the court judgment, because this is the only possibility for the damaged party to re-establish, at the prices existing on the respective day, patrimonial situation that he/she had before the damage was inflicted. From the moment of delivering the final judgment, responsible person also has to pay related interest incurred in relation to the amount established as compensation (Article 619 of the Civil Code), before its payment. If after awarding compensation through a final court judgment infliction of the new damage is proved, following the same illegal action, additional compensation may be received, without the possibility to invoke the authority of *res judicata* of the judgment delivered earlier. This possibility may be exercised both in case of awarding compensation as a lump sum, as well as in case of awarding compensation in the form of periodical payments.

As mentioned above, in case of bodily injury or deterioration of victim's health as a result of domestic violence, the Law No. 45 does not include sufficient provisions that would offer necessary guarantees to the victim for implementation of the right to compensation of the damage caused by violence. Or, if according to Article 15 of the Law No. 45, the following protective measures may be applied against the aggressor – obligation to cover the costs and damages caused by the aggressor's acts of violence, including medical expenses and the cost of replacing or repairing destroyed or damaged assets, the right of the victim to claim and, respectively, the obligation of the state to ensure compensation in cases when damage is not covered by the aggressor, is not regulated by the law. In such situation, the victim may claim payments from the social insurance budget under general conditions, and namely allowance for inability to work for a certain period of time and subsequently invalidity allowance in case he/she receives invalidity degree.

Regretfully, national legal framework does not provide solutions for compensation by the state of the costs incurred by the victim that are not covered by the perpetrator who is unable to pay, and victim does not meet conditions for invalidity allowance or other

social assistance payments. Examination of the opportunity to include these persons in the category of beneficiaries of state allocations, regulated by the Law No. 499 from 14.07.1997, would be welcomed.

#### Article 31.

##### Custody, visitation rights and safety

1. *Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account.*
2. *Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.*

Republic of Moldova, as state-party to the UN Convention on the Rights of the Child, committed to protect children against any form of abuse and violence.

According to the Constitution of the Republic of Moldova, parents have the right and duty to ensure their children's upbringing, education and training, and the state shall facilitate by all means implementation of obligations that belong to the family, as well as ensure special regime of assistance of children placed in difficult situations in implementation of their rights<sup>1</sup>.

In order to ensure protection of children-victims (as well as of witnesses of acts of violence), the Law No. 45 provides the possibility to oblige the aggressor to stay away from victims; not to contact them; provide support to children, including to child-victims. Another protective measure represents establishing a temporary visitation schedule for the aggressor's underage children. At the same time, the law establishes that the application of protective measures does not prevent the initiation of the procedure of annulment of parental rights, seizure of a child without

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<sup>1</sup> Article 48-50 from the Constitution of the Republic of Moldova.

annulment of parental rights or other actions provided by applicable legislation. When examining the request for withdrawal of protective measures in case of children-victims, the court must necessarily examine the circumstances that determined submission of the request .

Framework Regulation for the Organization and Functioning of the Centres of Rehabilitation for Victims of Domestic Violence admits placement of couples mother-child/children, father-child/children. Respectively, children, who can be both victims of violence, as well as witnesses of acts of violence, are admitted in the centre in order not to be left under aggressor's custody, and not to be subjected in this way to the risk of victimization. Or, according to the Minimum Quality Standards for Social Services Rendered to Victims of Family Violence, victims who request help from the rehabilitation centre should not provide evidence of violence to which they were subjected. It is important for them to be trusted and treated without preconceived ideas. According to the Law No. 45, security of victims, their safety and public order in victim rehabilitation centres shall be ensured by the police bodies.

Nevertheless, the Law No. 45 needs to regulate that protective order shall temporary offer the custody of a child to the non-violent parent, and also allow the courts to issue protective orders regarding the child. Conditions for a temporary visitation regime need to be very clearly described, so that protective order is not accidentally violated and the aggressor does not have the possibility to visit children in order to further victimize the victim. Clarifications need to be made about the manner of how, when and where the aggressor will visit children, if the visit will be monitored and, if yes, by whom and how the exchange of children will be organized when the visiting time expires.

Recommended amendments:

Article 15 shall be supplemented by a new paragraph (8), which should read as follows:

"The custody of the child should be temporary awarded to the non-violent parent (who requested issuance of the protective order), the court shall establish temporary regime of visiting children, by specifying details regarding the place and the way of carrying out the visit, whether visit will be monitored and the manner of carrying out the exchange of children when the visiting time expires."

#### Article 32.

#### Civil consequences of forced marriages

*Parties shall take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim.*

Family and family relations in the Republic of Moldova are under protection of the state. Only marriages concluded by the state bodies of civil registration generate rights and obligations of spouses <sup>1</sup> . Family relations are regulated according to the following principles: monogamy, voluntariness of the marriage union of the man and the woman, equality of spouses in the family, rendering of mutual moral and material support, conjugal fidelity, the priority of education of children in the family, demonstration of care for rendering support, education and protection of the rights and interests of minors and disabled members of the family, settlement, by mutual consent, of all family problems, inadmissibility of any deliberate intervention in family relations, unhindered access to judicial protection of legitimate rights and interests of members of the family <sup>2</sup> . Requirements concerning family relations are intangible, except cases when law expressly provides conditions for defence of the violated right <sup>3</sup> .

Marriage shall be concluded by the state bodies of civil registration. Marriage declaration needs to be personally submitted by the citizens who want to conclude a marriage to the state body of civil registration whose

1 Family Code No. 1316-XIV from 26.10.2000//Official Monitor of the Republic of Moldova No. 47-48/210 from 26.04.2001.

2 Ibidem, Article 2.

3 Ibidem, Article 8.

Future spouses should indicate in the marriage declaration the fact that there exist no legal impediments to their marriage <sup>1</sup>.

Mutual, unvicious, personally and unconditionally expressed consent of the man and woman who marry, as well as their attaining of the matrimony age of 18 is necessary for entering a marriage.

A marriage is concluded in the presence of persons who marry, after expiration of the term of at least one month from the moment of submitting declaration of marriage.

According to Articles 41-44 of the Family Code, the court shall declare null and void any marriage that was concluded including without mutual, unvicious, personally and unconditionally expressed consent of the man and the woman who marry. A marriage shall be considered null from the moment it was concluded. The court must submit, within 3 days from the date when the judgment concerning declaration of nullity of the marriage becomes final, a copy of the respec-

tive judgment to the civil registration office situated within territorial competence of the court.

The right to request nullity of a marriage, in cases of vicious consent, belongs to the spouse whose rights were violated by conclusion of the marriage, as well as to the prosecutor. The request concerning declaration of nullity of a marriage concluded with a minor who did not attain matrimonial age or with a person declared incapable shall be examined with mandatory participation of the representative from guardianship authority. The court may recognize a marriage valid if, at the moment of examination of the ground for nullity, circumstances that were impeding conclusion of the respective marriage disappeared.

A marriage declared null by the court is considered null from the day it was concluded and it does not give rise to the rights and obligations between spouses, with the following exceptions:

- upon request of the spouse who acted in good faith, the court is entitled to oblige the other spouse to pay the maintenance pension;
- the spouse who acted in good faith is entitled to request, as regulated by the civil legislation, compensation of moral and material damage caused.

The declaration concerning nullity of a marriage shall not affect the rights of children born from that marriage.

Therefore, empowering the prosecutor by law to request declaration of the nullity of marriage, in cases of vicious consent, and obliging the court to send, within 3 days from the date when judgment on nullity of marriage becomes final, a copy of the respective judgment to the civil registration office which has territorial competence, exempts the good faith spouse, who in such conditions participates as a victim, from any undue financial or administrative burdens, generated by forced marriage.

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<sup>1</sup> Article 15. Impediments to Marriage

(1) Marriage cannot be concluded between:

- a) two persons if at least one of them is already married;
- b) collateral blood relatives, up to the fourth degree including, brothers and sisters, including those with one common parent;
- c) between the adopting parents and the adopted child;
- d) the adopted child and his/her collateral blood relative, up to the second degree including;
- e) guardian and the minor placed under his/her guardianship, in the period of guardianship;
- f) persons, if at least one of them was deprived of his/her legal capacity;
- g) persons convicted to imprisonment in the period when both of them are executing their sanction;
- h) Persons of the same sex.

(2) Any person can oppose a marriage, in case of existence of legal impediments or if other legal requirements are not met, by describing his/her reasons in written form and attach evidence invoked. Civil registration body must verify the impediments and, if they are confirmed, shall refuse conclusion of the marriage.



### Article 33. Psychological violence

*Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalized.*

Legal framework of the Republic of Moldova defines psychological violence in the Law No. 45-XVI on Preventing and Combating Family Violence.

*According to the Law, psychological violence means imposing one's volition or personal control by causing tension and mental suffering including ridiculing, swearing, insulting, derogatory nicknaming; blackmailing; the intentional destruction of objects; verbal threats; the demonstrative showing of fire arms or hitting domestic animals; neglect; meddling in the personal lives of others; acts of jealousy; imposing isolation by detention, including detention in the family dwelling; isolation from the family, community, friends; prohibiting professional accomplishment, prohibiting attendance of educational institutions; seizure of identity documents; intentional deprivation of access to information; or other similar actions;*

Criminal Code of the Republic of Moldova includes criminal punishment for a number of actions that attempt on psychological integrity of the person. According to criminal law, criminal responsibility may intervene in the following cases:

- for threatening with murder or severe bodily injury or damage to health, provided that the danger of accomplishing such a threat existed (Article 155 of the Criminal Code);
- forcing a person to work against his/her will, obtaining labour or services by means of coercion, violence or the threat of violence (Article 168 of the Criminal Code);
- placing or keeping a person in conditions where another person owns him/her or forcing the person through coercion, violence or threat of violence to enter into or remain in an extramarital or marital relationship (Article 167 of the Criminal Code);
- the demand for the transmission of goods or of the rights over such goods or for commission of other actions of a patrimonial nature involving threats of violence against the person, his/her relatives or close persons, of the deterioration or destruction of objects or of kidnapping the relatives or close persons (Article 189 of the Criminal Code), etc.

According to Article 77 of the Criminal Code the crime committed by use of physical or mental constraint is considered to be committed in aggravating circumstances.

Article 2011 of the Criminal Code (Family Violence) incriminates deliberate action or inaction, manifested physically or verbally, committed by a family member against another family member, that caused physical suffering, light bodily injury or light damage to health, mental suffering or material or moral damage.

Therefore, criminal norm invoked above includes criminal liability also for deliberate action, manifested verbally, that leads to psychological suffering of the victim.

Taking into consideration requirements of the Istanbul Convention and in order to ensure a more efficient counteraction of the violent actions committed against family members, it is proposed to formulate paragraph (1) of Article 2011 of the Criminal Code (Family Violence) in the following new version:

Article 2011 paragraph (1) shall be formulated in the following new version:

“(1) Deliberate action committed by a family member against another family member, manifested by:

- a) ill-treatment, beatings, other violent actions that caused physical pain or light bodily or health injuries;
- b) deprivation of liberty, isolation, stalking, intimidation, in order to impose one's volition or personal control of the victim;
- c) deprivation of basic means for living or of objects that represent first necessity, if this caused physical or mental suffering.



The new proposed text of Article 201<sup>1</sup> paragraph (1) of the Criminal Code (Family Violence) clearly indicates actions that attempt on psychological integrity of the damaged party and the consequences, whose gravity justifies their inclusion in the text of criminal norm.

Coercion is included in the proposed norm, however threat, as manifestation of the aggressor that may attempt on the psychological condition of the victim, is missing.

This solution is dictated by the rationale that, in the condition where verbal threats are included in the definition from the Law No. 45, as a form of psychological violence, protection measures, regulated by the respective law for the victim of domestic violence, and which, according to the law, are applicable in such situations, represent a sufficient remedy for the protection of the victim. Inclusion of "verbal threats" in the criminal law as element of crime, would excessively criminalize the society

#### Article 34. Stalking

*Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalized.*

Stalking is not found in any definition of the forms of family violence from the Law No. 45-XVI on Preventing and Combating Family Violence.

The essence of such actions is rather attributed to the form of psychological violence. Therefore, we consider that it is necessary to supplement definition of psychological violence from the Law No. 45.

The new proposed version of paragraph (1) of Article 201<sup>1</sup> from the Criminal Code (Family Violence) incorporates stalking and intimidation as distinct elements of the crime. The new text of paragraph (1) of Article

201<sup>1</sup> from the Criminal Code was mentioned in details during examination of the previous Article.

While elaborating on the subject of protection of victims of domestic violence, we also need to mention the importance of ensuring an adequate response to the behaviour of the aggressor.

It is obvious that repeated actions of the aggressor indicate on the stability of his/her intentions that cause a higher level of discomfort to the victim, and represent respectively a higher danger. Therefore, repeated actions require more drastic counteraction measures.

Following the above-mentioned, the proposal is to amend and supplement some Articles of the Criminal Code, in order to ensure a more efficient counteraction of violent actions committed against family members repeatedly, by aggravating the sanction for committing them. Therefore,

Criminal Code of the Republic of Moldova No. 985-XV from 18 April 2002 (republished in Official Monitor No. 72-74/195 from 14.04.2009), with subsequent amendments and completions, shall be amended and supplemented as follows:

#### Article 77:

paragraph (1) shall be supplemented with letter a1), with the following content:  
"a1) committing a crime by a person who have earlier committed a similar crime;"

#### Article 2011:

paragraph (2) shall have the new version:  
"(2) Actions indicated in paragraph (1):  
a) committed against two or more family members;  
b) committed in relation to request for protective measures;  
c) committed by a person who earlier committed similar actions;  
d) which caused bodily or health injuries of medium gravity;  
shall be punished with community service from 180 to 240 hours or with imprisonment for 3 to 6 years."

Therefore, considering that criminal liability needs to be proportional to the social danger of actions committed, the proposal is to recognize repeated acts of violence as aggravating circumstances. At the same time, it is proposed to supplement Article 2011 paragraph (2) of the Criminal Code with several aggravating circumstances:

- committed in relation to a request for protective measures;
- committed by a person who earlier committed similar actions.

At the same time, in the spirit of CAHVIO recommendations, we propose to introduce a new Article to the Criminal Code of the Republic of Moldova in order to incorporate the definition of stalking or persecution actions. Family violence legislation is not complete without such provision.

The first anti-stalking law was adopted in the United States, in California, in 1990, and the first arrest that resulted from the newly defined crime was carried out in 1991. The case did not involve a celebrity, but it was related to domestic violence and in majority of situations such cases are representative. In May 1991, police from Sherman Oaks, Los Angeles, arrested a man for stalking his former girlfriend. The two of them had a relationship for two years, and when woman decided to break up, her partner did not want to accept the situation. He started to harass her on the phone, vandalize her car and kidnapped her dog. Victim managed to obtain a restriction order and submitted in total thirteen complaints against her former partner, before he called her in the office and directly threatened her life. After being arrested, police discovered a firearm under the bed from his apartment, which was of the same calibre as the firearm used by Robert Bardo when killing actress Rebecca Schaeffer.

According to the new anti-stalking law, the man was convicted to one year imprisonment and six months placement in a rehabilitation centre <sup>1</sup>.

<sup>1</sup> John Douglas, *Obsession*, Pocket Books, New York, 1998, pp. 331-332

Stalking crime involves much more than just aggressive behaviour, despite of the fact that it usually represents an element of this crime. Legal definition varies from state to state, but the fundamental message that evolved from collaboration of the National Association of Criminal Justice with the National Institute of Justice and National Centre for Victims (among other groups) is the following: a stalker represents a person who engages in „displaying a conduct that generates in a reasonable person fear for his/her security, and stalker intended and succeeded to produce such fear in the victim.”<sup>2</sup>

#### Recommended amendments:

Following the above-mentioned, we propose to introduce a new Article in Criminal Code:

A new Article is introduced in the Criminal Code: Article 1771 "Acts of stalking"

#### "Article 1771 Stalking:

1. Repeated threatening or harassment of a person in order to cause him/her a serious and continuous condition of anxiety or fear or generate well-grounded fears for his/her own safety or safety of his/her relatives, or a close person from affective point of view, in order to constrain the person to change his/her own living conduct, shall be punished by a fine or by imprisonment for up to 2 years;
2. The same action committed by a divorced or separated person, or by a person with whom the victim had an affective relationship, or against a minor, shall be punished by a fine or by imprisonment for up to 5 years <sup>3</sup>;

<sup>2</sup> Brent E. Turvey, Wayne Petherick, *Forensic victimology: Examining violent crime victims in investigative and legal contexts*, Academic Press, San Diego, California, 2009, p. 274

<sup>3</sup> Alternatively, we propose introducing a new Article as follows: "Article 1771 Harassment:

- (1) Repeatedly stalking a person, without legitimate right or interest, or supervising his/her dwelling, place of work or other places attended by the respective person, and thus causing him/her a condition of fear, shall be punished by imprisonment for 3 to 6 months or by a fine.

## Article 35. Physical violence

*Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of committing acts of physical violence against another person is criminalized.*

Legal framework of the Republic of Moldova includes definition of physical violence in the Law No. 45-XVI on Preventing and Combating Family Violence.

According to the Law, *physical violence means deliberate infliction of bodily injuries or damage to health by hitting, pushing, tossing, pulling by the hair, stinging, cutting, burning, strangling, biting, in any form and of any intensity; by poisoning, intoxicating, or other similar actions.*

Acts of physical violence, committed including outside the family, are recognized as actions of increased social danger. Therefore, these actions are to be found in a number of norms of the Criminal Code<sup>1</sup> and Contravention Code<sup>2</sup>. Victim of the acts of physical violence, that represent crimes or contraventions, has a well determined procedural status, and benefits of procedural and material guarantees, under conditions of the law.

In order to ensure security and safety of the victims of domestic violence, Criminal Code of the Republic of Moldova was supplemented by Article 201<sup>3</sup> (Family Violence)<sup>3</sup>. The respective criminal norm includes,

1 Criminal Code of the Republic of Moldova. Special Part. Chapters I-III; VII; XIII.

2 Contravention Code of the Republic of Moldova. Book One. Special Part. Chapters VII; XVIII-XIX.

3 Article 201<sup>3</sup>. Family Violence

(1) Family violence, meaning deliberate action or inaction, manifested physically or verbally, committed by

a family member against another family member, which caused physical suffering, resulting in minor bodily or health injuries, mental suffering or material or moral damage shall be punished with community service from 150 to 180 hours or with imprisonment of up to 2 years.

(2) The same action:

among others, liability for intentional actions, manifested physically and verbally, that cause physical and mental suffering to the victim.

Taking into consideration the increased social danger of family violence, punishment for family violence should not be milder than for similar actions committed against persons, others than family members.

For these considerations and according to requirements of the Istanbul Convention, it was proposed to amend Article 201<sup>1</sup> of the Criminal Code (Family Violence), in order to ensure a more efficient involvement in counteracting violent actions committed against family members, including by increasing current sanctions that are smaller than sanctions from other Articles of the Criminal Code established for similar actions committed under general conditions.

Therefore, we propose the following amendments,

Article 201<sup>1</sup> of the Criminal Code needs to be formulated in the new version:

“Article 201<sup>1</sup> Family Violence

(1) Deliberate action committed by a family member against another family member, manifested by:

- a) ill-treatment, beatings, other violent actions that caused physical pain or light bodily or health injuries;
- b) deprivation of liberty, isolation, stalking, intimidation, in order to impose one's volition or personal control of the victim;

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a) committed against two or more family members;

b) which caused bodily or health injuries of medium gravity

shall be punished with community service from 180 to 240 hours or with imprisonment of up to 5 years.

(3) The same action, which:

- a) caused serious bodily or health injuries;
- b) determined a person to commit suicide or suicide attempt;
- c) caused the victim's death

shall be punished with imprisonment for 5 to 15 years.

c) deprivation of basic means for living or of objects that represent first necessity, if this caused physical or mental suffering

shall be punished with community service for 180 to 240 hours or with imprisonment for 1 to 3 years

(2) Actions indicated in paragraph (1):

- a) committed against two or more family members;
- b) committed in relation to request for protective measures;
- c) committed by a person who earlier committed similar actions;
- d) which caused bodily or health injuries of medium gravity; shall be punished with community service from 180 to 240 hours or with imprisonment for 3 to 6 years.”;

(3) The same action, which:

- a) caused grave bodily or health injuries;
- b) determined a person to commit suicide or suicide attempt;

shall be punished with imprisonment for 6 to 12 years.

(4) Violent actions against a family member that caused victim's death

shall be punished with imprisonment for 8 to 15 years.”

In such conditions, we may conclude that national legislation has necessary instruments for ensuring protection of the victim from any acts of violence within family and outside the family.

#### Article 36.

##### Sexual violence, including rape

(1) Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalized:

(a) engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;

(b) engaging in other non-consensual acts of a sexual nature with a person;

(c) causing another person to engage in non-consensual acts of a sexual nature with a third person.

(2) Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.

(3) Parties shall take the necessary legislative or other measures to ensure that the provisions of paragraph 1

also apply to acts committed against former or current spouses or partners as recognized by internal law.

Legal framework of the Republic of Moldova provides the following definition of sexual violence in the Law No. 45-XVI on Preventing and Combating Family Violence.

According to the Law,

*Sexual violence is any violence of a sexual character or any illegal sexual conduct within the family or within other interpersonal relationships, such as marital rape; prohibiting the use of contraception; sexual harassment; any unwanted, imposed sexual conduct; forced prostitution; any illegal sexual conduct with a minor family member, including fondling, kissing, setting the child into poses or other unwanted touching with sexual connotations; or other similar actions.*

Acts of sexual violence, including those committed within family, are recognized as having a high degree of social danger. Therefore, these actions are sanctioned by a number of Articles of the Criminal Code <sup>1</sup>.

For instance, Article 171 of the Criminal Code criminalizes rape, which is a sexual intercourse committed by the physical or mental coercion of the person, or by taking advantage of the victim's incapacity to defend himself/herself or to express his/her will. Article 172 of the Criminal Code includes punishment for satisfying sexual needs in perverted forms (others than rape) committed through the physical or mental coercion of the person or by taking advantage of the person's incapacity to defend himself/herself or to express his/her will.

Aggravating circumstances represent rape, including violent actions of sexual nature committed against a family member (we mentioned above the recommended amendment to Article 1331 of the Criminal Code to extend the list of subjects of family violence, in order to ensure observance of requirements established by Istanbul Convention), against a minor or pregnant woman, etc.

<sup>1</sup> Criminal Code of the Republic of Moldova. Special Part. Chapter IV.

Criminal Code establishes criminal liability for sexual harassment (Article 173 of the Criminal Code); for sexual intercourse other than rape, as well as any other acts of vaginal, anal or oral penetration committed with a person under the age of 16 (Article 174 of the Criminal Code); for perverted actions committed against a person under the age of 16 (Article 175 of the Criminal Code), including indecent fondling, obscene or cynic discussions with the victim regarding sexual intercourse, forcing victim to participate or to assist at pornographic shows; for trafficking in human beings and trafficking in children for the purpose of sexual exploitation (Articles 165, 206 of the Criminal Code); as well as inciting juveniles, by violence or the threat of violence, to immoral acts, infantile pornography (Articles 208-2081 of the Criminal Code), etc. According to Article 2082 of the Criminal Code, criminal legislation sanctions availing of sexual services provided by a person certainly known to be under the age of 18, for any material advantages.

Therefore, national legal framework includes a large spectrum of violent actions of sexual nature, which is even larger than the one established in the Istanbul Convention, and their commission bears criminal liability, under conditions of the law.

#### Article 37. Forced marriage

1. *Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalized.*
2. *Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalized.*

In the Republic of Moldova, marriage is concluded by the state bodies of civil registration, based on free consent between a man and a woman. Marriage declaration needs to be submitted personally by citizens who want to marry. In order to enter a marriage, it is necessary to have mutual, unvicious, personally and

unconditionally expressed consent of the man and woman who marry.

Criminal law provides criminal liability (Article 167 of the Criminal Code) for forcing the person through deceit, coercion, violence or the threat of violence to enter into or remain in an extramarital or marital relationship. Such actions shall be punished by imprisonment for 3 to 10 years.

#### Article 38. Female genital mutilation

- a) *Parties shall take the necessary legislative or other measures to criminalize excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;*
- b) *Parties shall take the necessary legislative or other measures to criminalize coercing or procuring a woman to undergo any of the acts listed in point a;*
- c) *Parties shall take the necessary legislative or other measures to criminalize inciting, coercing or procuring a girl to undergo any of the acts listed in point a).*

Despite the fact that actions enumerated in the respective Article were not registered on the territory of the Republic of Moldova yet, they can occur as a result of migration of people from other countries of the world, where such inhuman practices still persist.

However, in case such actions would occur on the territory of the Republic of Moldova, legislation of our country would qualify such actions as bodily or health injury, which unconditionally would bear criminal liability according to Articles 151-152 of the Criminal Code (intentional severe or less severe bodily or health injury), and as aggravating elements – bodily or health injury committed by mutilation or torture.

When such actions are committed during rape (Article 171 of the Criminal Code) or violent actions of sexual character (Article 172 of the Criminal Code), they shall be qualified as aggravating circumstances – rape, respectively, violent actions of sexual character, accompanied by torture of the victim or causing other severe consequences.

Criminal Code also criminalizes:

- compelling a person to remove organs or tissues for transplant or for other purposes with violence or the threat of its application (Article 158 of the Criminal Code);
- recruitment of a person, with or without his/her consent, for the purpose of commercial or non-commercial sexual exploitation, removal of human organs or tissues committed by the threat of physical or mental violence, by deception; by the abuse of vulnerability or abuse of power, by giving or receiving payments or benefits to get the consent of a person controlling another person (Article 165 of the Criminal Code), etc.

#### Article 39.

##### Forced abortion and forced sterilization

*Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalized:*

- a) performing an abortion on a woman without her prior and informed consent;*
- b) performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.*

According to the Law on Protection of Reproductive Health and Family Planning<sup>1</sup> any person is entitled to freely take decision concerning the number of children and timing of their birth within and outside a marriage. The state guarantees that it will not interfere in the right of the citizens to freely decide on reproductive health issues. Interested person has the right to receive full and veridical information about his/her reproductive health and family planning, which shall be offered by the state and non-state medical institutions that have licence for such type of activities. Services related to protection of reproductive health and family planning, of which any person can avail, are provided by the state and non-state health protec-

1 Article 5-7 of the Law on Protection of Reproductive Health and Family Planning No. 185 from 24.05.2001 //Official Monitor No. 90-91/697 from 02.08.2001.

tion, educational and social assistance institutions, as established by the legislation in force.

Any person is entitled to use contraception methods and to refuse their use. Surgery contraception method shall be applied only based on free and informed consent<sup>2</sup>.

The Law on Health Protection<sup>3</sup> guarantees the right of women to personally decide about the maternity issues. Surgery for interruption of a pregnancy may be carried out until the end of first 12 weeks of pregnancy in public and private medical-sanitary institutions. The procedure for conducting such surgery after the first 12 weeks of pregnancy is determined by the Ministry of Health.

Regulation concerning voluntary interruption of pregnancy was approved by the Order of the Ministry of Health No. 647 from 21 September 2010<sup>4</sup>.

According to the provisions of this Regulation, voluntary interruption of pregnancy shall be carried out, according to the provisions of the Law on Health Protection, in the medical-sanitary institution that provides such types of services, at the choice of pregnant woman, regardless of where she lives or where is her residency. Voluntary interruption of pregnancy shall be carried out only by doctors-specialists in obstetrics-gynaecology, who are trained to provide such types of service. Medical-sanitary institution shall guarantee free and unhindered access of the pregnant women to the service of voluntary interruption of pregnancy and to performance of the respective surgery in conditions of confidentiality. Every pregnant woman, who requests voluntary interruption of pregnancy, shall be informed about methods, alternatives, as well as existing risks, in accordance with the provisions of the Law on Patient Rights and Responsibilities.<sup>5</sup>

2 Ibidem, Article 11.

3 Article 32-33 of the Law on Health Protection No. 411 from 28.03.1995 //Official Monitor No. 34/373 from 22.06.1995.

4 Order of the Ministry of Health No. 647 from 1.09.2010 concerning voluntary interruption of pregnancy in safe conditions, Official Monitor No. 241-246/948 from 10.12.2010.

5 Law on Patient Rights and Responsibilities No. 263-XVI from 27 October 2005 //(Official Monitor No. 176-181/867 from 2005.



Medical-sanitary institution shall carry out voluntary interruption of pregnancy according to the method chosen by the pregnant woman or shall refer her to another medical-sanitary institution that provides services of interruption of pregnancy by the method chosen by the pregnant woman. Before performing surgery, pregnant women who carry out voluntary interruption of pregnancy, shall express their consent to the surgery by signing an informed agreement, which needs to be attached to the Medical File on voluntary interruption of pregnancy. Voluntary interruption of pregnancy after the first 12 weeks and until the end of week 21 shall be performed only in public medical-sanitary institutions, upon medical indications (foetal malformations which are incompatible with life/incurable; condition resulted from surgery treatment with removal of a vitally important organ; illnesses or pathological conditions that endanger health and life of pregnant woman) and social indications (the category of social indications includes, among others, the age of pregnant woman under 18 years old or above 40 years old; in case pregnancy occurred as a result of rape, incest or trafficking of human beings; divorce during pregnancy; decease of the husband during pregnancy; deprivation of liberty or of parental rights of one or both spouses; pregnant women with 5 or more children; association of the following at least 2 circumstances: lack of domicile, lack of financial sources for living, abuse of alcohol or/and drugs, acts of domestic violence, vagabondage, etc.).

In order to guarantee observance of the legislation in the field of ensuring reproductive health and family planning, Criminal Code of the Republic of Moldova criminalizes the following:

1. interrupting a pregnancy by any means committed:
  - a) outside medical institutions or specially authorized medical offices;
  - b) by a person without special higher medical education;
  - c) in case of a pregnancy that exceeds 12 weeks without medical indications issued by the Ministry of Health;
  - d) if there are medical contraindications for such operations;
  - e) in insanitary conditions (Article 159 of the Criminal Code).

2. illegally performing surgical sterilization by a doctor (Article 160 of the Criminal Code).

3. performance by a doctor of artificial insemination or the implantation of an embryo without the written consent of the patient (Article 161 of the Criminal Code).

From the above-mentioned, it is clear that national legislation promotes the idea of maintaining pregnancy, but leaves conscious decision concerning interruption of pregnancy in the first 12 weeks at woman's discretion. Interruption of pregnancy after 12 weeks is allowed only in case of medical or social indications. Or, according to the legislation, decision concerning interruption of pregnancy in these situations should still belong to the woman. Moreover, interrupting a pregnancy that exceeds 12 weeks, without medical indications or in case there are medical contraindications for such operations (or eventual ending of natural reproduction capacity) shall bear criminal liability according to Article 159 of the Criminal Code, even in case woman provides her consent.

Currently, abortion without prior and informed consent of the woman is not regulated by the Criminal Code.

#### Recommended amendments:

We therefore consider necessary to examine the opportunity of supplementing Article 159 of the Criminal Code with a new paragraph that would introduce criminal responsibility for:

**"Interrupting a pregnancy without consent of the pregnant woman".**

Regarding surgery intervention with the purpose or effect of ending woman's capacity of natural reproduction, without her prior and informed consent or without understanding the procedure, these actions will be qualified based on Article 160 of the Criminal Code – illegally performing surgical sterilization, taking into consideration that in this regard legislation requires performance of all necessary investigations



in order to ensure reproductive health, as well as proper information of the patient about the procedures and consequences, in order to ensure a conscious consent.

#### Article 40. Sexual harassment

*Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.*

National legislation framework provides definition of sexual harassment that almost entirely incorporates elements of the similar norm from the Istanbul Convention.<sup>1</sup>

According to the Law on Ensuring Equal Opportunities for Women and Men, the employer shall cooperate with employees and trade union representatives with a view to establishing internal regulations that will prevent and exclude cases of discrimination based on the criterion of sex during work. The employer must undertake measures to prevent sexual harassment of women and men at their place of work, as well as to prevent persecution for submitting complaints against discrimination to the competent body.

According to the law, gender units from central and local public administration authorities shall examine petitions submitted by legal entities and natural persons regarding cases of discrimination based on the

<sup>1</sup> Law on Ensuring Equality: harassment – any form of unwanted behaviour that creates an intimidating, hostile, degrading, humiliating, or insulting environment with the purpose or effect of violating the dignity of a person based on criteria stipulated by the current Law;

Law on Ensuring Equal Opportunities for Women and Men: sexual harassment – any form of physical, verbal, or non-verbal behaviour, of sexual nature, which infringes upon person's dignity or creates an unpleasant, hostile, degrading, humiliating, or insulting environment.

criterion of sex. Regretfully, such gender units were not instituted yet and therefore legal norm remains only declarative.

It shall be noted that once the Law on Ensuring Equality was adopted, situation on legislative level has improved. The purpose of this Law is to prevent and combat discrimination, as well as ensure equality of all persons on the territory of the Republic of Moldova in political, economical, social, cultural and other spheres of life, regardless of sex, age, disability or any other criteria. The Law considers harassment at the place of work as discriminatory action that allows the victim to request protection from the Council for Preventing and Eliminating Discrimination and Ensuring Equality, as well as provides the victim with the right to initiate an action in court and request: prohibition of continuing violation of his/her rights; compensation of material and moral damage caused, as well as compensation of court fees.

Criminal Code includes criminal liability, under conditions of Article 173, for sexual harassment, manifested by physical, verbal, or nonverbal behaviour, which infringes upon person's dignity or creates an unpleasant, hostile, degrading, humiliating, or insulting environment in order to determine the person to sexual relations or other unwanted sexual actions, committed by threat, coercion, blackmail.

#### Article 41. Aiding or abetting and attempt

- 1. Parties shall take the necessary legislative or other measures to establish as an offence, when committed intentionally, aiding or abetting the commission of the offences established in accordance with Articles 33, 34, 35, 36, 37, 38.a and 39 of this Convention.*
- 2. Parties shall take the necessary legislative or other measures to establish as offences, when committed intentionally, attempts to commit the offences established in accordance with Articles 35, 36, 37, 38.a and 39 of this Convention*

As mentioned above, national legislation criminalizes almost all actions indicated in the respective Articles of the Convention.

According to the provisions of the Criminal Code of the Republic of Moldova, an offence shall be considered consummated if the committed act contains all constitutive elements of an offence. An inchoate crime shall be considered preparation to commit an offence and attempt to commit an offence. Liability for preparation to commit an offence and attempt to commit an offence shall be determined according to the respective Article from the Special Part of this Code, as for the consummated offence, by taking into consideration circumstances that prevented completion of the offence <sup>1</sup>.

Participation shall be considered the intentional cooperation of two or more persons in the commission of a deliberate crime. Participants shall be considered persons who contribute to the commission of a crime either as authors, organizers, instigators, or as accomplices. An author directly commits an act set forth in the criminal law, an organizer organizes the commission of a crime or manages its commission and an instigator makes another person, by any means, commit a crime. An accomplice shall be considered the person who contributes to the commission of a crime by giving advice, indications, or information and by offering means or tools or eliminating obstacles, as well as the person who promises in advance that he/she will favour the criminal, hide the means or tools used to commit the crime or traces thereof or the goods obtained through criminal means, or the person who promises in advance to purchase or sell such goods. The organizer, the instigator, and the accomplice in a crime set forth in the criminal law and committed with intent shall be punished with the sanction provided by the law for the author of the crime<sup>2</sup>. Criminal law envisages criminal liability, under conditions of Article 323 of the Criminal Code, for favouring of a criminal as well as for hiding the means or tools of the commission of a serious, extremely serious, or exceptionally serious crime, its traces, or goods obtained

through criminal means, provided that such acts were not promised in advance<sup>3</sup>.

#### Article 42.

#### Unacceptable justifications for crimes, including crimes committed in the name of so-called "honour"

*1) Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called "honour" shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.*

*2) Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed.*

Criminal Code of the Republic of Moldova envisages that persons who commit crimes shall avail of equal protection of the law and shall be subject to criminal liability irrespective of any situation. A person's rights and interests cannot be defended by violating the rights and interests of another person or of a group of persons. Criminal law shall be applied with due consideration of the prejudicial nature and degree of the crime committed, the personality of the criminal, and the circumstances<sup>4</sup> of the case that mitigate or aggravate criminal liability.

A person who committed a crime may be exempted from criminal liability in cases: of juveniles; administrative liability; voluntary abandonment of a crime; active repentance; situation change; probation; criminal liability limitation period<sup>5</sup>.

<sup>1</sup> Criminal Code, Article 25-27, 81.

<sup>2</sup> Criminal Code, Article 41-42, 83.

<sup>3</sup> Ibidem, Article 49.

<sup>4</sup> Ibidem, Article 49.

<sup>5</sup> Ibidem, Article 53.

Criminal Code does not recognize actions determined by religious convictions and by traditions as committed in mitigating circumstances, etc.

On contrary, the following shall be considered as aggravating circumstances: the commission of a crime due to social, national, racial, or religious hatred; against a person known to be under 14 years of age or against a pregnant woman or by taking advantage of the victim's known or obvious helpless condition caused by advanced age, disease, physical or mental handicap, or another factor; using juveniles, persons in difficulty, mentally retarded persons, or persons dependent on the perpetrator, etc.

At the same time, it should be mentioned that, according to Article 42 of the Criminal Code, an author of a crime shall be considered not only the person who directly committed a crime, but also the person who committed a crime through persons not subject to criminal liability due to their age, irresponsibility, or other reasons.

Involvement of juveniles in criminal activity or encouraging them to commit crimes, as well as inciting juveniles to committing immoral acts (e.g., begging, gambling, lust, etc.) by a person who has reached the age of 18 shall bear criminal liability also based on Article 208 of the Criminal Code. The same actions committed by the parents or other legal representatives of the child or by his/her teachers, as well as committed with violence or threat of violence, etc.; represent elements that shall aggravate criminal liability.

#### Article 43. Application of criminal offences

*The offences established in accordance with this Convention shall apply irrespective of the nature of the relationship between victim and perpetrator.*

Actions of violence, both physical, sexual, psychological, as well as economical, cause serious bodily and/or mental harm to the person-victim, the latter being deprived of the possibility to benefit of the declared fundamental rights, such as the right to individual security and freedom, the right to be treated with

dignity, etc. Having a higher degree of social danger, actions of violence against a person are found in a number of Articles of the Criminal Code.

In order to eradicate the phenomenon of family violence in the Republic of Moldova, a new norm was introduced in the Criminal Code, Article 201, which qualifies family violence as a crime. In this way, family violence was transformed from a private issue of the family members in a socially dangerous act of violation of human rights, which needs to be combated and prevented.

Investigation of domestic violence cases is usually quite difficult because they take place within a family, and therefore they are not very visible. This fact requires the state to ensure some adequate conditions for the efficient implementation of its positive obligation to offer victims the full protection guaranteed by the law. Or, in case of family violence, actions of the perpetrator are manifested by an increased social danger, because usually, victim of family violence suffers much more as a result of perpetrator's actions. At the same time, being usually dependent on the perpetrator, in most of the cases, the victim hesitates to notify criminal investigation body or prosecutor.

According to the provisions of the Criminal Procedure Code, the fact of committing or preparation for committing a crime may be established based on notification through denunciation or complaint submitted by a natural person or legal entity, as well as in case of direct discovery of the crime by the collaborators of the criminal investigation body or prosecutor.

When establishing the fact of committing or preparation for committing a crime regulated by the Criminal Code, criminal investigation body and prosecutor may order the initiation of criminal investigation, in case there are no circumstances that exclude criminal investigation. It should be mentioned that according to Article 262 of the Criminal Procedure Code, in cases, when according to the law, criminal investigation may be initiated only based on a preliminary complaint, criminal investigation cannot be initiated without the respective complaint, criminal investigation cannot be initiated without the respective complaint.

Article 276 paragraph (1) of the Criminal Procedure Code enumerates crimes, for commission of which criminal investigation is initiated only on the basis of the preliminary complaint of the victim. The respective norm does not include crime regulated by Article 2011 of the Criminal Code (Family Violence), therefore in case of committing acts of family violence, which are regulated by the respective Article, criminal investigation may be initiated also without preliminary complaint from the victim. Because Article 2011 of the Criminal Code (Family Violence) is not included in the list of crimes indicated under Article 276 paragraph (1) of the Criminal Procedure Code, where preliminary complaint of the victim is required for initiating criminal investigation, the procedure of reconciliation of the parties is also not applicable under conditions of the legislation in force for Article 2011, and, respectively, criminal investigation cannot be dismissed in case damaged party wishes reconciliation with the suspect, accused or defendant. Nevertheless, paragraph (5) of Article 276 of the Criminal Procedure Code, that envisages reconciliation procedure (but not the ground), provides the following, ... *In cases of family violence, prosecutor or court shall examine whether victim's wish for reconciliation is freely expressed, by ensuring that victim had real access to assistance and protection.*

Further maintaining this norm is disadvantageous for the victim and at the same time it perpetuates an uncertain judicial practice, creating difficulties in its application.

Generally, national legislation does not provide the possibility for the victim to reconcile with the perpetrator in cases of family violence, and this fact fully corresponds with international practice in the field of combating domestic violence, including with the norms of Istanbul Convention, which establish that crimes of family violence shall apply regardless of the nature of relationship between the victim and aggressor. And regulations from paragraph (5) Article 276 of the Criminal Procedure Code, concerning cases of family violence, do not correspond to other relevant norms.

From this perspective, it was proposed to revise the text of paragraph (5) of Article 276 paragraph (5) of the Criminal Procedure Code, as follows:

**Article 276 of the Criminal Procedure Code:**

to exclude from paragraph (5) the following text, „in cases of family violence, prosecutor or the court shall examine whether victim's wish for reconciliation is freely expressed, by ensuring that victim had real access to assistance and protection.“.

Proposals for amendment of Criminal Procedure Code, mentioned above, are determined by the need to consolidate the mechanism of protection of the victim of family violence within criminal procedure.

#### **Article 44. Jurisdiction**

*(1) Parties shall take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:*

- a) in their territory; or*
- b) on board of a ship flying their flag; or*
- c) on board of an aircraft registered under their laws; or*
- d) by one of their nationals; or*
- e) by a person who has her or his habitual residence in their territory.*

*2) Parties shall endeavour to take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention where the offence is committed against one of their nationals or a person who has her or his habitual residence in their territory.*

*44 and 39 of this Convention, Parties shall take the necessary legislative or other measures to ensure that their jurisdiction is not subordinated to the condition that the acts are criminalised in the territory where they were committed.*

*4) For the prosecution of the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, Parties shall take the necessary legislative or other measures to ensure that their jurisdiction as regards points d and e of paragraph 1 is not subordinated to the condition that the prosecution can only be initiated following the reporting by the victim of the offence*

*or the laying of information by the State of the place where the offence was committed.*

*5) Parties shall take the necessary legislative or other measures to establish jurisdiction over the offences established in accordance with this Convention, in cases where an alleged perpetrator is present on their territory and they do not extradite her or him to another Party, solely on the basis of her or his nationality.*

*6) When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult each other with a view to determining the most appropriate jurisdiction for prosecution.*

*7) Without prejudice to the general rules of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its internal law.*

Violent actions, including family violence actions, mainly represent crimes and are included in several Articles of the Criminal Code.

According to the provisions of the Criminal Code, all persons who committed crimes on the territory of the Republic of Moldova shall be held criminally liable under legislation of the country.

Citizens of the Republic of Moldova and stateless persons with permanent domiciles on the territory of the Republic of Moldova who commit crimes outside the territory of the country shall be liable for criminal responsibility on the basis of Moldovan Criminal Code. If not convicted in a foreign state, foreign citizens and stateless persons without permanent domiciles on the territory of the Republic of Moldova who commit crimes outside the territory of the Republic of Moldova shall be criminally liable under conditions of the national legislation and shall be subject to criminal liability on the territory of the Republic of Moldova, provided that the crimes committed are adverse to the interests of the Republic of Moldova, to the rights and freedoms of the citizens of the Republic of Moldova, to the peace and security of humanity, or constitute war crimes, including crimes set forth in the international treaties to which the Republic of Moldova is a party.

Crimes committed in the territorial waters or the air space of the Republic of Moldova are considered to be committed in the territory of the Republic of Moldova. Person who committed a crime on a sea craft or aircraft registered in a harbour or airport of the Republic of Moldova and located outside the water or air space of the Republic of Moldova, may be subject to criminal liability under the Criminal Code of the Republic of Moldova provided that the international treaties to which the Republic of Moldova is a party do not provide otherwise. Persons who commit crimes on board of a military sea craft or aircraft belonging to the Republic of Moldova, irrespective of its location, shall be held criminally liable under legislation of the Republic of Moldova.

Relations of the Republic of Moldova with foreign countries concerning legal assistance in criminal matters are regulated by the provisions of the Criminal Procedure Code and provisions of the Law on International Legal Assistance in Criminal Matters. In case Republic of Moldova is party to several international documents related to legal assistance, to which the state from which legal assistance is requested or state that requests such assistance is also a party and there are divergences or incompatibilities among the norms of these acts, provisions of the treaty that ensures a more beneficial protection of the human rights and freedoms shall apply.

In case of committing a crime abroad, citizens of the Republic of Moldova and persons who received political asylum in the Republic of Moldova cannot be extradited and are held criminally liable according to the national criminal legislation. Foreign citizens and stateless persons who committed crimes outside the territory of the Republic of Moldova, but who are on the territory of the country, can be extradited only based on an international treaty to which Republic of Moldova is party or under conditions of reciprocity based on a court judgment.

## Article 45.

### Sanctions and measures

1. *Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition.*
2. *Parties may adopt other measures in relation to perpetrators, such as*
  - *monitoring or supervision of convicted persons;*
  - *withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.*

Physical, sexual, psychological violence seriously harms physical and/or mental integrity of the victim. Taking into consideration their social danger, actions of violence against a person are found in a number of Articles of the Criminal Code.

Criminal Code of the Republic of Moldova was supplemented through the Law No. 167 from 09 July 2010 with Article 2011 (Family Violence), which has the following content:

#### Article 2011. Family Violence

- (1) Family violence, meaning deliberate action or inaction, manifested physically or verbally, committed by a family member against another family member, which provoked physical suffering following light bodily or health injuries, mental suffering or material or moral damage shall be punished with community service for 150 to 180 hours or with up to 2 years imprisonment.
- (2) The same action:
  - a) committed against two or more family members;
  - b) which provoked bodily or health injuries of medium gravity;shall be punished with community service for 180 to 240 hours or with up to 5 years imprisonment.
- (3) The same action, which:
  - a) has caused grave bodily or health injuries;

- b) has determined a person to commit suicide or suicide attempt;
  - c) has caused the victim's death;
- shall be punished with imprisonment for 5 to 15 years.

Paragraphs (1) and (2) of the respective norm are attributed to the category of less serious crimes, and paragraph (3) represents extremely serious crime, which, however, due to the minimum level of sanction, allows application of a milder punishment than for similar actions committed against other persons than family members.

It is a well known fact that in case of family violence, victim suffers much more from the actions of the aggressor, who is a close person, than victim of a violent act committed outside family, by an unknown person. Or, violence on behalf of a family member causes not only physical, but also mental suffering. Moreover, victim of family violence, usually, does not have another refuge, and the perpetrator is always around, the fact that perpetuates hostile relations between family members. Finally, tensed situation in the family affects its integrity (of the family) as a social institution, as well as moral spirit of each individual member of the family. Therefore, these and other circumstances indicate on the increased social danger of the family violence. Respectively, according to the principle of proportionality, punishment for violent actions committed by a family member within the family should not be milder than for similar actions committed against other persons than family members, the fact accepted without reservation on the international level.

Therefore, we propose the following amendments to the provisions of some Articles of the Criminal Code, in order to counteract more efficiently violent actions against family members and, most importantly, in order to increase current sanctions, which are lower than sanctions from other Articles of the Criminal Code that establish punishment for similar actions committed under general conditions.

Following the above-mentioned, we consider logical to supplement Article 145 of the Criminal Code,



by including an aggravating qualificative to the action of murder of a family member, because currently such actions are qualified according to paragraph (1), in case no circumstances envisaged in paragraph (2) are established.

Following the above-mentioned, we consider logical to supplement Article 145 of the Criminal Code, by including an aggravating qualificative to the action of murder of a family member, because currently such actions are qualified according to paragraph (1), in case no circumstances envisaged in paragraph (2) are established.

Recommended amendments:

Therefore, we propose the following amendments,

Article 145 of the Criminal Code:

paragraph (2) shall be supplemented with letter e1), with the following text:  
"e1) against a family member;"

Following the above-mentioned reasoning, we also propose introduction of amendments to Article 2011 "Family Violence" of the Criminal Code (based on requirements of the Convention), including a new version of paragraph (1), amendment of current paragraphs (2) and (3), supplementing Article with new provisions and, simultaneously, increasing sanctions, which are currently milder than sanctions from other Articles of the Criminal Code that establish punishment for similar actions committed under general conditions.

Therefore, we propose the following new text of Article 2011 of the Criminal Code:

"Article 2011 Family Violence

(1) Deliberate action committed by a family member against another family member, manifested by:

- a) ill-treatment, hitting, other violent actions that caused physical pain or light bodily or health injuries;
- b) deprivation of liberty, isolation, stalking, intimidation, in order to impose one's volition or personal control of the victim;

c) deprivation of basic means for living or of objects that represent first necessity, if they caused physical or mental suffering

shall be punished with community service for 180 to 240 hours or with imprisonment for 1 to 3 years.

(2) Actions indicated in paragraph (1):

- a) committed against two or more family members;
- b) committed in relation to request for protective measures;
- c) committed by a person who earlier committed similar actions;
- d) which caused bodily or health injuries of medium gravity; shall be punished with community service for 180 to 240 hours or with imprisonment for 3 to 6 years."

(3) The same action, which:

- a) has caused grave bodily or health injuries;
- b) has determined a person to commit suicide or suicide attempt;

shall be punished with imprisonment for 6 to 12 years.

(4) Violent actions against a family member that caused the victim's death

shall be punished with imprisonment for 8 to 15 years."

Criminal Code of the Republic of Moldova provides possibility of conditional suspension of the execution of the punishment <sup>1</sup> and conditional exemption from punishment prior to the expiry of the term <sup>2</sup>, applied in case of guilty persons under conditions of the law.

When applying these measures, the court may require that the convict:

- does not change his/her domicile without the consent of a competent body;
- does not attend certain places;
- undergoes certain treatment for addiction to alcohol, drugs, toxic substances, or for a venereal disease;
- participates in a special treatment program or counselling in order to reduce violent conduct;

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<sup>1</sup> Article 90 of the Criminal Code

<sup>2</sup> Article 91 of the Criminal Code.

- provides financial support to the victim's family and compensates victim's family for the damage caused within the term set by the court.

Control over the behaviour of the convict shall be exercised by the competent body, and upon its suggestion, during the probation period, the court may totally or partly cancel obligations previously imposed on the convict or may impose new ones.

If a convict systematically violates obligations set or public order during the probation period, the court may issue a ruling sending the convict for execution of the punishment set by the court sentence, upon recommendation of the body that exerts control.

Activity and competences of the body that exerts control over the behaviour of convicts is regulated by the Law on Probation<sup>1</sup> that regulates the manner of organization and functioning of probation bodies, establishes their competencies aimed at preventing recidivism, regulates assistance and counselling with the view of reintegrating subjects of probation in the community. According to the Law, the following are the subjects of probation:

- persons who are in conflict with the criminal law (suspect, accused, defendant; persons liberated from criminal punishment; persons liberated from criminal liability; persons convicted to community service, as well as those deprived of the right to hold certain positions or to practice certain activities;
- persons released from detention places who request social adaptation.

Convicted persons can benefit of the following types of probation: community sentence probation; penitentiary probation; post-penitentiary probation<sup>2</sup>, under conditions of the law.

<sup>1</sup> Law No.8 from 14.02.2008 on Probation //Official Monitor No. 103-105/389 from 13.09.2008.

<sup>2</sup> Article 10. Community sentence probation

(1) Based on a court decision, in community sentence probation, control is exercised on:

a) convicted persons with conditional suspension of the execution of the punishment; persons conditionally liberated from

Taking into consideration national mechanism created in order to prevent recidivism, as well as provide assistance and counselling with the view to ensure reintegration of the subjects of crimes in the community,

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criminal liability before the term; convicted persons whose execution of the punishment is postponed; persons liberated from punishment where constraint measures of educational nature are applied;

b) execution of the sanction of community service, as well as deprivation of the right to hold certain positions or to practice certain activities.

(2) Actions that are part of re-socialization and reintegration programs, programs related to correction of social behaviour, etc. may apply to the categories of persons enumerated under paragraph (1)

Article 11. Penitentiary probation

(1) Within penitentiary probation, and namely in the period of preparation for release, programs of civic, ethic and moral education, of professional training and educational work shall be elaborated and applied to persons placed in detention facilities.

(2) The probation body, in collaboration with the administration of the penitentiary, may contribute to:

a) establishment of preliminary official contacts with the specialized institutions in order to create possibilities for professional training, professional refreshment and development according to requirements of labour force market;

b) establishment of preliminary official contacts with labour agencies in order to offer veridical information to the convicted persons about vacant jobs and about possibilities of choosing an adequate job, in order to facilitate their registration at the labour agency;

c) establishment of contacts with the specialized agencies responsible for facilitating renting of accommodation, upon request of persons who do not have relatives or other social relations;

d) establishment of contacts with the specialized agencies in order to facilitate placement of aged persons and of disabled persons in foster homes, upon their request;

e) elaboration and improvement of short-term and long-term programs related to social adaptation of persons who follow to be released from detention places.

Article 12. Post-penitentiary probation

Post-penitentiary probation aims at providing assistance and support to persons released from places of detention, at their social reintegration, according to the legislation in force.

opportune to amend the Law on Preventing and Combating Family Violence, by elaborating a new text of Article 9, as follows:

**"Article 9. Competence of Probation Body**

(1) Persons convicted for offences of family violence must participate in special counselling and re-socialization programs, applied within community sentence probation or penitentiary probation.

(2) Probation activity is carried out by probation bodies under conditions of the law."

Family Code establishes the right of the child to protection against abuse, including against bodily punishment from parents or persons who replace them. Parents cannot exercise their rights contrary to the interests of their child and cannot damage their child's physical and mental health. Education methods of children, chosen by their parents, shall exclude abusive behaviour, insults and any forms of ill-treatment, mental and physical violence, application of bodily punishment, and other illegal acts. Parents shall be held liable, as provided by the law, for exercising their parental rights in detriment of their child's interests.

Therefore, according to Article 67 of the Family Code, parents who abuse their parental rights or/and are cruel to their children, and apply physical or mental violence, or attempt on sexual inviolability of the child, etc., may be deprived of their parental rights. At the same time, in case child's life and health is endangered if he/she continues to stay together with parents, upon request of the guardianship authority, the court may decide that the child should be taken away from his/her parents without depriving them of their parental right.

The essence of punishing parents by depriving them of their parental rights consists of limiting their contacts with the child, as in such situation they may have meetings with their child only upon permission of the guardianship authority, who can refuse such contacts in case they establish that parents are not capable of such contacts or their contacts with the child can damage the latter's physical and intellectual development. In case the child is taken away without deprivation of parental rights, parents also lose the

right to communicate with the child, to personally participate in his/her education and to represent his/her interests. Parents, whose child was taken away, may have meetings with the child, but only upon the permission of guardianship authority.

The Law on Preventing and Combating Family Violence envisages possibility of applying protective measures in child's favour. A temporary regime for visiting minors may also be established as a protective measure for victim of family violence. According to the Law, application of protective measures does not impede initiation of the procedure of deprivation of parental rights, of taking the child away without deprivation of parental rights, and other actions regulated by the legislation in force.

**Article 46.  
Aggravating circumstances**

*Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:*

- a) the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;*
- b) the offence, or related offences, were committed repeatedly;*
- c) the offence was committed against a person made vulnerable by particular circumstances;*
- d) the offence was committed against or in the presence of a child;*
- e) the offence was committed by two or more people acting together;*
- f) the offence was preceded or accompanied by extreme levels of violence*
- g) the offence was committed with the use or threat of a weapon;**h) the offence resulted in severe physical or psychological harm for the victim;*

*i) the perpetrator had previously been convicted of offences of a similar nature.*

According to the provisions of the Criminal Code of the Republic of Moldova, an equitable punishment within the limits set by the Special Part of this Code and in strict compliance with the provisions of the General Part of this Code shall be applied to a person found guilty of the commission of a crime. When determining the category and the term of punishment, the court shall take into consideration the seriousness of the crime committed, its motive, the personality of the guilty person, the circumstances of the case that mitigate or aggravate liability, the impact of the punishment on the rehabilitation and re-education of the guilty person, as well as the living conditions of his/her family. A more severe punishment shall be applied only when a milder punishment cannot ensure achievement of the purpose of the punishment.

Therefore, in order to ensure application of an equitable punishment that would correspond to the gravity of the committed offence, criminal law also includes a norm that describes, in an exhaustive manner, the aggravating circumstances of committing an offence.

Therefore, according to Article 77 of the Criminal Code, when determining the punishment, the following shall be considered as aggravating circumstances:

- a) the commission of a crime by a person who previously was convicted for a similar crime or for other acts relevant to the case;*
- b) severe consequences caused by the commission of the crime;*
- c) the commission of a crime with any form of participation;*
- d) the commission of a crime due to social, national, racial, or religious hatred;*
- e) the commission of a crime against a person known to be under 14 years of age or against a pregnant woman or by taking advantage of the victim's known or obvious helpless condition caused by advanced age, disease, physical or mental handicap, or another factor;*
- f) the commission of a crime against a person in connection with his/her professional or social duties;*

*g) the commission of a crime using juveniles, persons in difficulty, mentally retarded persons, or persons dependent on the perpetrator;*

*h) the commission of a crime through extremely cruel acts or humiliation of the victim;*

*i) the commission of a crime by means that pose a great social danger;*

*j) the commission of a crime by a person in a state of intoxication. The court has the right, depending upon the nature of the crime, not to consider this as an aggravating circumstance;*

*k) the commission of crime with the use of weapons, ammunition, explosive substances, or similar devices, specially prepared technical devices, noxious and radioactive substances, medical and other chemical/pharmaceutical preparations, and the use of physical and mental coercion;*

*m) the commission of a crime by taking advantage of a state of emergency, natural calamities, and mass disorders;*

*n) the commission of a crime by abusing someone's trust.*

According to Article 78 of the Criminal Code, in case when aggravating circumstances are present the court may apply maximum punishment set in the corresponding article of the Special Part of this Code.

The comparative analysis of the aggravating circumstances enumerated in the criminal law of the Republic of Moldova and in the respective Article of the Istanbul Convention shows that they correspond almost entirely, with some minor exceptions.

In order to ensure full compliance of the national legislative framework with the provisions of the Istanbul Convention, it is proposed to introduce certain amendments and additions to the Criminal Code, in order to recognize acts of violence committed repeatedly, as well as acts of violence committed in the presence of a child as aggravating circumstances and allow a more severe sanctioning.

## Recommended amendments:

We propose the following amendments below,

Article 77 of the Criminal Code: paragraph (1) shall be supplemented by letter a1), with the following content:

“a1) the commission of a crime by a person who previously committed similar crime;”

after the word “using”, letter g) from paragraph (1) shall be completed with the phrase “or in the presence of” and further according to the text.

### Article 47.

#### Sentences passed by another Party

*Parties shall take the necessary legislative or other measures to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with this Convention when determining the sentence.*

According to the provisions of Article 11 of the Criminal Code, all persons who committed crimes in the territory of the Republic of Moldova shall be held criminally liable under legislation of the country.

Criminal punishments and criminal records for crimes committed outside the territory of the Republic of Moldova shall be taken into consideration hereunder in individualizing the punishment for a new crime committed by the same person on the territory of the Republic of Moldova as well as in settling issues related to amnesty in conditions of reciprocity based on a court decision.

### Article 48.

#### Prohibition of mandatory alternative dispute resolution processes or sentencing

1. *Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention.*

2. *Parties shall take the necessary legislative or other measures to ensure that if the payment of a fine is ordered, due account shall be taken of the ability of the perpetrator to assume his or her financial obligations towards the victim.*

According to Article 276 of the Criminal Procedure Code, criminal investigation stops in case of reconciliation of the damaged party with the suspect, accused, defendant in cases initiated on the basis of the preliminary complaint submitted by the victim, in case of committing crimes mentioned in paragraph (1) of this Article. Reconciliation of the parties can also be done through application of mediation. As mentioned above, respective Article does not include crime regulated by Article 2011 of the Criminal Code (Family Violence), and therefore, in case of committing actions of family violence the procedure of reconciliation between the parties is not applicable, under conditions of the legislation in force and, respectively, mediation is not applicable either. Nothing is mentioned in this perspective in the Law on Mediation No. 134 from 14.06.2007<sup>1</sup>.

Therefore, under conditions of the national criminal legislation, actions of family violence are not subjected to mediation, and criminal investigation does not stop upon reconciliation of the parties. This proves the fact that criminal legislative framework of the Republic of Moldova corresponds to the international practice in the field of combating domestic violence, and corresponds to the norms of the Istanbul Convention that establishes that crimes of family violence are applied regardless of the nature of relations between the victim and the perpetrator.

Nevertheless, lack of correspondence with the relevant international instruments on this subject is found in the Law on Preventing and Combating Family Violence.

Therefore, according to Article 11 paragraph (4) of the Law No. 45, cases of family violence may be subject to mediation, at the request of the parties. Mediation shall be performed by certified mediators or,

<sup>1</sup> Official Monitor No. 188-191/730 from 07.12.2007.

in the absence of such mediators, by the commission for social issues, with the participation of social assistant, as appropriate.

In the Report “Implementation of the Republic of Moldova’s Domestic Violence Legislation”, authors refer to the international practice in the field, and mention about the necessity to exclude from the Law No. 45 provisions referring to mediation. Authors of the Report insist that the use of mediation in cases of domestic violence diminishes aggressor’s accountability for violent behaviour and reflects an assumption that both parties are equally at fault for violence. Mediation also may further endanger victims of domestic violence because, if seen as an alternative to criminal investigation, it may allow for violent aggressors to avoid criminal investigation and sanctions for their behaviour.

Finally, mediation assumes that both parties are equal to negotiate. However usually this is not the case in cases of domestic violence and mediation in fact can bring additional risks of danger for the victim.

#### Recommended amendments:

By fully supporting position mentioned above, and having the purpose of consolidating the mechanism of protection of the victim of family violence, we propose to exclude paragraph (4) from Article 11 of the Law No. 45, which has the following content:

“(4) Cases of family violence may be subject to mediation, at the request of the parties. Mediation shall be performed by certified mediators or, in the absence of such mediators, by the commission for social issues, with the participation of social assistant, as appropriate. ”

We also need to mention the importance of ensuring an adequate punitive practice in cases when crimes of family violence are committed, in order not to put the burden of paying sanctions established to the aggressor on the victim of violence, even indirectly, considering that in such cases the victim and the aggressor have the same budget – family budget. In this regard, the emphasis should be on the categories of sanctions of individual nature.

Exactly for these considerations, proposals referring to sanctions established for the acts related to domestic violence practically do not include payment of fees as a form of punishment.

Therefore, sanctions from Article 2011 of the Criminal Code (Family Violence) include punishment in the form of community service or imprisonment.

For intentional failure to or avoiding to carry out measures established by the court in the protective order of the victim of family violence, initially a contravention sanction is provided in the form of administrative arrest, and in case it is repeated, criminal punishment is provided in the form of community service or imprisonment, etc.



# CHAPTER VI

## INVESTIGATION, PROSECUTION, PROCEDURAL LAW AND PROTECTIVE MEASURES

### Article 49. General obligations

*(1) Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.*

*(2) Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention.*

In the legislation of the Republic of Moldova, acts of violence are found in several provisions of the Criminal Code and Contravention Code. Victim of acts of violence, whose physical, psychological or sexual integrity is affected by commission of crimes or contraventions has a well-determined procedural status, and he/she benefits of the procedural and substantive guarantees, under conditions of the law.

Contravention Code recognizes the status of victim to any natural person or legal entity who, by contravention, was caused moral, physical or pecuniary damage. The victim enjoys the rights and the guarantees envisaged in the contravention legislation, and executes his/her obligations personally or through representatives, in case of a minor or a person who was in a state of irresponsibility. Provisions of the Criminal Procedure Code shall apply correspondingly to the contravention

proceedings, with exceptions expressly established in the contravention legislation.

According to the Criminal Procedure Code, the goal of the criminal procedure is the protection of individuals against crimes, as well as the protection of individuals against abusive acts committed by officials investigating or trying the alleged or committed crimes. Criminal procedure legislation recognizes the status of victim to any person who, by a crime, was caused moral, physical or pecuniary damages, and he/she shall benefit during criminal proceedings of all procedural guarantees, rights and obligations established by law. Therefore, according to Article 23 of the Criminal Procedure Code, the victim of an act that constitutes a crime is entitled to request, under conditions of the present Code, the initiation of criminal proceedings, participate within criminal proceedings as damaged party and have the moral, physical and pecuniary damage inflicted to him/her compensated. In case it is established that by a consequence of a crime, moral, physical or material damage was caused, the victim receives the status of a damaged party, with his/her consent, and by the ordinance of the criminal investigation body.

According to Articles 58-59 of the Criminal Procedure Code the victim/damaged party shall be heard in the conditions provided for hearing of the witnesses. Should sound evidence exist that life, physical integrity or liberty of a victim/damaged party, or of a close relative to him/her, are in danger in connection with the statements that he/she makes in a criminal case

concerning a serious, extremely serious and exceptionally serious offence, then the investigation judge, or as the case may be, the court, may allow to hold the hearing of the respective witness without his/her physical presence in the place where the criminal proceeding is carried out or in the courtroom.

According to criminal legislation, the forms of physical, psychological and sexual violence against family members, represent crimes, respectively procedural guarantees and rights of the victim, mentioned above, are also applicable in the case of victims of family violence. Besides this, Article 2151 of the Criminal Procedure Code establishes protection measures for the victims of family violence and the procedure of their application. Therefore, according to paragraphs (1) and (2) of this norm, the request of the victim of family violence addressed, within criminal proceedings, to the criminal investigation body, prosecutor or court concerning threat with death, with application of violence, with deterioration or destruction of goods or other illegal acts, shall be examined by the court, which must take measures aimed at ensuring protection of the victim against the suspect, accused or defendant who is a family member by issuing a protective order. In case a request is submitted to the criminal investigation body or prosecutor, they shall immediately submit, through a request, an application to the court in order to have it examined. We have mentioned above the disadvantage of the respective norm, because of the fact that it allows involvement of the competent bodies in ensuring victim's protection exclusively upon his/her request and it was proposed to review the respective regulation, in order to ensure a more efficient protection of the victim. Also, in order to consolidate the mechanism of victim's protection within criminal proceedings, some solutions were proposed in order to ensure mandatory participation of the defender in the proceedings in order to defend the victim, especially when we have minor victim and victim of family violence, who are placed in obvious position of vulnerability.

According to the provisions of the Law No.45-XVI from 1 March 2007 on Preventing and Combating Family Violence, the rayon section/department for social

assistance and family protection shall designate a specialist responsible for the prevention and combating of family violence. Other local-level public services (general education, youth and sports departments; health protection bodies, internal affairs bodies) shall appoint persons tasked with prevention and combating of family violence, who will be responsible for the coordination of specific activities within their institutions and for the collaboration when carrying out joint activities at the level of administrative-territorial unit, based on established collaboration procedures in the field of prevention and combating of family violence cases.

In this regard, the Law No. 45 tasked local public administration authorities to create multi-disciplinary teams in order to ensure cooperation in the field of protection and support of victims of all forms of violence and of other persons involved, who are the other members of the family affected by violence.

In order to carry out the envisaged tasks, the Law No. 45 establishes clear duties to the competent structures, taking into consideration their functional competencies, at the same time insisting on the need to join the efforts in order to offer a consolidated answer to these challenges.

Therefore, according to Article 8 of the Law, social assistance and family protection sections/departments collaborate with the internal affairs bodies to identify persons inclined to commit acts of family violence, conduct psychological and psycho-social counselling of the victims by their own means or by referring the case to the specialists of rehabilitation centres, carry out informational programs to prevent family violence, jointly with other empowered authorities and in collaboration with non-governmental organizations in the field.

General education, youth and sports departments also have competence, jointly with other authorities with competence in the field and in collaboration with non-governmental organizations in the field, to conduct educational programs for parents

and children on preventing and combating family violence, and report cases of family violence, including cases of family violence against children, to the appropriate authorities, guardianship authority and police.

Medical institutions of all types ensure medical counselling and assistance for victims, initiate and accomplish programs and services for aggressors, including for alcoholism, detoxification, psycho-therapeutic treatment.

Internal affairs bodies examine requests and notifications submitted by citizens, medical institutions, forensic medicine centres and other institutions that deal with conflicts within families, acts of violence, death threats or the immediate danger of the same, explain the victim's rights to the victim and, at the victim's request, assist them with placement in a rehabilitation centre, inform the victim of his/her right to free legal assistance, obtain protective order in crisis situation based on the request submitted by the victim or the reporting of the case, as well as ensure enforcement of the protective order.

The Report "Implementation of the Republic of Moldova's domestic violence legislation" elaborated by the Advocates for Human Rights, Women's Law Centre and Bulgarian Gender Research Foundation mentions that in the Republic of Moldova multi-disciplinary teams and National Referral System, which in 2008 was officially expanded to serve victims of domestic violence, have great potential to promote victim's safety. Therefore, after an initial meeting of the victim with a social assistant, the National Referral System assigns a multi-disciplinary team to a victim to deal with victim's case depending on his/her specific needs.

Despite positive results of the National Referral System and the multi-disciplinary teams, delays, limited resources, and lack of accessibility diminish the potential effectiveness of these programs. In order to ensure a more efficient involvement of the specialists assigned from competent local structures in cases of family violence, we have earlier proposed some additions to the legislation, which aim at explaining their tasks and duties when taking over the case.

According to Article 11 of the Law No. 45, responsible persons and other persons who know about the threat or danger to the life or health of a potential victim must notify about this fact authorities responsible for preventing and combating family violence. Authorities responsible for preventing and combating family violence must react promptly to any such notification.

Procedure of submitting claims of family violence acts is regulated by Articles 12-14 of the Law No. 45.

In order to improve the existing mechanism, the proposal is to introduce the following amendments:

Article 12 shall be supplemented with two new paragraphs, which shall become paragraph (2) and paragraph (3) with the following text:

"(2) Claim for issuing protective order shall be submitted by the victim personally or through a legal representative. In case of victim's impossibility to submit a claim for issuing protective order, upon his/her request, the respective claim may be submitted in the interests of the victim by the police body, social assistance body or prosecutor.

(3) Request for issuing protective order in the interests of a child or another unable person may be submitted by the prosecutor or guardianship authority regardless of whether a request from the victim or his/her legal representative was submitted."

A new version of Article 13 paragraph (3) is proposed, as follows:

"(3) No state fee shall be charged for submitting a request to the court regarding issuing protective order. Victim of family violence is fully exempted from paying court costs;"

Article 14:

in paragraph (2) the word "claim" shall be replaced by the phrase "claim or request for issuing protective order";

According to Article 20 of the Criminal Procedure Code, criminal investigation and the trial of criminal cases shall be carried out in reasonable terms.

for the settlement of criminal case are the following: complexity of the case; conduct of the parties in the proceeding; conduct of the criminal investigation body and the court, importance of the proceedings for the interested parties; age below 18 of the victim. The observance of the reasonable term during criminal investigation shall be secured by the prosecutor, and at the trial of the case by the respective court.

In case of danger of violating reasonable term during the carrying out of criminal investigation or examination of a concrete case in court, the participants within the proceedings may address a request to the investigation judge or, when necessary, the court that examines the case in substance, for accelerating criminal investigation or the examination of the case in court. Examination of the request is carried out in the absence of the parties, within 5 working days, by the investigation judge or, when necessary, by another judge or by another panel of judges than the one that examines the case. Following examination of the request, the investigation judge or the court shall decide on the request from paragraph (5) and issue a motivated decision, where it either obliges the criminal investigation body or, when necessary, the first instance court to carry out a procedural act, by establishing, when necessary, certain time for accelerating the procedure, or rejects the request. Court decision cannot be appealed, however national legislative framework also offers other remedies to the victim or other interested parties.

Therefore, according to Article 2 of the Law on Compensation by the State of the Damage Caused by Violation of the Right to Trial of the Case Within Reasonable Term or of the Right to Enforcement of the Court Judgment Within Reasonable Term<sup>1</sup>, any natural person or legal entity who considers that his/her right to trial of the case in reasonable term was violated may file an application to the court concerning establishing such a violation and compensation of the

damage caused through this violation. Compensation of the damage caused through violation of the right to trial of the case within reasonable term is made only when violation occurred based on reasons that cannot be imputed exclusively to the person who filed the application. The damage caused by violation of the right to trial within reasonable term shall be compensated regardless of the guilt of the court or criminal investigation body. Damage caused by a public authority or by an authority to which the state delegated duties of a public authority by violating the right to trial of the case within reasonable term shall be compensated by the state. Damage shall be compensated from the state budget. The burden of proof concerning violation of the right to trial of the case within reasonable term and absence of moral damage belongs to the Ministry of Justice, and the burden of prove concerning pecuniary damage caused by this violation and obligation to pay legal costs and expenses belongs to the applicant. The request shall be examined in maximum 3 months from the moment of its submission and shall be executed immediately after it enters into force.

#### Article 50. Immediate response, prevention and protection

1. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.
2. Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

According to Article 11 of the Law on Preventing and Combating Family Violence, authorities responsible for preventing and combating family violence must react promptly to any such notification.

<sup>1</sup> Law on Compensation by the State of the Damage Caused by Violation of the Right to Trial of the Case Within Reasonable Term or of the Right to Enforcement of the Court Judgment within Reasonable Term No. 87 from 21.04.2011//Official Monitor No. 107-109/282 from 01.07.2011.

In order to carry out the respective tasks, the Law No. 45 assigns concrete duties to the competent structures, by taking into consideration their functional competencies, and insisting at the same time on the need to ensure cooperation of efforts in order to offer a consolidated answer to these challenges.

Therefore, according to Article 8 of the Law, social assistance and family protection sections/departments collaborate with the internal affairs bodies to identify persons inclined to commit acts of family violence, conduct psychological and psycho-social counselling for victims, by their own means or by referring the case to the specialists from rehabilitation centres. General education, youth and sports departments shall report cases of family violence, including cases of family violence against children, to the appropriate authorities, the guardianship authority and the police

The internal affairs bodies shall examine requests and notifications submitted by citizens, medical institutions, forensic medicine centres and other institutions that deal with conflicts within families, acts of violence, death threats or the immediate danger of the same. In order to ensure victim protection, and upon his/her request, they shall assist them with placement in a rehabilitation centre, request the court to issue protective order and ensure its enforcement, and in emergency situation carry out administrative arrest of the aggressor.

Therefore, according to point 81 of the Methodical Instruction concerning Intervention of Internal Affairs Bodies in Preventing and Combating Family Violence Cases <sup>1</sup>, in order to support the request for issuing protective order, employees of the service of operative district officers (service for minor) shall attach the following documents: victim's request; reference of the local public authority; reference letter from the employer; explanations from the victim or members of the family, neighbours, relatives concerning the behaviour of the perpetrator; copies of the minutes

<sup>1</sup> Methodical Instruction concerning Intervention of Internal Affairs Bodies in Preventing and Combating Family Violence Cases, approved by the Order of the Ministry of Interiors No. 275 from 14.08.2012.

elaborated for the contraventions of family violence earlier committed; copies of the protective orders issued by the court and information concerning their enforcement; copies of the minutes concerning interventions of multi-disciplinary teams in cases of family violence; copies of the minutes concerning assessment of living conditions (elaborated quarterly by the social assistant); information from forensic medicine centres, information concerning establishment of bodily injuries caused to the victim; copies of the examined materials concerning commission of cases of family violence; other materials.

According to Article 15 of the Law No. 45 on Preventing and Combating Family Violence, the court shall issue, within 24 hours since the receipt of the request, a protective order, in order to assist the victim of family violence. Protective measures shall be applied for up to three months, may be cancelled upon the elimination of the threat or danger that caused the application of such measures, and may be extended in case of a repeated claim or if the conditions set in the protective order have not been observed. The district inspector, in collaboration with the social assistant, is responsible for notifying the aggressor of the protective order and its application. Internal affairs bodies, administrative bodies of social assistance and other administrative bodies, as appropriate, shall be responsible for supervising execution of protective measures established by the court. Application of protective measures does not prevent the commencement of divorce procedures, division of property, deprivation of parental rights, seizure of a child without deprivation of parental rights or other actions provided by applicable legislation. An appeal of the protective order may be made according to applicable legislation.

The mechanism for protection of victims of family violence was improved through the Law No. 167 from 09.07.2010 by introduction of respective amendments in civil and criminal procedure legislation.

Civil Procedure Code was supplemented with Chapter XXX1. Application of Protective Measures in Cases of Family Violence. According to Article 3184 of the Civil Procedure Code, the court shall issue,

within 24 hours on receipt of the request for application of protective measures, a decision to allow or dismiss the request. In case request is admitted the court shall issue a protective order regarding application of one or more measures established by law on victim protection, which needs to be sent for immediate execution.

According to criminal legislation, forms of physical, psychological and sexual violence against family members represent crimes, and therefore victims of family violence are entitled to procedural rights and guarantees, within the ongoing criminal proceedings, including protective measures for victims of family violence included in Article 215<sup>1</sup> of the Criminal Procedure Code.

Therefore, according to this norm, request of the victim of family violence addressed, within criminal proceedings, to the criminal investigation body, prosecutor or court concerning threat with death, with application of violence, with deterioration or destruction of goods or other illegal acts, shall be immediately submitted for the court's examination. The court, within 24 hours after the receipt of the request, must take measures aimed at ensuring protection of the victim against the suspect, accused or defendant who is a family member by issuing a protective order. Protective order needs to be immediately sent to the internal affairs body and social assistance body at the whereabouts of the suspect, accused or defendant and victim. Decision of the judge concerning application or prolongation of protective order needs to be immediately enforced, with the right to appeal to a higher court.

In order to consolidate the mechanism for protection of the victims of family violence, it is proposed to supplement criminal law with a norm that would introduce punishment for non-enforcement of measures included in protective order, established under conditions of the law, after application of contravention sanction for the respective act.

#### Recommended amendments:

Therefore, after Article 320 of the Criminal Code, Article 320 shall be introduced with the following content:

**"Article 320<sup>1</sup> . Non-enforcement of Measures included in Protective Order of the Victim of Family Violence**  
Deliberate non-enforcement or avoiding to enforce measures established by the court in the protective order of the victim of family violence, shall be punished by community service for 150 to 200 hours or by imprisonment until 2 years."

In order to ensure victim's protection, and when, following the circumstances established at the scene of crime, there is reasonable ground to believe that a family violence crime was committed and there is an imminent danger that perpetrator might commit violent actions again, we propose to supplement Article 166 of the Criminal Code with a new paragraph that obliges criminal investigation body to decide in such circumstances on apprehension of the perpetrator.

Therefore, Article 166 of the Criminal Procedure Code shall be supplemented with a new paragraph (11) as follows:

**„(11) When, following the circumstances established at the scene of crime, there is reasonable ground to believe that a family violence crime was committed and there is an imminent danger that violent actions will be committed again, criminal investigation body must decide on apprehension of the perpetrator."**

#### Article 51.

##### Risk assessment and risk management

- 1. Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide co-ordinated safety and support.*
- 2. Parties shall take the necessary legislative or other measures to ensure that the assessment referred to in paragraph 1 duly*



takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to weapons.

Activity related to establishment and resolution of cases of family violence, as well as the ways of interaction with other authorities and institutions competent to prevent and combat family violence are regulated by Methodical Instructions .

Therefore, according to point 15 of Methodical Instructions concerning Intervention of Internal Affairs Bodies in Preventing and Combating Cases of Family Violence, in case when the finding body, present at the scene of crime, will discover reasonable grounds that a crime envisaged by Article 2011 of the Criminal Code was committed, depending on the circumstances and seriousness of the case, it must immediately inform the guard union of the police territorial subdivision about the crime committed, and operative service officer shall organize transportation of the members of operative group to the scene of crime.

In cases when perpetrator's actions represent imminent danger for victim's life, health and goods, or when they may result in serious consequences, officers of internal affairs bodies shall intervene in force when there are no other ways of bringing them to an end in order to have access to the whereabouts of the victim. Criminal investigation body, notified about commitment of a crime, shall act in accordance with provisions of Criminal Procedure Code in order to establish circumstances that serve as ground for initiating criminal investigation. Victim and aggressor will be heard separately, in order to avoid intensification of conflicts and create a safe remedy, as well as efficient psychological contract. In order to discover traces of family violence case, as well as corpus delicti, and in order to establish the circumstances of the act or other circumstances which are important for just settlement of the case, representative of the finding body shall examine the scene of crime. In case when acts of physical violence were committed, representative of the finding body shall issue victims a prescription

for forensic examination, in order to establish gravity of bodily injuries caused. In the process of examination of the case of family violence, hearing of persons and accumulation of evidence, representative of the finding body shall establish the following elements: - whether the respective incident represents a case of family violence; the nature of relationship between the subjects (married, divorced, cohabitants, brothers, etc.); the whereabouts or the possible whereabouts of the perpetrator, if he/she is not present; whether victim and perpetrator are living together or separately, or whether they earlier lived together; documentation of each element of aggression (physical, verbal, psychological, sexual, economical, spiritual); any other aggressions that earlier occurred; all possible places of residence of the victim and perpetrator, information about their places of work, information about educational institutions (kindergarten, gymnasium, lyceum, college, university) attended by children; description of assets that were destroyed as a result of actions of violence committed by the perpetrator; circumstances and the reasons for committing the offence of family violence; presence of children, of disabled or aged persons who suffered as a result of violent actions committed by the perpetrator or are threatened by the latter with application of violent actions; whether perpetrator has a weapon, the place and the conditions of storing the weapon and legality of holding the weapon; as well as the fact whether perpetrator used the weapon against the victim or threatens with its use or application; establishing the fact of violation of restrictions applied through the protective order issued for the victim of family violence by the court, if it exists, and which measures included in the protective order were violated; circumstances that place the victim in a crisis situation, when he/she is in the situation of physical and/or mental inability, and if the victim provided his/her consent to the request concerning issuance of protective order by the court. In the process of settlement of the case of family violence, finding body shall evaluate the risk and carry out necessary measures in order to ensure immediate security for the victim, by apprehending the perpetrator or, when necessary, evacuating the victim and children with the victim's consent and providing assistance for their placement in specialized centres. At the same time,

the rights of the victim and perpetrator shall be explained to them, including the right to free legal assistance guaranteed by the state, as well as to services that are available and bodies that can offer such services. In case there is reasonable ground to believe that perpetrator committed a family violence offence, criminal investigation body can apprehend the latter, under conditions of the Criminal Procedure Code. Representative of the finding body (chief of post, operative district officer) shall inform social assistant about the case of family violence which was committed, and elaborate a joint plan aimed at ensuring security of the victim. In cases of family violence with involvement of victims-minors, collaborators of the internal affairs bodies shall immediately notify guardianship authorities about these <sup>1</sup>.

According to provisions of Article 15 of the Law No. 45 on Preventing and Combating Family Violence, the court shall issue a protective order to the victim of family violence, by applying one or several protective measures against the aggressor, including prohibition to keep or bear weapons.

According to provisions of Article 15 of the Law No. 45 on Preventing and Combating Family Violence, the court shall issue a protective order to the victim of family violence, by applying one or several protective measures against the aggressor, including prohibition to keep or bear weapons.

It is necessary to mention that according to Article 7 of the Law on the Regime of Weapons and Ammunitions of Civil Destination <sup>2</sup>, permission for purchasing lethal and non-lethal weapons which require authorization and, when necessary, permission for holding weapons is not issued to the following persons:

- who have the status of accused or defendant in criminal cases for committing deliberate acts, according to the legislation in force;
- have criminal record;
- whose right to purchase, hold or, when applicable, bear and use lethal or non-lethal weapons which require authorization, was annulled in the last 5 years;
- who were convicted by a final court sentence for committing deliberate offences, with the use of weapons or ammunitions, of explosive or toxic substances and materials, as well as of narcotic drugs, psychotropic substances and precursors;
- who were convicted by a final court sentence to imprisonment for deliberately committing serious, extremely serious and exceptionally serious crimes;
- who represent danger for public order, life and bodily integrity of persons and who are under supervision of police bodies.

Law on the Regime of Weapons and Ammunitions of Civil Destination No. 130 from 08.07.2012 //Official Monitor No. 222-227/721 from 26.10.2012, in force since 26.10.2013.

#### Recommended amendments:

We still ascertain lack of Unique Methodical Instructions for evaluating the risk in cases of family violence. In this context, we propose introducing a new paragraph (g) to Article 15 of the Law 45, with the following content:

“(9) Authorities responsible for preventing and combating family violence must efficiently evaluate the risk of lethality, the gravity and the risk of committing a repeated act of violence at all stages of investigation, of providing assistance to the victim and of applying protective measures, in order to offer security and protection to the victim.”

Annex No. I to this Report includes a form that may be used by the competent authorities when evaluating the risk.

<sup>1</sup> Points 23-37 of Methodical Instruction concerning Intervention of Internal Affairs Bodies in Preventing and Combating Cases of Family Violence, approved by the Order of the Minister of Interiors No. 275 from 14.08.2012.

<sup>2</sup> Law on the Regime of Weapons and Ammunitions of Civil Destination No. 130 from 08.07.2012 //Official Monitor No. 222-227/721 from 26.10.2012, in force since 26.10.2013.

## Article 52. Emergency barring orders

*Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk.*

Article 15 of the Law No. 45 on Preventing and Combating Family Violence provides that the court shall issue, within 24 hours from the receipt of the request, a protective order, to assist the victim of family violence. Unfortunately the Law does not provide for possibility to issue an emergency barring order, we therefore propose granting the role of issuing emergency barring order to the police, as follows:

### Recommended amendments:

We propose introducing a new Article 151 to the Law No. 45, as follows:

#### "Article 151 Emergency barring order

- (1) In case when receiving a signal about commission of an act of violence, police must immediately travel to the indicated place without waiting to receive a request from the victim or other person under conditions of Article 12.
- (2) In case when case of violence was committed, police shall:
  - a) take all legal measures to eliminate family violence;
  - b) interrogate immediately and separately the possible victim, witnesses, perpetrator, including children, which shall be recorded in written form and, if possible, in audio form;
  - c) inform victim of family violence of his/her rights;
  - d) upon victim's request or, when necessary, ensure victim's transfer to a medical institution;

- e) upon victim's request or, when necessary, ensure transfer of the victim and/or of his/her children to a shelter;
- f) in case of transferring victim to another dwelling, ensure that victim takes all personal assets from his/her place of residence;
- g) report case of violence and ensure safety of the victim;
- h) issue emergency barring order for evacuating the perpetrator from the dwelling, according to the procedure established by the law.

(3) Police shall register cases of family violence in a special registry for registration of crimes and take the necessary measures in order for the report and the accumulated materials be submitted to the prosecutor for control.

(4) Police shall separately register in its database the committed act of family violence, measures taken, the number of victims, measures applied against the perpetrator, as well as other statistical data."

## Article 53. Restraining or protection orders

- (1) *Parties shall take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention.*
- (2) *Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders referred to in paragraph 1 are:*
  - available for immediate protection and without undue financial or administrative burdens placed on the victim;
  - issued for a specified period or until modified or discharged;
  - where necessary, issued on an ex parte basis which has immediate effect;
  - available irrespective of, or in addition to, other legal proceedings;
  - allowed to be introduced in subsequent legal proceedings.
- (3) *Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1*

*shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.*

According to Article 15 of the Law No. 45 on Preventing and Combating Family Violence, the court shall issue, within 24 hours from the receipt of the request, a protective order, to assist the victim of family violence. Protective measures shall apply for a period of up to 3 months, may be withdrawn once the danger that determined their application disappears and may be prolonged in case of a repeat request or of a failure to observe conditions envisaged in the protective order. The competence of supervising the execution of protective measures established by the court belongs to internal affairs bodies, social assistance bodies, and to other bodies, depending on the case. Application of protective measures does not impede the process of initiating divorce procedure, sharing joint assets, deprivation of parental rights, taking the child away without deprivation of parental rights and other measures regulated by legislation in force.

The Law No. 167 from 09.07.2010 improved the mechanism for protection of victims of family violence, and necessary amendments were operated for this purpose to the civil procedure and criminal procedure legislation.

Civil Procedure Code was supplemented by Chapter XXX<sup>1</sup>. Application of Protective Measures in Cases of Family Violence. According to Articles 318<sup>1</sup> -318<sup>4</sup> of the Civil Procedure Code, the request for the application of protective measures shall be submitted to the court by the victim of family violence or by his/her legal representative, and in respect of minors – by guardianship and trusteeship authority. In case of victim's impossibility to submit the request, it may be submitted, at the instruction of the victim, by the prosecutor, social assistance body or the police. Upon receiving the request, the court shall immediately contact the district police at the whereabouts of the aggressor and shall request aggressor's notification about the initiation of the proceedings, and shall also request from the social assistance body or the police, as the case may be, to present a report characterizing the relevant family and the aggressor, as well as other acts required for the examination of the request.

Aggressor's failure to appear at the court hearing shall not prevent the court from examining the request. Within 24 hours from the receipt of the request for the application of protective measures, the court shall issue an order for the allowance or dismissal of the request. In case of allowance of request, the court shall issue a protective order, applying to the aggressor one or several restrictions provided by law, which at the same time represent protective measures for the victim. Protective measures shall be applied for a term of up to 3 months. The court shall immediately forward the protective order to the police and the social assistance body for immediate execution.

Within criminal proceedings, the procedure of issuing protective order for victims of family violence is regulated by Article 215<sup>1</sup> of the Criminal Procedure Code. According to this norm, upon the request of the victim of family violence submitted during criminal proceedings to the criminal investigation body, the prosecutor or the court, concerning threats of death, violence, deterioration or destruction of assets or other illegal acts, they shall immediately forward the request for the court's examination, by way of a solicitation. Within 24 hours as of the receipt of the request the court shall issue, by way of court order, a protective order to offer protection to the victim against the suspect, the accused or the defendant family member. Protective measures shall apply for up to three months. The duration of protective measures may be extended by the court at the repeat request addressed as a result of committing acts of family violence or as a result of non-observance of the conditions established in the protective order. The protective order shall be immediately forwarded to the internal affairs and social assistance bodies at the whereabouts of the suspect, the accused, the defendant and the victim.

Application in practice of the existing legal framework highlights some gaps and omissions that need to be eliminated, and some of them were already analyzed above together with recommendations.

In the context of the above-mentioned, we propose the following amendments and completions to several legislative acts:

1. The Law on Preventing and Combating Family Violence:

Article 12 shall be supplemented with three new paragraphs, which shall become paragraph (2), paragraph (3) and (4) with the following text:

“(2) Request for issuing protective order shall be submitted by the victim personally or through a legal representative. In case of victim’s impossibility to submit a request, at the instruction of the victim, request for issuing protective order may be submitted in the interests of the victim by the police body, social assistance body or prosecutor.

(3) Request for issuing protective order in the interests of a child or another unable person may be submitted by the prosecutor or guardianship authority regardless of whether the victim or his/her legal representative submitted a request.

(4) The court may issue protective order only based on victim’s declaration regarding the danger of an act of family violence being committed”.

Proposals formulated above are based on the following rationale. Article 12 of the Law No. 45 in its current version enumerates persons who may submit claims concerning commission of acts of family violence. From the content of the norm, this claim has a meaning of a notification (complaint or denunciation) concerning commission of a crime of family violence, and not a request for issuing protective order. Otherwise, it might result that the indicated subjects may initiate the procedure of obtaining protective measures for the victim of family violence without his/her knowledge and consent.

The proposed additions aim at regulating the procedure of requesting protective measures. Victim is the initiator of a request for protective measures, with some exceptions related to certain subjects, and with the possibility of involvement, upon victim’s request, of professionals when victim is unable to get involved directly.

Paragraph (3) of Article 13 shall have the following content:

“(3) No court fee is charged for submitting the request for protective order. Victim of family violence is also fully exempted from court fee.”;

Proposals to Article 13 of the Law No. 45 aim at ensuring possibility of initiating the procedure for receiving protective order for all victims, including victims who are in financial difficulties and/or who are totally dependent on the aggressor.

Also, proposals concerning full exemption of the victim from paying court fees within the procedure for receiving protective order aim at determining the victim to manifest more initiative in this regard, by understanding that the family will not bear additional financial costs for this.

Article 14:

in paragraph (2) the word “request” shall be replaced with the phrase “request or claim for issuing protective order”;

Amendments to Article 14 of the Law No. 45 are determined by the need to adjust the respective norm from the law with the provisions of the Criminal Procedure Code, which establishes in Article 2151 of the Criminal Procedure Code, that victim shall submit a claim and criminal investigation body or prosecutor shall make a request for receiving protective order for the victim of family violence.

Article 15:

paragraph (1) shall be supplemented by letter a1) and letter e1) as follows:

“a1) limiting the right of the aggressor to use a part of the common dwelling, when it can be divided in such a way that aggressor does not have any contact with the victim; e1) obliging the aggressor to bear the rental costs and/or other costs related to maintaining the dwelling where the victim, minor children or other members of the family temporary live or will live as a result of the impossibility to stay in the family dwelling.”;

paragraph (2) shall have the following content:  
“(2) Protective order shall be immediately communicated to the police body whose territorial competence covers the domicile of the aggressor. Responsibility for informing aggressor about protective order and its application belongs to the district inspector from the respective locality.”;

in paragraph (3) the text “upon the elimination of the threat or danger that caused the application of such measures” shall be replaced by the following text “under conditions of the present Law”.

Amendments to Article 15 of the Law No. 45 add new measures aimed at ensuring protection of the victim of family violence to the existing ones, and, at the same time, are determined by the need to further detail the current procedure of communicating the issuance of protective order for the victim, as well as the regulations related to the procedure of withdrawing protective measures.

2. The Civil Procedure Code of the Republic of Moldova shall be supplemented as follows:

Article 92 shall be supplemented by a new paragraph, paragraph (3), which shall have the following content:

„(3) Victim of family violence is exempted from costs related to examination of the request concerning application of protective measures. All payments in this respect shall be borne from the budget”;

Article 256:

Paragraph (1) shall be supplemented by letter e), which shall have the following content:

„e) protective measures regulated by Article 3184 paragraph (2) letter a1), e), e1) and f) from the current Code.”;

Article 318<sup>1</sup>:

paragraph (1) shall have the following content:

“(1) The request for issuing protective order shall be submitted by the victim personally or through a legal representative. In case of victim’s inability to submit the request for issuing protective order, upon his/her request, it may be submitted in the victim’s interests by the police body, the social assistance body or the prosecutor. Request for issuing protective order in the interests of the child or other

person who is unable may be submitted by the prosecutor or guardianship authority regardless of the existence of a request from the victim or his/her legal representative.”;

Article 3184:

paragraph (2) shall be supplemented by letter a1) and letter e1) as follows:

“a1) limiting the right of the aggressor to use a part of the common dwelling, when it can be divided in such a way that aggressor does not have any contact with the victim; e1) obliging the aggressor to bear the costs related to maintaining the dwelling where the victim lives, or will temporarily live as a result of impossibility to stay in the family dwelling.”;

from paragraph (4) the phrase „and social assistance” shall be excluded;

in paragraph (5) the phrase „paragraph (2) letter e) and f)” shall be replaced with the phrase „paragraph (2) letter a1), e), e1) and f)”;

paragraph (5) shall be supplemented with the following new sentence:

„Execution costs are to be borne by the aggressor, and he/she is the debtor of the execution procedure.”

A new paragraph (6) shall be introduced:

“The court may issue a protective order only based on victim’s declaration concerning the danger of a family violence act being committed.”

Amendments to the Civil Procedure Code are determined by the need to adjust provisions of the Code with the norms of the Law No. 45 related to court fees within the procedure of receiving protective order, as well as with the norms that establish subjects and procedure of submitting the request for issuing protective order, and new measures aimed at protection of the victims of family violence to the existing ones.

3. Article 11 letter b) from the Enforcement Code shall be supplemented as follows:

“, orders concerning protective measures regulated by Article 3184 paragraph (2) letter a1), e), e1) and f) from the present Code.”.



Amendments to the Enforcement Code are determined by the need to adjust the norm from the respective law with the provisions of the Criminal Procedure Code, by attributing to the protective order the status of an enforcement document under conditions of the law.

#### 4. Article 2151 of the Criminal Procedure Code:

paragraph (1) and (2) shall be formulated as follows:

„(1) When during criminal proceedings it is established that the victim of family violence is in danger of being subjected to violence or other illegal actions, including destruction of assets, criminal investigation body or prosecutor must immediately request application of protective measures.

(2) Request for application of protective measures may be submitted by the criminal investigation body or prosecutor also based on the request of the damaged party.“

Amendments to the Criminal Procedure Code are determined by the need to change current conditions that make possible involvement of competent bodies within criminal proceedings in order to ensure protection of the victim of family violence exclusively upon his/her request. In order to consolidate the mechanism of victim protection in cases of family violence, we welcome the review of the above-mentioned regulations to keep the possibility for the victim to directly submit the request to the criminal investigation body or prosecutor in order to ensure efficient protection and, at the same time, to offer possibility to the competent authorities to intervene ex officio, when necessary, in order to ensure protection of the victim who for different reasons does not manifest the initiative in this regard.

We would also like to mention that under current practice, which was developed based on the existing legislation, in case of non-execution of measures from protective order, contravention procedure is first initiated based on Article 318 of the Contravention Code, and subsequently criminal liability may follow according to Article 320 of the Criminal Code. Both the Criminal Code, in Article 320, as well as the Contravention Code, in Article 318, include liability for „the non-execution of a court judgment“. Such situations allow ambiguous interpretation of the

contravention and criminal law, in case of liability for non-execution by aggressor of restrictions introduced by protective order, because in Article 14 of the Civil Procedure Code, a court judgment is indicated only as one of the judicial acts issued by the court when trying civil cases (other acts are also mentioned here, such as decision, order). This fact allows for interpretation that norms of Article 318 of the Contravention Code and Article 320 of the Criminal Code should not be applied in case of non-execution of restrictions applied based on protective order, because when examining the request for application of protective measures in a family violence case, the court does not issue judgments, but decisions to admit the request and protective order.

In order to exclude ambiguities in this regard, our proposal mentioned above was to supplement criminal law with the norms that include liability specifically for non-execution of measures included in protective order issued for the victim of family violence.

#### Article 54. Investigations and evidence

*Parties shall take the necessary legislative or other measures to ensure that, in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary*

According to Article 11 of the Law on Preventing and Combating Family Violence, the right to private life and confidentiality of information concerning victim shall be guaranteed.

Civil procedure legislation<sup>1</sup> establishes that court may order trial of a case in a closed hearing in order to prevent divulgation of information that refers to private aspects of life that infringes upon honour, dignity or professional reputation or other circumstances that could damage interests of the participants in the proceedings, public order or morality.

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<sup>1</sup> Civil Procedure Code, Article 23.

The hearing may be declared closed during the entire trial or only for carrying out some specific procedural acts. The court shall take necessary measures in order to preserve information about person's private life.

Inviolability of private life is also protected within criminal proceedings. Therefore, according to Article 15 of the Criminal Procedure Code, any person has the right to the inviolability of his/her private life, to the confidentiality of his personal and family life, etc. During criminal proceedings, no one has the right to interfere arbitrarily and illegally in the private life of a person. In the process of carrying out procedural actions information about private life of the person, which is not necessary for the proceedings, should not be collected. At the request of the criminal investigation bodies and the court, participants in procedural actions have obligation not to disclose such information and shall make a written pledge for this. Persons from whom the criminal investigation body requires information on private and personal life have the right to be convinced about the fact that this information will be used in a concrete criminal case. A person has no right to refuse providing information on his/her or other persons' private and personal life based on argument of inviolability of private life, but he/she has the right to ask for explanations from the criminal investigation body on the reasons for requiring such information, and ask for including explanations in the minutes of the respective procedural act. Evidence confirming information regarding private and personal life of a person shall be examined in closed court hearing, based on his/her request. Damages caused to a person by infringing on his/her private and personal life during the criminal proceedings shall be compensated in the way provided by the current legislation.

According to Article 111 of the Criminal Procedure Code, in certain cases, when damage can be inflicted on the private life of a damaged person, defendant accused for committing a sexual crime and his/her defense counsel will not be allowed to submit evidence about the alleged character or personal history of the victim, except the case when the court grants such permission. Defendant can file an application to the president of the court hearing requesting the

right to submit evidence on the alleged character or personal history of the damaged person. This application shall be settled in a closed hearing, where the defendant and prosecution will have the possibility to express their opinion. Following the closed hearing, the court will provide the permission to submit evidence on the alleged character or personal history of the damaged person only in case it is convinced of the relevance of such evidence and of the fact that their lapse may affect the defendant's acquittal in case of prohibition to administer such evidence. In such cases, the president of the hearing will establish the limits for administering the respective evidence and will address questions.

#### Article 55.

##### Ex parte and ex officio proceedings

1. *Parties shall ensure that investigations into or prosecution of offences established in accordance with Articles 35, 36, 37, 38 and 39 of this Convention shall not be wholly dependent upon a report or complaint filed by a victim if the offence was committed in whole or in part on its territory, and that the proceedings may continue even if the victim withdraws her or his statement or complaint.*
2. *Parties shall take the necessary legislative or other measures to ensure, in accordance with the conditions provided for by their internal law, the possibility for governmental and non-governmental organisations and domestic violence counsellors to assist and/or support victims, at their request, during investigations and judicial proceedings concerning the offences established in accordance with this Convention*

As actions of violence represent an increased social danger, they are found in a number of Articles of the Criminal Code. Through the Law No. 167 from 09.07.2010 Criminal Code of the Republic of Moldova was supplemented with a new norm, Article 201 that establishes criminal liability for family violence.

According to the provisions of the Criminal Procedure Code, the fact of committing or preparing to commit a crime may be established based on a complaint

or denunciation filed by a person or by a legal entity, as well as based on information concerning commission of a crime, which is received by the criminal investigation body or prosecutor in the process of exercising its activity.

When the fact of committing a crime or preparing to commit a crime regulated by the Criminal Code is established, the criminal investigation body, as well as prosecutor, may order the start of criminal investigation, in case there are no circumstances that exclude criminal investigation. It should be mentioned that according to Article 262 of the Criminal Procedure Code, if, according to the law, the criminal investigation starts only based on the preliminary complaint of the victim, the criminal investigation cannot start in the absence of the complaint.

Crimes, where the criminal investigation starts only upon the preliminary complaint of the victim, are enumerated in Article 276 paragraph (1) of the Criminal Procedure Code. This norm does not include serious crimes against life and person's integrity, including sexual crimes committed against the victim and crime provided by Article 201 of the Criminal Code (Family Violence) or other norms of the Criminal Code related to the crimes committed against family members, therefore criminal investigation may be initiated in these cases also without the requirement of a preliminary complaint filed by the victim.

Because Article 201 of the Criminal Code (Family Violence) is not included in the list of crimes indicated in Article 276 paragraph (1) of the Criminal Procedure Code, reconciliation of the parties is not applicable, under conditions of the legislation in force, and, respectively, criminal investigation cannot be discontinued, in case when damaged party would accept reconciliation with the suspect, accused or defendant.

Therefore, in case the victim does not want to continue criminal proceedings, even without the influence of the perpetrator, there is no legal ground for ceasing criminal investigation.

In accordance with the provisions of the Law No. 45-XVI from 1 March 2007 on Preventing and Combating

Family Violence, the rayon section/department for social assistance and family protection shall designate a specialist responsible for the prevention and combating of family violence. Other local-level public services (general education, youth and sports departments; health protection bodies; internal affairs bodies) shall appoint persons responsible for the prevention and combating of family violence, in order to coordinate specific activities within their institutions and ensure collaboration when carrying out joint activities at the level of administrative-territorial unit, based on established collaboration procedures. For this purpose, the Law No. 45 tasked local public administration authorities to create multi-disciplinary teams in order to ensure cooperation in the field of protection and support of victims of all forms of violence.

In accordance with Article 11 of the Law No. 45, the victim of family violence is guaranteed the protection of his/her legitimate rights and interests, including the right to assistance for physical, psychological and social rehabilitation; to primary and qualified free legal assistance according to the legislation on state guaranteed legal aid; to medical assistance in accordance with the Law on Mandatory Medical Assistance Insurance.

Responsible persons and other persons who are aware of a threat or danger to the life or health of a potential victim must notify this fact to the authorities responsible for preventing and combating family violence. Authorities responsible for preventing and combating family violence must react promptly to any such notification and inform the victims about their rights, about authorities and institutions responsible for preventing and combating family violence; about the type of services and organizations where they can address for help; about the assistance available for them; about where and how they can file a complaint and receive protection; at what extent and under what conditions they have access to legal consultancy or assistance; about cancellation of the protective order, etc.

Nevertheless, legal provisions mentioned above concerning offering adequate conditions

for an efficient protection of the victims of violence continue to be to some extent declarative and the main reasons are organizational and financial problems.

#### Article 56. Measures of protection

*(1) Parties shall take the necessary legislative or other 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:*

- (a) providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;*
- (b) ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively;*
- (c) informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case;*
- (d) enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;*
- (e) providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;*
- (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.*

*(2) A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.*

According to Article 11 of the Law on Preventing and Combating Family Violence, a victim of family violence is guaranteed the protection of his/her legitimate rights and interests, including the right to assistance for physical, psychological and social rehabilitation; to private life and confidentiality of information; to primary and qualified free legal assistance according to the legislation on state guaranteed legal aid; to medical assistance in accordance with the Law on Mandatory Medical Assistance Insurance.

Authorities responsible for preventing and combating family violence must react promptly to any such notification and inform the victims about their rights, about authorities and institutions responsible for preventing and combating family violence; about the type of services and organizations where they can address for help; about the assistance available for them; about where and how they can file a complaint; about the procedure that follows after filing a complaint and their role after such procedures; about how one can be granted protection; at what extent and under what conditions they have access to legal consultancy and assistance; if there is danger for their life and health in case of release of an apprehended or convicted person; if protective order was cancelled. Offering protection and assistance services to the victim should not be conditioned by his/her desire to make declarations and participate in the proceedings related to prosecution of the perpetrator.

According to Article 8 of the Law No. 45, social assistance and family protection sections/departments collaborate with the internal affairs bodies to identify persons inclined to commit acts of family violence, conduct psychological and psycho-social counselling of the victims by their own means or by referring the case to the specialists of rehabilitation centres, carry out informational programs to prevent family violence, jointly with other empowered authorities and in collaboration with non-governmental organizations in the field.

The general education, youth and sports departments also have competence to conduct, jointly with other empowered authorities and in collaboration with non-governmental organizations in the field, educational programs for parents and children on preventing and combating family violence, as well as report cases of family violence, including cases of family violence against children, to the appropriate authorities, guardianship authorities and police. Medical institutions of all types shall ensure medical counselling and assistance for victims; carry out programs and services for aggressors, including aimed at dealcoholisation, detoxification, psycho-therapeutic treatment, etc. Internal affairs bodies shall examine requests and notifications submitted by citizens, medical institutions, forensic medicine centres and other institutions that deal with conflicts within families, acts of violence, death threats or the immediate danger of the same; inform the victim of their rights, and upon his/her request, assist the victim in placement within the rehabilitation centre, inform the victim of their right to free legal assistance, obtain a protective order from the court in emergency cases, based on the victim's request or on the notification of the case; ensure the enforcement of the protective order.

Departmental activity aimed at informing victims of family violence about the ways of interaction with relevant authorities and institutions in order to receive necessary assistance and counselling services is regulated by Methodical Instructions.

Nevertheless, the existing normative framework continues to be mainly inefficient concerning the offering of adequate conditions for an efficient protection of victims of violence. In order to improve management of cases of family violence, it is necessary to develop a network of services aimed at re-socialization and rehabilitation of victims, which are currently mainly provided by non-governmental organizations that offer professional psychological support and assistance, also accompanied by temporary placement of persons in difficulty.

According to Article 1 of the Criminal Procedure Code, the goal of the criminal procedure is the protection of

individuals against crimes, as well as the protection of individuals against abusive acts committed by officials investigating or trying the alleged or committed crimes.

According to the legislation, during the carrying out of criminal proceedings and trial of civil cases<sup>1</sup>, a person who does not speak the state language has the right to get acquainted with all the documents and the materials of the case, and to speak before the criminal investigation body and the court through an interpreter.

Criminal procedural legislation recognizes the status of victim to any natural person who, by a crime, was caused moral, physical or pecuniary damages, and who benefits within criminal proceedings from procedural guarantees, rights and obligations. In case a victim was caused moral, physical or material damages by consequence of a crime, with his/her consent, and through the order of the criminal investigation body, he/she is recognized a damaged party.

his/her consent, may be carried out only with authorization of the investigation judge. These actions cannot be however carried out in places or under circumstances where there is a risk of traumatizing the damaged party or the risk of violating his/her human rights.

According to Articles 58-59 of the Criminal Procedure Code, the victim/damaged party is entitled to make declarations and give explanations; to submit documents and other means of evidence that can be attached to the criminal case and investigated in the court hearing; to formulate objections against actions of the criminal investigation body or court and to request for his/her objection to be included in the minutes of the respective action; to challenge the person that carries out criminal investigation, the judge, prosecutor, expert, interpreter, translator, court clerk; to be informed of the minutes of the procedural actions in which he/she participated, to request their

<sup>1</sup> Criminal Procedure Code, Article 16; Civil Procedure Code, Article 24.

completion or including of his/her objections in the respective minutes; to be informed about the materials of the criminal case from the moment when the criminal investigation ended and to make notes on any information in the file; to participate in the court hearings, including in the examination of the materials of the case; to be informed by the criminal investigation body, or when relevant, by the prosecutor, on all decisions adopted regarding his/her rights and interests, to receive, at his/her request, free copies of these decisions, as well as of the decisions concerning cessation or classification of the proceeding in the respective case, concerning non-initiating criminal investigation, a copy of the sentence, of the decision or of other final court judgment; to receive compensation of the expenses he/she had in the criminal case as well as of the damage caused as a consequence of illegitimate actions of the criminal investigation bodies; to be represented by an elected defense counsel or, in case that he/she does not have the means to pay a defense lawyer, to be assisted, under conditions of the law, by an ex officio lawyer; to notify hierarchically superior prosecutor or, when necessary, the court about violation of the reasonable term, etc. Damaged party will benefit of his/her rights and exercise his/her obligations personally or, if the law permits, through representatives. In case when the damaged party is juvenile or incompetent person, his/her rights are exercised by his/her legal representatives in the way provided by the law. Bodily examination, as well as collecting samples from bodily discharges or other biological samples from the damaged party without his/her consent, may be carried out only with authorization of the investigation judge. These actions cannot be however carried out in places or under circumstances where there is a risk of traumatizing the damaged party or the risk of violating his/her human rights.

Should sound evidence exist that life, physical integrity or liberty of the victim/damaged party, or of a close relative to him/her, are in danger in connection with the statements that he/she makes in a criminal case concerning a serious, extremely serious and exceptionally serious crime, the instruction judge, or as the case may be, the court may allow organizing the hearing of

this person without his/her physical presence in the place where the criminal proceeding is carried out or in the courtroom, provided that there are adequate technical means, through a television network, with his/her image and voice being distorted in such a way that he/she may not be recognized. Statements are recorded on videotape and incorporated in the minutes drafted in accordance with the law conditions.

Juvenile victim/damaged party or witness younger than 14 years shall be heard in criminal cases related to sexual or domestic violence crimes, as well as in other cases where the interests of justice or of the juvenile require, under special conditions. They are heard by the investigation judge in premises specially arranged for this purpose, equipped with audio/video recording means, and through a psycho-pedagogue. The juvenile and the psycho-pedagogue shall be placed in a separate room from the investigation judge and the other parties who take part at this procedural action, and they are entitled to ask questions through the investigation judge. All declarations are registered through audio-video tools and are incorporated in the minutes drafted in accordance with the procedural norms.

If there are sufficient grounds to believe that damaged party, witness, other participants in the proceedings or members of their families could be or are threatened with death, with application of violence, with deterioration or destruction of their goods, or with other illegal acts, the criminal investigation body and the court must take measures provided by the Law on the Protection of Witnesses and Other Participants to the Criminal Proceeding. Protection measures may be applied separately or jointly, including with urgent measures and/or with assistance measures under conditions of the law. Information about real identity or other information about the protected person shall be kept in conditions of maximum security of confidentiality. Contravention and criminal liability is envisaged for disclosing data about the protected person. Persons who take part in the protection programme shall sign a confidentiality declaration in this regard.



**Article 57.**  
**Legal aid**

*Parties shall provide for the right to legal assistance and to free legal aid for victims under the conditions provided by their internal law.*

According to Article 11 of the Law No. 45, the victim of family violence is guaranteed the protection of his/her legitimate rights and interests, including the right to physical, psychological and social assistance; to primary and qualified free legal assistance according to the legislation on state guaranteed legal aid, etc.

Authorities responsible for preventing and combating family violence must inform victims about the possibilities to receive protection, to what extent and in what conditions they have access to legal consultancy and assistance, etc.

The above-mentioned legal provisions continue to be to some extent declarative, and this fact is also reflected in the Report “Implementation of the Republic of Moldova’s Domestic Violence Legislation”. According to this report, despite the guarantees included in the Law no. 45 and efforts made, victims of family violence rarely have access to free legal assistance.

This happens despite of the fact that according to Article 19 of the Law on State Guaranteed Legal Aid, in criminal cases qualified legal aid may be requested at any stage of criminal proceedings, and in civil cases also before proceedings are initiated.

In order to improve the current mechanism for protection of victims of family violence and ensure necessary legal aid, we consider necessary to develop regulatory framework in order to establish procedure of mandatory participation of the defence lawyer.

Currently, criminal procedural legislation that establishes conditions for mandatory participation of the defence counsel in the criminal proceedings is regrettably limited to the obligation to ensure mandatory participation of the defence counsel only for defence of the suspect, the accused and the defendant, and

nothing is mentioned about the victim. Therefore, victim has to find a defence counsel by his/her own. We consider that this situation is disadvantageous for the victim, especially when victim is a juvenile and is a victim of family violence, because these cases clearly disclose victim’s vulnerability.

Situation in the civil procedure is not better. Article 77 of the Civil Procedure Code describes situations that require mandatory participation of defence lawyer in civil proceedings. The law includes a number of legal grounds that oblige the court to request territorial office of the National Council for State Guaranteed Legal Aid to designate a lawyer for the party in the proceedings or the interviewee, including – other cases regulated by the law.

As mentioned above, Article 11, paragraph (5) of the Law No. 45 envisages the right of the victim of family violence to free primary and qualified legal assistance according to the legislation on state guaranteed legal aid. Or this provision, in corroboration with the norm evoked from the Civil Procedure Code, does not guarantee free mandatory presence of the lawyer within the proceedings, unless there is a respective request from the victim, if he/she meets conditions envisaged in the Law on State Guaranteed Legal Aid. Therefore, in order to ensure efficient protection of the victim within the proceedings, it is necessary to introduce a norm that would imperatively prescribe the need for mandatory participation of the lawyer in the proceedings concerning receipt of protective order that are initiated upon victim’s request.

Based on the above mentioned, we propose the following,

**1. Proposal is to introduce the following amendments and completions in the Criminal Procedure Code of the Republic of Moldova:**

**Article 69:**

paragraph (1) shall be supplemented with point 13) and point 14) reading as follows:  
„13) damaged party is a minor;

paragraph (2) shall be supplemented with point 4) reading as follows:

„4) was recognized damaged party – in case regulated by paragraph (1) point 13)-14).“

Article 70:

paragraph (3) point 2) after the phrase „and suspect, accused, defendant“ shall be supplemented by the phrase „, damaged party“ and further according to the text.

2. The following amendments and completions shall be introduced in the Civil Procedure Code of the Republic of Moldova,

Article 77:

Paragraph (1) letter c) phrase „Article 304 and 316“ shall be replaced with the phrase „Article 304, 316 and 3183“;

Article 3183 shall be supplemented with a new paragraph, paragraph (11) reading as follows:

„(11) When examining the request of the victim of family violence concerning application of protective measures, the court shall ask the coordinator of the territorial office of the National Council for State Guaranteed Legal Aid to designate a lawyer for defending victim's interests. Legal aid provided to the victim is free.“

Article 58.

Statute of limitation

*Parties shall take the necessary legislative and other measures to ensure that the statute of limitation for initiating any legal proceedings with regard to the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, shall continue for a period of time that is sufficient and commensurate with the gravity of the offence in question, to allow for the efficient initiation of proceedings after the victim has reached the age of majority.*

According to provisions of Article 53 of the Criminal Code, a person who committed an act that comprises elements of a crime may be exempted from criminal liability by a prosecutor during a criminal investigation or by a court during a case hearing, including in the case of criminal liability limitation period, according to Article 60 of the Criminal Code.

Article 60. Criminal Liability Limitation Period

*(1) A person shall be exempted from criminal liability if the following terms have expired from the date of the commission of the crime:*

- a) 2 years from the commission of a minor crime;*
- b) 5 years from the commission of a less serious crime;*
- c) 15 years from the commission of a serious crime;*
- d) 20 years from the commission of an extremely serious crime;*
- e) 25 years from the commission of an exceptionally serious crime.*

*(2) The limitation period shall cover the period between the commission of the crime and until the date of the final court decision.*

*(3) If a person commits a new crime, the limitation period shall be calculated for each crime separately.*

*(4) The limitation period shall be interrupted if, prior to the expiry of the terms specified in par. (1), the person commits a crime for which a punishment of imprisonment for more than 2 years may be applied hereunder. In such a case, the calculation of the limitation period shall start the moment the new crime was committed.*

*(5) The limitation period shall be suspended if the person who committed the crime avoids criminal investigation or trial. In these cases, the limitation period shall resume the moment of the person's seizure or confession; however, a person may not be subject to criminal liability if more than 25 years have elapsed since the date of the commission of the crime and the limitation period has not been interrupted by the commission of a new crime.*

*(6) The application of the limitation period to a person who commits an exceptionally serious crime shall be decided by the court. If the court shall find it impossible to apply the limitation period and exempt the person from criminal liability, life imprisonment shall be replaced by imprisonment for 30 years. (7) The terms of the criminal liability limitation period shall be reduced by half for persons who were juveniles at the date of the commission of the crime.*

*(8) The limitation period shall not apply to persons who commit crimes against the peace and security of humanity, war crimes, or other crimes set forth in international treaties to which the Republic of Moldova is a party.*

Following the analysis of the text of Article 60 from the Criminal Code, it corresponds, with some exceptions, to the provisions of the Istanbul Convention.

In order to promote in the national criminal legislation requirements of the Convention concerning the need to extend the limitation period for initiating legal proceedings for crimes of sexual violence, before victim reaches 18 years old, the following amendments to Article 60 of the Criminal Code of the Republic of Moldova are proposed:

Article 60 shall be supplemented by a new paragraph (21), reading as follows:

“(21) In case of sexual crimes committed against a juvenile, the limitation period shall start from the date when the juvenile reaches 18 years. If juvenile victim dies before reaching 18 years, the limitation period shall start from the date of his/her death.”

# CHAPTER VII

## MIGRATION AND ASYLUM

### Article 59. Residence status

(1) Parties shall take the necessary legislative or other measures to ensure that victims whose residence status depends on that of the spouse or partner as recognised by internal law, in the event of the dissolution of the marriage or the relationship, are granted in the event of particularly difficult circumstances, upon application, an autonomous residence permit irrespective of the duration of the marriage or the relationship. The conditions relating to the granting and duration of the autonomous residence permit are established by internal law.

(2) Parties shall take the necessary legislative or other measures to ensure that victims may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner as recognised by internal law to enable them to apply for an autonomous residence permit.

(3) Parties shall issue a renewable residence permit to victims in one of the two following situations, or in both:

(a) where the competent authority considers that their stay is necessary owing to their personal situation;

(b) where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

(4) Parties shall take the necessary legislative or other measures to ensure that victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.

In order to adopt a new regulatory framework in compliance with the community legislation, Republic of Moldova adopted the Law on the Regime for

Foreigners in the Republic of Moldova<sup>1</sup>, that regulates foreigners' entry into, stay on and departure from the territory of the Republic of Moldova, granting and prolongation of the residence right, repatriation, specifies enforcement measures in case of violation of the residence regime, in compliance with the obligations assumed by the Republic of Moldova by entering into international treaties which it is a party to.

According to the respective law, foreigners who stay in the Republic of Moldova on legal grounds enjoy the same rights and freedoms as the citizens of the Republic of Moldova, guaranteed by the Constitution of the Republic of Moldova and other laws, as well as rights provided by the international treaties the Republic of Moldova is a party to, with exceptions established by the applicable legislation. During their stay or residence in the Republic of Moldova foreigners must observe the legislation of the Republic of Moldova and be subject to control of the competent authorities according to law.

Foreigners may request competent authority for foreigners to grant them the right to temporary residence in the Republic of Moldova for labour immigration, studies, family reunification, humanitarian or religious activities, long-term medical treatment and balneo-therapy and rehabilitation, protection of victims of trafficking of human beings, for other purposes, in which the foreigner's activity is not contrary to legislation of the Republic of Moldova or his/her presence in the Republic of Moldova is necessary in the public interest or in the interest of national security.

<sup>1</sup> Law on the Regime for Foreigners in the Republic of Moldova No. 200 from 16.07.2010 //Official Monitor No. 179-181/610 from 24.09.2010.

of the document allowing him/her to cross the state border, by the medical certificate showing he/she does not suffer from any diseases that may endanger public health, by evidence of the fact that he owns a housing space, holds a medical insurance and possesses means of support, by a police clearance certificate from the country of origin and by other documents depending on the purpose for which the right of temporary residence in the Republic of Moldova is requested. Within up to 30 calendar days from application the competent authority for foreigners shall issue a decision on granting or denying the temporary residence right. The decision on denying a temporary residence right shall be notified to the applicant in writing within 3 working days from issuance and may be contested in an administrative court.

The temporary residence right for family reunification may be granted to foreigners married to citizens of the Republic of Moldova residing in the Republic of Moldova or foreigners having the right of residence in the Republic of Moldova or foreigners whose status of stateless persons was recognized, provided that the marriage is not fictitious and is established under the applicable legislation. The temporary residence right for family reunification is extended for each family member in part for the same period that the temporary residence right was granted to the foreigner staying in the Republic of Moldova, at his/her request, upon evidence of availability of means of support in the minimum amount of one average monthly salary in the national economy for each family member.

According to Article 39 of the Law No. 200, the temporary residence right of the foreigner holding the residence right of family reunification may be independently extended if he becomes an adult; the person who requested a family reunification right deceased; the marriage terminated by divorce or death. To extend the right of residence the applicant shall additionally submit the birth certificate, the death certificate, the divorce certificate or the court decision on dissolution of marriage, as applicable. The residence right may be extended for a period of up to 6 months. Any further extension of the residence right

is granted only under the conditions and for purposes provided by this law.

The right of permanent residence in the Republic of Moldova may be granted upon request and under conditions of the law for unlimited period of time to a foreign holder of a temporary residence right, except those enrolled in education and migrant workers, provided he/she meets cumulatively the following conditions:

- a) the foreigner has a legal and continuous right of temporary residence on the territory of the Republic of Moldova for at least 3 years – in case of a foreigner married to a citizen of the Republic of Moldova;
- b) has a legal and continuous right of temporary residence on the territory of the Republic of Moldova for at least 5 years – for a foreigner of any other category;
- c) proves that he possesses the necessary funds for self-maintenance, except for foreigners married to citizens of the Republic of Moldova;
- d) possesses a residential space and has satisfactory knowledge of the official language;
- f) continues to meet entry regulations of the Republic of Moldova and has had no criminal record during the last 3 years.

The application for the right of permanent residence in the Republic of Moldova written in the state language shall be filed in person to the competent authority for foreigners and shall be accompanied by the following documents: certificate of civil status; a valid document for the state border crossing; a document confirming legal ownership of a residential space; a document confirming the existence of means for maintenance; a police clearance; a medical certificate; a proof of medical insurance.

The application for the right of permanent residence in the Republic of Moldova may be rejected if the terms and conditions for filing application were not met and all necessary documents that confirm

confirm conditions established by the law were not attached. The decision on rejecting the application for the right of permanent residence in the Republic of Moldova may be contested in the administrative court of appeal.

Those foreigners whose applications for the right of permanent residence in the Republic of Moldova were denied may receive a temporary residence right, if applied for, according to the situation prior to filing the application for the permanent residence right. A repeated application for the right of permanent residence in the Republic of Moldova may be filed after the elimination of grounds for its previous refuse.

Therefore, relevant domestic legislation generally corresponds to the requirements of the Istanbul Convention and is also applicable for the victims of family violence. Nevertheless, in order to ensure full observance of conditions of accessibility and accuracy of the legislative act, we consider necessary to introduce the following amendments to the Law on the Regime for Foreigners in the Republic of Moldova:

1. Article 31:

paragraph (1) shall be supplemented with letter e2) reading as follows:  
„e2) for the protection of the victim of gender violence;“;

2. Article 39:

paragraph (1) shall be supplemented with letter d) reading as follows:  
„d) is victim of gender violence;“;

3. After Article 42<sup>1</sup> a new Article 422 is introduced, reading as follows:

“Article 422. Extension of the right to temporary residence for victims of gender violence

(1) The right to temporary residence for victims of gender violence may be extended in case of a foreigner who is or was a victim of family violence, provided that the following conditions are met cumulatively:

a) foreigner manifests a clear will for cooperation with competent authorities in identification and criminal liability of the participants in committing a crime where he/she is a victim;

b) staying of the foreigner on the territory of the country is necessary for a good conduct of criminal proceedings;

c) foreigner does not represent danger for national security and/or for public order.

(2) By derogation from Article 32 paragraph (2) and Article 38 paragraph (8), foreigner needs to attach the following documents to the application for extension of the right to temporary residence for victims of family violence:

a) ordinance of the criminal investigation body on his/her recognition as damaged party;

b) document for state border crossing or any other document confirming his/her identity;

c) confirmation of the address of domicile or residence in the Republic of Moldova.

(3) The right of temporary residence for victims of family violence may be granted, upon the request of the victim, for a period of 6 months, with the possibility of extension for new periods of up to 6 months, under conditions of paragraph (1). Upon expiration of the right to temporary residence, general provisions concerning the regime of foreigners in the Republic of Moldova shall apply to the victims of family violence.

(4) The right to temporary residence for victims of family violence and the associated residence permit shall be granted for free.”

With reference to the requirements of the Istanbul Convention concerning the need to ensure effective protection of the victims of forced marriage brought to the Republic of Moldova with the purpose to marry, or to regain his/her lost residence right in the country where he/she habitually resides, we consider that a solution here would be to introduce amendments and additions to the Law on the Regime for Foreigners in the Republic of Moldova, especially in Chapter X. Legal Regime Applicable to Certain Specific Categories of Foreigners.

According to Article 62 of the Law No. 200, foreigners who had committed an administrative or criminal offence on the territory of the Republic of Moldova may be subject to expulsion. Nevertheless, according to Article 63 of the Law No. 200, a foreigner may not be expelled to another state if there is justified concern



that his life may be put at risk or he will be subject to tortures, inhuman or degrading treatment there. The prohibition of expulsion remains valid until the elimination of all reasons thereof.

Article 67 of the Law No. 200 provides possibility for the competent authority for foreigners to grant permission (tolerance) of stay on the territory of the Republic of Moldova to the foreigners who have no residence right and who, for objective reasons, cannot leave the territory of the Republic of Moldova. According to Article 68 of the Law, tolerance may be granted to foreigners who were denied by irrevocable decision any form of protection according to the legislation and who, for objective reasons, have not left the territory of the Republic of Moldova within the term set by the legislation; etc. Tolerance shall be granted for a period up to 6 months and may be extended for new periods up to 6 months until the elimination of causes. Tolerance does not cancel a foreigner's obligation to leave the territory of the Republic of Moldova upon cessation of grounds thereof.

#### Article 60. Gender-based asylum claims

*(1) Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.*

*(2) Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.*

*(3) Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.*

In order to adopt a new regulatory framework in compliance with the community legislation, Republic of Moldova adopted the Law on Asylum in the Republic of Moldova <sup>1</sup> that regulates the functioning of the asylum system in the Republic of Moldova, as well as the procedure for granting, ceasing and cancelling protection.

According to Article 10 of the Law No. 270, provisions of the national legislation shall apply to asylum-seekers and beneficiaries of a form of protection without discrimination as to race, nationality, ethnic origin, language, religion, political membership, social category, convictions, sex, sexual orientation or age.

Republic of Moldova cooperates with other states and with international organizations in order to settle issues related to asylum. Representatives of the Office of the United Nations High Commissioner for Refugees have access, upon request, to the information on individual applications for asylum, determination procedure and to the decisions taken, subject to the consent of asylum-seekers.

According to Article 9 of the Law, competent authorities shall ensure access to the territory of the Republic of Moldova of any foreigner situated at the border, upon written or verbal expression of his/her will, from which it follows with certainty that the latter seeks protection of the Republic of Moldova. Asylum-seekers shall not be sanctioned for illegal entry or stay on the territory of the Republic of Moldova. Such persons shall be treated in accordance with international human rights standards and pursuant to the provisions of this Law

Pursuant to the provisions of the Law, the following forms of protection are granted on the territory of the Republic of Moldova to the asylum seekers: refugee status; humanitarian protection; temporary protection; political asylum.

<sup>1</sup> Law on Asylum in the Republic of Moldova No. 270-XVI from 18.12.2008 // Official Monitor No. 53-54/145 from 13.03.2009.

An asylum-seeker shall enjoy the right not to be returned or expelled until his/her application for asylum is determined; to be informed in writing, upon submission of the application, in a language that he/she speaks or is reasonably presumed to speak about his/her rights and duties during the asylum procedure; upon request to be interviewed by a person of the same sex; to be provided for free with an interpreter (translator) at any stage of the asylum procedure; to legal assistance at any stage of the asylum procedure, in accordance with the law; to be counselled and assisted by representatives of nongovernmental organisations at any stage of the asylum procedure; upon request, to work - the right granted temporarily - provided that, for objective reasons, the person lacks necessary means for subsistence; to be placed in an accommodation centre for the period of the procedure; to benefit of all social assistance measures, granted according to the legislation in force, etc.

According to Article 17 of the Law No. 270, upon request, the refugee status is recognised to a foreigner who, having a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her former habitual residence, as a result of such events, is unable or, owing to such fear, unwilling to return to it.

Humanitarian protection is granted to a foreigner who does not meet the criteria for the recognition of refugee status and with regard to whom there are reasons to believe that, upon return to his/her country of origin, he/she will be subjected to a serious risk, owing to which he is unable or unwilling to avail himself of the protection of that country.

Applications for asylum<sup>1</sup> shall be assessed individually, objectively and impartially by qualified personnel. Whenever some or all reasons presented in the application for asylum, which would justify the grant of

<sup>1</sup> Law on Asylum in the Republic of Moldova, Articles 43-46.

a form of protection, are not substantiated with any documentary or other evidence, the benefit of the doubt shall be granted.

Acts considered persecution, in order to be granted the status of a refugee, must be:

- sufficiently serious by their nature or by repetition as to constitute a severe violation of basic human rights,
- represent multitude of measures, including violations of human rights, which are sufficiently serious to affect a person.

Acts of persecution may be in the form of:

- acts of physical or mental violence, including acts of sexual violence;
- legal, administrative, police, and/or judicial measures which are discriminatory or which are applied in a discriminatory manner;
- acts and abuses of gender-specific discrimination nature, as well as acts and abuses of child-specific discrimination nature.

A refugee or beneficiary of humanitarian protection can request family reunification on the territory of the Republic of Moldova, confirming by a signed declaration that his/her family members do not fall under the exclusion clauses. Competent authorities shall respect the principle of family unity, pursuant to the provisions of this Law. Therefore, according to Article 12 of the Law No. 270, family members of the beneficiary of a form of protection shall benefit from the same form of protection and status as the beneficiary if:

- they are accompanying the beneficiary of a form of protection;
- they are the beneficiary's dependants and live together with him/her;
- their personal status is not incompatible with the status of refugee or another form of protection.

The status of refugee's family members whose refugee status has been recognised shall be maintained in case of divorce, separation or the refugee's death.

Cessation or cancellation of refugee status or of humanitarian protection shall not have automatic

legal effects with regard to the foreigner's family members. .

In case of an acute, life-threatening condition asylum-seekers shall be provided with emergency health care at the pre-hospital stage, in accordance with the legislation in force. When an asylum-seeker provides information or has signs of the application of torture or other inhuman and degrading treatment, or of being a victim of any form of violence, the Refugee Directorate shall order a forensic examination.

Central and local public administration authorities shall contribute to the development and implementation of social integration programs for persons who have been granted a form of protection. Assistance for economic, cultural and social integration of foreigners is ensured in accordance with the provisions of the legislation governing the status of foreigners in the Republic of Moldova

The Law on Integration of Foreigners in the Republic of Moldova <sup>1</sup> was adopted in order to ensure integration of foreigners, including foreigners holding the right to temporary residence for reintegration of the family, in the economic, social and cultural life of the Republic of Moldova, as well as to ensure the rights and freedoms and exercise the obligations.

Foreigners shall have access, among others, to information and counselling concerning access to work market, to medical services and to social protection measures, to services of professional orientation and formation, etc.

It is important to mention that according to Article 6 of the Law No. 274, foreigners who have obtained a form of protection in Moldova and have low potential for self-healing (unaccompanied minors, single parents with children, families with three or more dependent children, people with disabilities, people

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<sup>1</sup> Law on Integration of Foreigners in the Republic of Moldova No. 274 from 27.12.2011 //Official Monitor No. 48/144 from 13.03.2012.

who have reached retirement age) conditioned by factors which are objective and independent of their will, have equal and fair access to assistance as Moldovan nationals under the law.

The respective norm is also applicable in the case of victims of family violence. However, in order to ensure full observance of the conditions of accessibility and accuracy of the legislative act, we consider necessary to amend the current text of the Article, by expressly indicating, among the categories of subjects invoked in the respective norm, one more category of subjects who usually have low potential for self-healing – victims of family violence.

In this way, victims of family violence will have access to the necessary assistance in special cases, under conditions of the law. Or, according to Article 28 of the Law No. 274, the competent authority for foreigners shall notify specialized institutions in the field about the existence of special cases provided in Article 6, whose assistance they are to take. Competent authority for foreigners, jointly with specialized institutions, assesses the situation of persons who fall within the special cases and determines if they require specialist care. Refugees and beneficiaries of humanitarian protection which fall within the special cases can benefit from free accommodation for a period not exceeding six months in the accommodation centers run by the competent authority for foreigners. After the expiry of the term, recipients of assistance are transferred to the specialized centers placed under management of other central and local public authorities. Special cases are included in the integration programs and persons from this category have access, in parallel, to the services of institutions in the field.

Considering the need to ensure full observance of the conditions of accessibility and accuracy of legislative acts, and in order to implement requirements of the Istanbul Convention, we propose the following amendments to the legislation:

## 1. In the Law on Asylum in the Republic of Moldova:

### Article 45:

paragraph (2) letter f), after the phrase „acts and abuses of gender-specific discrimination nature,” shall be supplemented with the following text „including gender based acts of violence against women, “;

### Article 46:

paragraph (1) letter e) after the phrase „shall include the holding of an opinion regarding a certain matter, “ shall be supplemented with the following text „including about gender based discrimination, “.

## 2. In the Law on Integration of Foreigners in the Republic of Moldova:

### Article 6:

after the phrase „persons who have reached retirement age” shall be supplemented with the following text „, victims of family violence”.

## Article 61 . Non-refoulement

*(1) Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.*

*(2) Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.*

According to the Law on the Regime for Foreigners in the Republic of Moldova <sup>1</sup>, the competent authority for foreigners shall impose the return from the territory of the Republic of Moldova on those foreigners who entered the territory of the Republic of Moldova illegally or whose stay on this territory became illegal or whose visa or residence right was cancelled

<sup>1</sup> Articles 51-54 of the Law on the Regime for Foreigners in the Republic of Moldova.

or revoked or who were denied the extension of the temporary residence right or whose permanent residence right has expired, whose application for asylum was dismissed, in case the respective procedure was discontinued, or whose status of asylum-seekers was annulled, as well as against former asylum seekers. The decision on return is an administrative act by which a foreigner’s residence is declared illegal and which forces the foreigners to leave the territory of the Republic of Moldova within a certain term stipulated in the law, which shall be calculated as from the date when the foreigner was informed about the decision on return. The decision on return may be contested in a court within 5 working days from the notification date. The contestation measure shall not suspend the execution of the decision on return. In well-grounded cases and in order to prevent imminent harm, the applicant may demand the court to suspend the execution of the decision on return until the delivery of a final decision. The court shall urgently examine the application for suspension and the decision adopted in this case shall be legally enforceable.

Deportation of a foreigner under escort means the accompanying of the latter to the state border-crossing point opened for international traffic or to the country of origin, transit or destination. Deportation is prohibited if there are justified concerns that the foreigner’s life may be put at risk or that he will be subject to torture, inhuman or degrading treatment in the country where he is to be returned. In this case, the right of residence in the Republic of Moldova may be granted or extended to the person, as applicable, except for foreigners who threaten public order or national security or those suffering from diseases threatening national health and refusing to undergo the treatment prescribed by medical authorities.

According to the Law on Asylum in the Republic of Moldova <sup>2</sup>, no asylum-seeker shall be expelled or returned from the border or from the territory of the Republic of Moldova. No beneficiary of a form of protection shall be returned or expelled to the country or territory where his/her life or freedom might be threatened or where he/she may be subjected to torture,

<sup>2</sup> Article 11 of the Law on Asylum in the Republic of Moldova.

inhuman or degrading treatment. The refugee or beneficiary of humanitarian protection, with regard to whom a court judgment of expulsion has been issued for posing a threat to the national security or public order from the Republic of Moldova shall be granted a reasonable term to perform the necessary formalities in order to be admitted into another country.

From the above-mentioned, it is clear that national legislation incorporates relevant norms that materialise the principle of non-return of the foreigner, where there are legal grounds to believe that his/her life might be threatened or where he/she may be subjected to torture, inhuman or degrading treatment in the state where he/she follows to be returned.

Despite of the fact that the respective legal norms regulate the general procedure without specifying the category of the person, they are equally applicable to the victims of gender based violence. We consider that this fact excludes the need of operating further amendments and additions to the respective legislation.

# CHAPTER VIII

## INTERNATIONAL COOPERATION

### Article 62 .

#### General principles

(1) Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through the application of relevant international and regional instruments on co-operation in civil and criminal matters, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

- (a) preventing, combating and prosecuting all forms of violence covered by the scope of this Convention;
- (b) protecting and providing assistance to victims;
- (c) investigations or proceedings concerning the offences established in accordance with this Convention;
- (d) enforcing relevant civil and criminal judgments issued by the judicial authorities of Parties, including protection orders.

(2) Parties shall take the necessary legislative or other measures to ensure that victims of an offence established in accordance with this Convention and committed in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence.

(3) If a Party that makes mutual legal assistance in criminal matters, extradition or enforcement of civil or criminal judgments imposed by another Party to this Convention conditional on the existence of a treaty receives a request for such legal co-operation from a Party with which it has not concluded such a treaty, it may consider this Convention to be the legal basis for mutual legal assistance in criminal matters, extradition or enforcement of civil or criminal judgments imposed by the other Party in respect of the offences established in accordance with this Convention.

(4) Parties shall endeavour to integrate, where appropriate, the prevention and the fight against violence against women and domestic violence in assistance programmes for development provided for the benefit of third States, including by entering into bilateral and multilateral agreements with third States with a view to facilitating the protection of victims in accordance with Article 18, paragraph 5.

In compliance with Article 531 of the Criminal Procedure Code, the cooperation with foreign states on mutual legal assistance in criminal matters is regulated by the Criminal Procedure Code<sup>1</sup> and provisions of the Law on mutual legal assistance in criminal matters<sup>2</sup>. The provisions of international treaties to which the Republic of Moldova is a party to and other international commitments of the Republic of Moldova shall have priority over national legislation. In case the Republic of Moldova is a party to several treaties for mutual legal assistance, to which the state from which mutual legal assistance is requested or which requests it is also a party to, and there is a conflict or inconsistency of norms of these acts, the provisions of the treaty which provides a better protection of human rights and freedoms shall apply.

In compliance with the Law on international treaties of the Republic of Moldova<sup>3</sup>, international treaties are enforced with a good will, in compliance with the principle *pacta sunt servanda*.

1 Articles 531-5591 of the Criminal Procedure Code of the Republic of Moldova No.122-XV from 14.03.2003.

2 Law on mutual legal assistance in criminal matters No. 371 from 01.12.2006, OM No.14-17/42 from 02.02.2007.

3 Law No.595 from 24.09.1999 on international treaties of the Republic of Moldova, OM No.24-26/137 from 02.03.2000.



The Republic of Moldova <sup>1</sup> may not present the provisions of national legislation as grounds for non-enforcement of provisions of the treaty to which it is a party to. Interpretation of international treaties shall be performed in compliance with the norms and principles of the international law, in order to avoid any conflict between provisions of the legislation of the Republic of Moldova and the treaty. The Government of Moldova shall take necessary measures to ensure enforcement of international treaties. Public authorities, with functions in the field of international treaties, shall ensure enforcement of obligations and observance of the rights of the Republic of Moldova that result from the treaty, and shall follow the enforcement of these by other parties to the treaty.

The mechanism of enforcement of provisions of the Criminal Procedure Code on mutual legal assistance in criminal matters, and other international treaties in this area, to which the Republic of Moldova is party to, is envisaged in the Law on mutual legal assistance in criminal matters.

In compliance with the Law, in absence of an international treaty, international legal assistance may be provided based on the principle of reciprocity, in case relevant provisions of the Criminal Procedure Code exist. However, even the lack of reciprocity does not hinder enforcement on the territory of the Republic of Moldova of a mutual legal assistance request, if such request proves necessary due to the nature of the deed or crucial character of fight against some serious criminal offences.

Rogatory commissions shall be addressed through the central authorities, namely the Ministry of Justice and General Prosecutor's Office. To the Ministry of Justice shall be filed requests for mutual legal assistance during the trial and enforcement of sentences, and to the Prosecutor's Office - during the criminal investigation procedure.

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<sup>1</sup> Law No.595 from 24.09.1999 on international treaties of the Republic of Moldova, OM No.24-26/137 from 02.03.2000.

International legal assistance may be required or rendered for enforcement of certain procedural activities, as envisaged by criminal procedure legislation of the Republic of Moldova and of the respective state, and especially:

- communication of procedural acts or judicial decisions to natural persons or legal entities from abroad;
- hearing persons as witnesses, suspects, indicted, civil defendant;
- performing crime scene investigations, searches, seizure of documents and objects and sending these abroad, forfeiture, confrontation, presentation for identification, identification of telephone subscribers, interception of communications, performing expertise, forfeiture of crime objects and other criminal procedure' actions as foreseen in this Code;
- summoning of witnesses, experts and other persons pursued by law enforcement officials or courts of law;
- initiating the criminal investigation at the request of a foreign state;
- search and extradition of persons which committed crimes or for serving non-custodial sentence;
- recognition and enforcement of foreign sentences, transfer of sentenced persons, communication of the criminal record, other actions not prohibited by the law.

Rogatory commissions may be rejected if these refer to crimes considered by the Republic of Moldova as political offences or related to these, or if there is proof that in the applicant state the person was denied fair trial, etc.

The criminal investigation body or the court of law shall enforce the rogatory commissions of respective foreign agencies in compliance with the international treaties to which Moldova and the requesting state are parties to, or based on reciprocity.

When enforcing rogatory commissions, at the request of the applicant party, the special procedure envisaged in the legislation of the foreign country may be applied, in compliance with the respective international treaty or reciprocity.

During execution of the rogatory commission may assist representatives of the foreign state or of the international agency, if this is set forth in the respective international treaty, or in a written obligation based on reciprocity. In such cases, at the request of the requesting party, the body charged with execution of rogatory commissions, shall inform the requesting party about the time, place and term for executing rogatory commissions, aimed to allow the interested counterpart to assist.

The Republic of Moldova may send to a foreign state a request for extradition of the person under criminal investigation for a crime for which the criminal law provides for a maximum punishment of at least one year imprisonment or another harsher punishment or on behalf of which a sentence with imprisonment for at least 6 months has been issued in case of extradition for enforcement, unless otherwise stipulated by international treaties. Extradition request is made in compliance with the international treaty to which the Republic of Moldova and the requesting state are parties to or based on written commitments in conditions of reciprocity.

If the person, whose extradition is requested, is charged with a crime, the authority competent to examine all necessary materials on extradition request is the General Prosecutor's Office. If the person whose extradition is requested has been sentenced, the competent authority is the Ministry of Justice. Extradition request shall be handed directly to the competent authority of the requesting state or by diplomatic channels, if so provided in the international treaty.

The foreign citizen or the person without citizenship criminally charged or sentenced by a foreign state for committing a criminally liable act in that state, may be extradited to this foreign state at the request of the competent authorities, for criminal investigation

or enforcement of issued sentence for the committed deed and for issuing of a new sentence.

Extradition with the goal of criminal prosecution and enforcement of the judicial sentence is possible only if the deed is criminally liable in compliance with the legislation of the Republic of Moldova and maximum sentence is at least one year of jail imprisonment.

If the Prosecutor General or, depending on the situation, the Minister of Justice considers that the person requested by the foreign state or an international agency may not be extradited, he/she shall reject extradition by a reasoned decision, and if he/she considers that it is possible to extradite the person, he/she will file a motion to the district court of the Ministry of Justice, attaching the letter rogatory and documents provided by the requesting state.

The extradition motion shall be examined by the investigative judge within the territorial district court of the Ministry of Justice, with participation of the prosecutor, representative of the Ministry of Justice (in case of extradition of sentenced persons), of the person whose extradition is requested and the defence attorney, chosen or appointed ex officio in compliance with the Law on State Guaranteed Legal Aid. Extradition request on behalf of the apprehended person shall be solved urgently, as set forth in the law. The court of law is not entitled to pronounce itself on the merits of the criminal investigation or sentencing for which the foreign authority is requesting extradition. In case it is established that the conditions for extradition are met, the court of law shall approve, by a decision, the request for extradition, in the same time issuing a decision on maintaining preventive custody until the extradition of the person. The judicial decision for extradition may be recoured by the prosecutor and by the extradited person and his/her defence attorney, within 10 days from its issuance, at the Court of Appeals from Chisinau. The decision of the investigative judge, once it has become final, shall be remitted to Prosecutor General or the Ministry of Justice for enforcement or informing the requesting state.

At the request of the competent authority of the foreign state to extradite the person or to arrest provisionally the person with the goal of extradition, the extradition of a foreign citizen or person without citizenship, on whose behalf was issued arrest warrant for extradition may be granted without a formal extradition procedure, if the person consents to such simplified procedure and his/her consent is approved by a court of law. If the arrested person consents to a simplified extradition, the official request for extradition is not necessary.

Investigative judge from an appropriate court of law shall examine, within a judicial hearing with the participation of the prosecutor, of the person whose extradition is requested and his/her attorney, the identification information on extraditable person, shall inform him/her about the right to a simplified extradition procedure and about the legal effects of it, after which will approve the statements made, which shall be signed by all participants at the judicial hearing.

The Republic of Moldova does not extradite its own citizens and persons to whom it has granted asylum. Extradition shall be refused in conditions set forth in the law.

In case the extradition of the person is accepted by a court of law, after entering into force of its decision, the Prosecutor General or, depending on the case, the Minister of Justice, shall inform the requesting state or international body about the place and date for handling the extradited person, and the length of served term of detention related to extradition.

If the Republic of Moldova requests the extradition from competent foreign authorities, the provisions of the international treaties to which Moldova is party to and national procedural provisions shall apply, accordingly.

The request of central authorities of the foreign states on transfer of criminal investigations in criminal cases in pre-trial stage, shall be examined by the Prosecutor General, and the request of the court of law on taking

over the criminal cases which are in a trial stage, shall be examined by the Minister of Justice, which shall decide on admissibility of these requests. All procedural documents, performed in compliance with the legislation of the requesting state have the same probative value and force, as those performed by the law enforcement authorities of the Republic of Moldova.

In the conditions set forth in the legislation, the Republic of Moldova shall ensure transfer of the criminal cases in the phase of criminal investigation to other states. After the applicant state consented to transmission of criminal procedure materials, no other criminal procedure may be initiated by the authorities of the Republic of Moldova, unless the requesting state informs that it cannot finalise criminal investigation after the transfer of proceedings.

Final foreign decisions on criminal matters may be enforced by the Republic of Moldova in conditions set forth in the legislation. On the territory of the Republic of Moldova, a foreign decision is enforced after a request for acknowledgement and enforcement has been addressed by competent authorities of the state which issued the sentence. Request for recognition of the decision of the foreign state, the enforcement of which is requested, shall be handled to the Ministry of Justice. The request shall contain the international treaty which serves as grounds for requesting enforcement. Enforcement of a foreign decision in criminal matters is performed in compliance with the legislation of the Republic of Moldova. Decisions which are recognised and admitted for enforcement on the territory of the Republic of Moldova have the same legal force as the decisions issued by national judicial authorities.

The person sentenced on the territory of the Republic of Moldova may be transferred, in conditions set forth in the Criminal Procedure Code, to the territory of another state for serving the sentence applied by the judicial authority of the Republic of Moldova. The person sentenced in a foreign state may be accordingly transferred, to the territory of the Republic of Moldova. The request for transfer shall be addressed by the state which has issued the sentence,

or the state which shall perform the enforcement of the sentence, with mentioning of the international treaty which serves as ground for requested transfer or with request to apply conditions of reciprocity convened and guaranteed by the states.

Any sentenced person liable for transfer procedures shall be informed by the competent authority of the state which pronounced the sentence, about the right of transfer for serving the sentence in the state to which he/she is a citizen to. The sentenced person shall be informed in writing about any decisions taken regarding the request for transfer.

Enforcement of the sentence is terminated immediately after the Republic of Moldova is informed by the sentencing state about any judicial decisions or measures which results in removing the enforcement nature of the sentence. The Republic of Moldova provides information to the sentencing state regarding the enforcement of the criminal sentence.

In compliance with the Articles 454-466 of the Civil Procedure Code, the foreign citizens and persons without citizenship, foreign and international organisations are entitled to address to the courts of law of the Republic of Moldova for protection of their legal rights, freedoms and interests and shall benefit in front of the courts of law of the Republic of Moldova of the same rights and procedural obligations as the citizens and organisations of the Republic of Moldova, in conditions set forth in the law. The Government of the Republic of Moldova may apply retorsion to persons in whose states exist limitations of procedural rights and organisations of the Republic of Moldova.

Filing in a court of law of the Republic of Moldova of a litigation addressed to a foreign state, the summoning of the latter as defender or as intervenient, applying forfeiture in the process of enforcement of judicial decision may be performed only with the consent of competent authorities of the respective state, unless the national law and the international treaty to which the Republic of Moldova is a party to provides otherwise.

In civil litigations with extraneous elements, the courts of law of the Republic of Moldova shall apply procedural legislation of the country, unless expressly provided otherwise. The proof of facts shall be performed in compliance with the law of the territory on which these took place. The proof of civil status and probational force on the acts of civil law shall be regulated by the state where the mentioned document has been concluded.

The courts of law of the Republic of Moldova have the jurisdiction to examine also cases with extraneous elements, if the plaintiff in the process on claiming alimony and statement of paternity has the domicile in the Republic of Moldova or the damage inflicted by bodily injury or other health injury or death took place on the territory of the Republic of Moldova or the plaintiff has the domicile in Moldova, etc.

The court of law of the Republic of Moldova shall reject the request for examining or shall rule on the cessation of the criminal case, if there is a decision on the litigation between the same parties, on same object and same grounds, issued by a court of law of a state with which the Republic of Moldova has concluded an international treaty, which stipulates acknowledgement and reciprocal enforcement of judicial decisions or when the acknowledgement and enforcement of decisions is carried out based on the reciprocity principle.

If a foreign court of law claims lack of jurisdiction to solve application filed by a citizen of the Republic of Moldova, the person may file the application with a competent court of law from the Republic of Moldova.

The courts of law of the Republic of Moldova shall execute the obligations handed to them by foreign courts of law on performing of procedural acts (handing the summons and other acts, obtaining statements from the parties, witness statements, forensic reports, investigation of the crime scene, taking measures to ensure the procedural action etc.). Courts of law of the Republic of Moldova may delegate performing of some procedural actions to foreign courts of law. The grounds for establishing relationships between

between national and foreign courts of law shall be determined by the legislation of the Republic of Moldova or the international treaty to which it is a party to.

In compliance with Articles 467-474 of the Civil Procedure Code, the decisions of foreign courts of law, including transactions, are acknowledged and have full legal force in the Republic of Moldova, whether based on the international treaty to which the Republic of Moldova is a party to, or on the principle of reciprocity as to effects of foreign judicial decisions. The foreign judicial decision which was not enforced wilfully, may be enforced on the territory of the Republic of Moldova, at the request of the creditor, based on the consent given by the court of law in whose jurisdiction will be the enforcement of the decision.

The request to acknowledge the decisions of a foreign court of law shall be examined in a court hearing, with legal information of the debtor about the place, date and time of the hearing. The court of law which examines the request for acknowledgement of the foreign court of law decision<sup>1</sup> shall inform about this mandatorily and immediately the Ministry of Justice.

When examining the request for acknowledgement of the decisions of a foreign court of law, the court may, depending on the case, request explanations from the applicant for acknowledgement and hear the debtor regarding the filed request or require explanations from the foreign court, which has issued the decision. The court of law of the Republic of Moldova may neither repeatedly examine the merits of the foreign judicial decision, nor amend it.

The refusal to approve forced enforcement of the foreign judicial decision shall be admitted if the party against which the decision was issued was denied the possibility to participate at the trial, due to not being legally informed on the place, date and time of examining the case, and other cases set forth in the legislation.

Republic of Moldova acknowledges the decisions of foreign courts of law, which due to their nature, do not

require further procedural action, including decisions on litigations between spouses, between a citizen of the Republic of Moldova and a foreign citizen, if at the date of divorce at least one spouse resided abroad; decisions regarding annulment, dissolution or declaration as void of the marriage between citizens of the Republic of Moldova, if at the date of the dissolution of marriage both spouses resided abroad, etc.

Legitimate rights and interests of the citizens of the Republic of Moldova in other states shall be protected and advanced by diplomatic missions of the Republic of Moldova in these states, within limitations allowed by international law. Diplomatic missions may also exercise consular functions<sup>1</sup>.

#### Article 63. Measures relating to persons at risk

*When a Party, on the basis of the information at its disposal, has reasonable grounds to believe that a person is at immediate risk of being subjected to any of the acts of violence referred to in Articles 36, 37, 38 and 39 of this Convention on the territory of another Party, the Party that has the information is encouraged to transmit it without delay to the latter for the purpose of ensuring that appropriate protection measures are taken. Where applicable, this information shall include details on existing protection provisions for the benefit of the person at risk.*

According to Article 29 of the Law on International Legal Assistance in Criminal Matters, the central authorities of the Republic of Moldova may, without prior request, hand over to a State Party to the European Convention on Legal Assistance in Criminal Matters, signed in Strasbourg on 20 April 1959 and amended by two Additional Protocols, information received within operative investigation activities or criminal investigation, when it considers that this information could help the receiving state to initiate criminal proceedings or to file an application for legal aid.

<sup>1</sup> Law on the statute of diplomatic missions of the Republic of Moldova in foreign states No.1133 from 04.08.1992 //Official Monitor No.008 from 17.04.1992.

Authorisation of the National Centre for Personal Data Protection is not required for trans-border transmission of personal data, in case transfer is made with the purpose of preventing or investigating offences.

#### Article 64 . Information

*(1) The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.*

*(2) A Party may, within the limits of its internal law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in preventing criminal offences established in accordance with this Convention or in initiating or carrying out investigations or proceedings concerning such criminal offences or that it might lead to a request for co-operation by that Party under this chapter.*

*(3) A Party receiving any information in accordance with paragraph 2 shall submit such information to its competent authorities in order that proceedings may be taken if they are considered appropriate, or that this information may be taken into account in relevant civil and criminal proceedings.*

According to the Law on International Legal Assistance in Criminal Matters, Republic of Moldova, through the Ministry of Justice, and at the express request of the foreign country, shall communicate any data, including information about court judgments and subsequent measures in respect of nationals of that state and which have been endorsed on the criminal record.

The same type of information received from foreign authorities within an exchange of information is received by the Ministry of Justice, which shall hand over this information to the Ministry of Interiors for registration.

Republic of Moldova ensures execution of rogatory commissions of the competent law authorities of the requesting state aimed at execution of some procedural acts, by also providing, upon the request, assistance to the competent authority of the requesting state in the process of execution of rogatory commission to the extent allowed by national legislation.

According to Article 29 of the Law on International Legal Assistance in Criminal Matters, the central authorities of the Republic of Moldova may, without prior request, hand over to a State Party to the European Convention on Legal Assistance in Criminal Matters, signed in Strasbourg on 20 April 1959 and amended by two Additional Protocols, information received within operative investigation activities or criminal investigation, when it considers that this information could help the receiving state to initiate criminal proceedings or to file an application for legal aid.

Therefore, information received within operative investigation activities or criminal investigation shall be handed over by the criminal investigation body to the prosecutor, who shall subsequently submit it to the General Prosecutor's Office in order to be sent to the respective foreign state. The procedure of handing over the information shall have the form of a rogatory commission, which shall expressly indicate the conditions or restrictions imposed, in order to bring them to the knowledge of the foreign state, which shall be bound to observe them when using this type of information.

#### Article 65. Data Protection

*Personal data shall be stored and used pursuant to the obligations undertaken by the Parties under the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).*

In order to create legal framework necessary for application on the national level of the Council of Europe Directive 95/46/CE from 24 October 1995 on the protection of individuals with regard to the processing of personal data



and on the free movement of such data, the Law on Personal Data Protection No. 133 of 08.07.2011<sup>1</sup> was adopted.

According to the Law, personal data needs to be collected for specified, explicit and legitimate purposes, and correctly processed. Personal data shall be processed with the consent of personal data subject.

Transborder transmission of personal data undergoing processing or that are intended for processing after transfer may take place only with the authorization of the National Center for Personal Data Protection and only if the country of destination ensures an adequate level of protection of the rights of personal data subjects and of data intended for transfer. Where the Centre considers that the country of destination does not ensure an adequate level of protection, it shall prohibit any transfer of data.

The Centre may authorise the transfer of personal data to another state, the legislation of which does not ensure at least the same level of protection as the one offered by the legislation of the Republic of Moldova, where the operator provides sufficient guarantees regarding the protection and the exercise of the rights of personal data subjects. If the transfer of personal data is carried out based on the provisions of a special law or an international treaty ratified by the Republic of Moldova, special law or international treaty must include guarantees regarding the protection of the rights of personal data subjects. Authorization of the Center is not necessary where the transfer of personal data takes place for the purpose of preventing or investigating crimes.

Transmission of personal data to states that do not ensure an adequate level of protection may take place only with the personal data subject's consent, if the transfer is necessary in order to protect the life, physical integrity or health of the personal data subject; if the transfer is necessary for the accomplishment of an important public interest, such as national defense, public order or national security, for a good carrying out of criminal proceedings or for ascertain-

ing, exercising or defending a right in court and only for a period necessary to achieve this purpose.

The personal data subject shall have the right to object at any time and free of charge, based on compelling legitimate grounds relating to his/her particular situation, to the processing of personal data relating to him/her. Where there is a justified objection, the processing performed by the operator may no longer involve those data.

Any person who has suffered damage as a result of an unlawful processing of personal data or whose rights and interests guaranteed by the law have been violated, shall have the right to address the court and request compensation<sup>2</sup> of material and moral damages.

In case of violation of the law, guilty persons shall be held liable according to civil, contravention or criminal legislation.

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<sup>2</sup> Articles 741, 742, 743 of the Contravention Code.

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<sup>1</sup> Official Monitor No. 170-175/492 from 14.10.2011.

Draft Law

on the Amendment and Supplementing of Certain  
Legislative Acts

The Parliament adopts this organic law.

Article I. – Law No. 45-XVI of 1 March 2007 on Preventing and Combating Family Violence (Official Monitor of the Republic of Moldova, 2008, No. 55-56/178 of 18.03.2008), with subsequent amendments and additions, shall be supplemented and amended as follows:

1. Article 2:

definition of spiritual violence, after the phrase *“by imposing a system of unacceptable personal values”* shall be supplemented with the text *“,or by adhering to spiritual and religious faiths and practices;”*;

replacement of the phrase *“or by causing pecuniary or moral damage”* with the phrase *“by which pecuniary or moral damage was caused”*;

excluding the phrase *“... and also against shared and personal property”*.

The phrase *“in concubinage”* shall be excluded from the definition of victim.

Definition of perpetrator shall be supplemented with the following new sentence:

*“,In case of complaints from several family members, the perpetrator shall be identified taking into consideration the following conditions: which person, from those involved, has acted for the own protection or protection of another person; the probability for arousal of a critical situation for each person; seriousness of injuries caused to each person; previous complaints regarding family violence, other circumstances directing to the instigator of violent acts; ”*;

After definition of victim, the Article shall be supplemented with the definition of *“crisis situation/critical situation”*, with the following content:

*“crisis situation/critical situation – the totality of circumstances that disclose psycho-social and physical manifestations that represent an imminent danger for the life and/or physiological and psycho-social integrity of the person, requiring urgent intervention”*;

2. Article 3:

letter b) paragraph (2) shall have the following wording:

*“b) in conditions of separate residence: persons in a relationship of marriage, their straight-laws, foster children, persons under guardianship, former spouses, persons currently or formerly in a relationship of concubinage.”*.

3. Article 5 shall be supplemented with a new principle: *“Non-discrimination”*.

4. Article 8:

paragraph (1) letter e) shall be supplemented with the phrase *“, ensure their training and continuous training;”*;

in paragraph (2), letter b) the text *“in the field”* shall be replaced with the phrase *“, whose activity is coordinated by the responsible specialist from the social assistance and family protection section/department”*;

in paragraph (2), letter c) shall read as follows:

*“c) shall organise and ensure financing of the centres/ services for assistance and social protection of victims of family violence and rehabilitation services for aggressors. In case of limited resources, priority shall be given to allocation of funds for support of the centres/services for social assistance and protection of the victims of family violence. Also, it shall ensure the access of the victims to opportunities for getting a profession and a job, and to social residence upon leaving the centres/ services of assistance and protection.”*

in paragraph (2), letter d) shall read as follows:

*“d) shall help counteract family violence by including the issue of preventing and combating family violence into local development programs; cooperation at implementation of the system for tracking the cases of family violence; allocation in the local budget of financial means for organising assessments and awareness raising campaigns to fight domestic violence,*

for supporting social services and other measures for the assistance of the victims of family violence, including by supporting related expenses for issuing forensic documents, in serious cases“;

letter e) after the word “patronage” shall be supplemented with the phrase “with cult organizations”;

in paragraph (6), letter f) the word “administrative” shall be excluded;

at letter j) the word “administrative” shall be replaced with the word “contravention”;

Article 8 is supplemented with new paragraphs, paragraph (7) and paragraph (8), in the following version:

“(7) Persons appointed under conditions of Article 7 paragraph (4) and paragraph (5) from the current law shall:

a) identify potential families affected by violence and ensure registration of cases of domestic violence from the respective region;

b) identify situations of risk and direct victims of domestic violence to specialised services;

c) ensure exchange of information with other persons involved in the examination of the case;

d) report about the identified case and the measures taken to the social assistant, and notify cases of violence against children to the guardianship authority;

e) offer necessary support in the process of criminal investigation of cases of domestic violence to police bodies;

f) offer legal, psychological, psychiatric services to the victims and aggressors, as well as provide services integrated into centres for rehabilitation of victims and services aimed at rehabilitation of aggressors;

g) upon request, offer the results of the findings related to the cases of domestic violence to the judicial bodies and law enforcement bodies, as well as to the parties who are in conflict or their representatives;

h) monitor the observance by aggressor of the measures aimed at victim protection;

i) carry out other actions, according to their competence, aimed at preventing and combating the acts of violence, ensuring efficient protection of the victims of domestic violence.

(8). Being a member of the multi-disciplinary team, specialist:

a) is responsible for the results of the carried out work;

b) ensures confidentiality of information concerning the identity and private life of the victim;

c) efficiently collaborates with the members of the team;

d) participates during the meetings of the team;

e) performs the assigned work in due time.”.

5. Article 9 shall be formulated as follows:

“Article 9. Competence of Probation Body

(1) Persons convicted for offences of family violence must participate in special counselling and re-socialization programs, applied within community sentence probation or penitentiary probation.

(2) Probation activity is carried out by probation bodies under conditions of the law.”

6. Article 11:

paragraph (4), which has the following content, shall be excluded:

“(4) Cases of family violence may be subject to mediation, at the request of the parties. Mediation shall be performed by certified mediators or, in the absence of such mediators, by the commission for social issues, with the participation of social assistant, as appropriate. ”.

shall be supplemented with a new paragraph, paragraph (8), as follows:

“(8) Victim of family violence is entitled to request from the perpetrator and/or state, compensation, in conditions set forth in the law, of pecuniary and moral damages, caused by bodily harm or injury to the health, and as a result of inadequate protection.”;

7. Article 12 shall be supplemented with two new paragraphs, which shall become paragraph (2) and paragraph (3) with the following text:

“(2) Claim for issuing protective order shall be submitted by the victim personally or through a legal representative. In case of victim’s impossibility to submit a claim for issuing protective order, upon his/her request, the respective claim may be submitted in the interests of the victim by the police body, social assistance body or prosecutor.

*(3) Request for issuing protective order in the interests of a child or another unable person may be submitted by the prosecutor or guardianship authority regardless of whether a request from the victim or his/her legal representative was submitted.”.*

8. A new version of Article 13 paragraph (3) is proposed, as follows:

*“(3) No state fee shall be charged for submitting a request to the court regarding issuing protective order. Victim of family violence is fully exempted from paying court costs.”;*

9. Article 14:

in paragraph (2) the word “*claim*” shall be replaced by the phrase “*claim or request for issuing protective order*”;

Article 15:

paragraph (1) shall be supplemented by letter a<sup>1</sup>) and letter e<sup>1</sup>) as follows:

*“a<sup>1</sup>) limiting the right of the aggressor to use a part of the common dwelling, when it can be divided in such a way that aggressor does not have any contact with the victim;*

*e<sup>1</sup>) obliging the aggressor to bear the rental costs and/or other costs related to maintaining the dwelling where the victim, minor children or other members of the family temporary live or will live as a result of the impossibility to stay in the family dwelling.”;*

*k) other measures necessary for the protection of victim and his/her children.”;*

paragraph (1) d) shall be supplemented with the following text after “*interdiction to visit victim’s work place and premises*”:

*“educational institution of the child, as well as other whereabouts of the victim”.*

*paragraph (2) shall have the following content:*

*“(2) Protective order shall be immediately communicated to the police body whose territorial competence covers the domicile of the aggressor. Responsibility for informing aggressor about protective order and its application belongs to the district inspector from the respective locality.”;*

in paragraph (3) the text “*upon the elimination of the threat or danger that caused the application of such measures*” shall be replaced by the following text “*under conditions of the present Law*”.

paragraph (3) shall be supplemented with the text “*for up to 1 year*”;

*paragraph (6) shall be supplemented as follows:*

*“Withdrawal of protection measures may be ordered only if the perpetrator has completed a specially tailored treatment or counselling programs, and does not considered to be a real danger to the victim or family members.”.*

11. A new Article 15<sup>1</sup> shall be introduced, as follows:

*“Article 15<sup>1</sup> Emergency barring order*

*(1) In case when receiving a signal about commission of an act of violence, police must immediately travel to the indicated place without waiting to receive a request from the victim or other person under conditions of Article 12.*

*(2) In case when case of violence was committed, police shall:*

*a) take all legal measures to eliminate family violence;*

*b) interrogate immediately and separately the possible victim, witnesses, perpetrator, including children, which shall be recorded in written form and, if possible, in audio form;*

*c) inform victim of family violence of his/her rights;*

*d) upon victim’s request or, when necessary, ensure victim’s transfer to a medical institution;*

*e) upon victim’s request or, when necessary, ensure transfer of the victim and/or of his/her children to a shelter;*

*f) in case of transferring victim to another dwelling, ensure that victim takes all personal assets from his/her place of residence;*

*g) report case of violence and ensure safety of the victim;*

*h) issue emergency barring order for evacuating the perpetrator from the dwelling, according to the procedure established by the law.*

(3) Police shall register cases of family violence in a special registry for registration of crimes and take the necessary measures in order for the report and the accumulated materials be submitted to the prosecutor for control.

(4) Police shall separately register in its database the committed act of family violence, measures taken, the number of victims, measures applied against the perpetrator, as well as other statistical data.”

12. Article 16 shall be supplemented by a new paragraph, paragraph (11) in the following version:

“(11) The Ministry of Labour, Social Protection and Family shall finance programs of national interest for preventing and combating family violence, using allocations budgeted by state for this purpose, and other resources for:

- a) financing centres/services for social assistance and protection of victims of family violence and rehabilitation services for aggressors. In case of limited resources, priority shall be given to allocation of funds for support of centres/services for social assistance and protection of victims of family violence.
- b) training of specialised personnel on performing activities for preventing and combating family violence;
- c) development of tracking, reporting and management system of cases of family violence;
- d) information and awareness raising for the population on the phenomenon of domestic violence;
- e) performing researches of the family violence phenomenon”.

12. Article 17:

to exclude from paragraph (2) the word “administrative”.

13. Article 19 shall be supplemented with a new paragraph, paragraph (5), in the following version:

“(5) The Ministry of Labour, Social Protection and Family finances programs of national interest, relevant to the issue of equality of women and men, using funds allocated from the state budget in this purpose, and other resources for:

a) training of qualified personnel, gender-sensitive awareness raising campaigns for this personnel, ensuring

integration of the principle of equality of opportunities between women and men into strategies, programs and financial investments;

b) promoting research and other activities to ensure equality between women and men, broadcasting these measures;

c) information and awareness raising of the public on the need to ensure equality between women and men;

d) development of activity of gender units;

e) carrying out jointly with non-governmental organisations, foundations, syndicates, patronage and international agencies activities to implement equality of women and men.”.

Article II. – Law on Equal Opportunities for Women and Men No. 5 from 09.02.2006 //Official Monitor No. 47-50/200 from 24.03.2006 with subsequent amendments and additions, shall be amended as follows:

1. In Article 2 of the Law No. 5 on Equal Opportunities for Women and Men , the following text shall be inserted:

„Violence against women” - any act of gender –based violence that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, occurring in public or in private life.

In Article 2, the following text shall be introduced: “gender-based violence against women” shall mean violence directed against a women because she is a woman or affects women disproportionately.

2. Article 19 shall be supplemented with a new paragraph, paragraph (5), in the following version:

“(5) The Ministry of Labour, Social Protection and Family finances programs of national interest, relevant to the issue of equality of women and men, using funds allocated from the state budget in this purpose, and other resources for:

a) training of qualified personnel, gender-sensitive awareness raising campaigns for this personnel, ensuring integration of the principle of equality of opportunities between women and men into strategies, programs and financial investments;



b) promoting research and other activities to ensure equality between women and men, broadcasting these measures;

c) information and awareness raising of the public on the need to ensure equality between women and men;

d) development of activity of gender units;

e) carrying out jointly with non-governmental organisations, foundations, syndicates, patronage and international agencies activities to implement equality of women and men.”.

2. Article 20 shall be supplemented with a new paragraph (11), which shall read as follows:

“(11) Expenditures for performing duties foreseen in the paragraph (1) of this Article shall be made from allocations indicated for this purpose in the local budget, within the limits of available financial resources, from funds allocated from the state budget for this, and also from other resources not prohibited by the law.”

Article III. The Law on Local Public Administration No. 436-XVI of 28 December 2006 (Official Monitor, 2007, No. 32-35/116 from 09.03.2006), with subsequent amendments and completions, shall be amended as follows:

1. Article 14

paragraph (2) shall be supplemented with the letters y<sup>1</sup>), y<sup>2</sup>), y<sup>3</sup>) in the following version:

“y<sup>1</sup>) approves development programs for social services, as needed in the community and determines necessary financial sources, making them a priority during the adoption of the local budget;

y<sup>2</sup>) decides on setting up non-profit organisations for providing primary social services in the local region;

y<sup>3</sup>) approves conditions for contracting services provided by private social services’ providers, envisages their functions, in compliance with the legislation; ”

2. Article 29:

paragraph (1) shall be supplemented with letters i<sup>1</sup>), i<sup>2</sup>), i<sup>3</sup>), i<sup>4</sup>), as follows:

“i<sup>1</sup>) organises studies on the types of social services needed in the community, develops and proposes for the approval of the local council programs for the

development of social services, based on identified needs;

i<sup>2</sup>) identifies financial resources necessary for development and functioning of the social community services, at the elaboration of the local budget;

i<sup>3</sup>) ensures enforcement of decisions of the local council for setting up non-profit organisations for rendering primary social services, supports, in conditions set forth by the law, the activity of private non-profit organisations for providing social services in the community;

i<sup>4</sup>) develops and presents to the local council for approval conditions for contracting services provided by private social services contractors, ensures procurement of services, pursuant to conditions established by the council;

3. Article 43:

paragraph (1) letter b) after the phrase “rayonal budget” shall be supplemented with the text “giving priority to expenditures for development in the rayon of necessary social services, approves” and further as in the text.

paragraph shall be supplemented with letters j<sup>1</sup>), p<sup>1</sup>) and p<sup>2</sup>) in the following version:

“j<sup>1</sup>) approves programs for development of social services, in compliance with the needs of the rayon and determines necessary financial sources;

p<sup>1</sup>) decides to set up non-profit organisations within the territorial-administrative unit to provide qualified and highly-qualified social services;

p<sup>2</sup>) approves conditions for contracting services provided by the social services providers, foresees facilities for these, in compliance with the legislation; “.

4. Article 51:

paragraph (2) shall be supplemented with letters b<sup>1</sup>) and b<sup>2</sup>) in the following version:

“b<sup>1</sup>) ensures examining of the needs of the rayon for social services and develops drafts programs for development of social services, in compliance with the identified needs;

b<sup>2</sup>) elaborates conditions for contracting services provided by private social services providers; “.



5. Article 53: paragraph (1) shall be supplemented with letters c1), c2), c3), c4), k1) in the following version:

*“c1) organise examining of types of social services required in the rayon, proposes for the approval of rayonal council the program for development of social services, in compliance with the identified needs;*

*c2) identifies necessary financial resources for development and functioning of rayonal social services, giving priority to these expenditures, at elaboration of the rayonal budget;*

*c3) ensures enforcement of the decisions of the rayonal council to set up public institutions for rendering social services in the territorial-administrative unit, facilitates and supports , in conditions set forth by the law, the activity of private non-profit organisations for rendering social services;*

*c4) ensures elaboration and approval of conditions of the rayonal council for contracting services provided by social services providers, ensures procurement of services, pursuant to the decision of the council;*

*k1) coordinates and controls the activity of public institutions for rendering social services, has the responsibility for ensuring their activity;*

6. Article 77 shall be supplemented with paragraph (31) in the following version:

*“(31) Providers of social services (primary, specialised, highly qualified), and the applicants which are intending to provide in respective administrative-territorial unit such social services, have priority at procurement of goods in conditions set forth in paragraphs (2) and (3) of this article“.*

7. Article 80:

The title of the Article shall be formulated as follows:

*“Setting-up enterprises, commercial and non-commercial organizations“.*

shall be supplemented by a new paragraph (2) as follows:

*“(2) Local councils are entitled to decide setting-up, under conditions of the law, of non-commercial organizations for providing primary, specialized and highly*

*specialized social services, according to the established needs.“.*

Article IV. – Law on Local Public Finances No. 397 of 16.10.2003 // Official Monitor 248-253/996, 19.12.2003, with subsequent amendments and additions, shall be amended as follows:

Article 7: paragraph (1) after the phrase *“public institutions and public services“* shall be supplemented with the text *“, and allocations for contracting works and services, as necessary“* and further as in the text.

Article V. – Law on Official Statistics No. 412-XV of 9 December 2004 // Official Monitor of the Republic of Moldova, 2005, No. 1-4, Article 8 of 07.01.2005 with subsequent amendments and additions, shall be amended as follows:

1. Article 4, paragraph (1) letter a) shall be formulated in the new version:

*„a) collection, procession, systematization, centralization, analysis, current estimation of statistical data disaggregated based on gender criteria and its dissemination.“.*

2. Article 9, paragraph (2) shall be supplemented by letter c1) in the following version:

*“c1) to ensure collection, procession and generalization of statistical data disaggregated based on gender criteria;“.*

3. Article 10, paragraph (2) shall be supplemented with letter a1) in the following version:

*“a1) to elaborate methodology for collecting, processing and generalizing statistical data disaggregated based on gender criteria;“.*

4. Article 19 shall be supplemented with paragraph (3) in the following version:

*“(3) Central and local public administration authorities, parties, other social-political organizations, legal entities and private persons who carry out entrepreneurial activities shall submit the necessary data disaggregated based on gender criteria to the official statistical bodies.“.*

Article VI. – Law on Integration of Foreigners in the Republic of Moldova No. 274 of 27.12.2011 //Official Monitor No. 48/144 of 13.03.2012 with subsequent amendments and additions, shall be amended as follows:

Article 6:

after the phrase „persons who have reached retirement age” shall be supplemented with the following text „, victims of family violence”.

Article VII. – Law on the Regime for Foreigners in the Republic of Moldova, No. 200 of 16.07.2010 //Official Monitor No. 179-181/610 of 24.09.2010 with subsequent amendments and additions, shall be amended as follows:

1. Article 31:  
paragraph (1) shall be supplemented with letter e<sup>2</sup>) reading as follows:  
„e<sup>2</sup>) for the protection of the victim of gender violence;”;

2. Article 39:  
paragraph (1) shall be supplemented with letter d) reading as follows:  
„d) is victim of gender violence;”;

3. After Article 42 a new Article 422 shall be introduced, reading as follows:

*”Article 422. Extension of the right to temporary residence for victims of gender violence*

*(1) The right to temporary residence for victims of gender violence may be extended in case of a foreigner who is or was a victim of family violence, provided that the following conditions are met cumulatively:*

- a) foreigner manifests a clear will for cooperation with competent authorities in identification and criminal liability of the participants in committing a crime where he/she is a victim;*
- b) staying of the foreigner on the territory of the country is necessary for a good conduct of criminal proceedings;*
- c) foreigner does not represent danger for national security and/or for public order.*

*(2) By derogation from Article 32 paragraph (2) and Article 38 paragraph (8), foreigner needs to attach the following documents to the application for extension of the right to temporary residence for victims of family violence:*

- a) ordinance of the criminal investigation body on his/her recognition as damaged party;*
- b) document for state border crossing or any other document confirming his/her identity;*
- c) confirmation of the address of domicile or residence in the Republic of Moldova.*

*(3) The right of temporary residence for victims of family violence may be granted, upon the request of the victim, for a period of 6 months, with the possibility of extension for new periods of up to 6 months, under conditions of paragraph (1). Upon expiration of the right to temporary residence, general provisions concerning the regime of foreigners in the Republic of Moldova shall apply to the victims of family violence.*

*(4) The right to temporary residence for victims of family violence and the associated residence permit shall be granted for free.”.*

Article VIII. – Law on Asylum in the Republic of Moldova, No. 270-XVI of 18.12.2008 //Official Monitor No. 53-54/145 of 13.03.2009 with subsequent amendments and additions, shall be amended as follows:

Article 45:

paragraph (2) letter f), after the phrase „acts and abuses of gender-specific discrimination nature,” shall be supplemented with the following text „including gender based acts of violence against women, ”;

Article 46:

paragraph (1) letter e) after the phrase „shall include the holding of an opinion regarding a certain matter, ” shall be supplemented with the following text „including about gender based discrimination, ”.

Article IX. – Criminal Code of the Republic of Moldova No. 985-XV of 18 Aprilie 2002 (republished in Official Monitor No. 72-74/195 of 14.04.2009), with subsequent amendments and additions, shall be amended and supplemented as follows:

3. Article 133<sup>1</sup>:

at letter a) after the word “relatives” the text shall be supplemented by the phrase „and straight-laws” and shall read further according to the text.

letter b) shall have the following version:

“b) in conditions of separate living: persons in a relationship of marriage, relatives and their straight-laws, foster children, persons under guardianship, former husbands, persons currently or formerly in a relationship of concubinage.”.

4. Article 145:

paragraph (2) shall be supplemented with letter e1) with the following content:

“e1) on a family member;”.

5. Article 176:

the proposal is to supplement paragraph (1), letter a) with the following provision “or by persons who manage a commercial, public or other non-state organization”.

6. A new Article is introduced: Article 177<sup>1</sup> “Acts of stalking”

“Article 177<sup>1</sup> Acts of stalking:

(1) Repeated threatening or harassment of a person in order to cause him/her a serious and continuous condition of anxiety or fear or generate well-grounded fears for his/her own safety or safety of his/her relatives, or a close person from affective point of view, in order to constrain the person to change his/her own living conduct, shall be punished by a fine or by imprisonment for up to 2 years;

(2) The same action committed by a divorced or separated person, or by a person with whom the victim had an affective relationship, or against a minor, shall be punished by a fine or by imprisonment for up to 5 years

7. Article 201<sup>1</sup> shall be formulated in the new version:

“Article 201<sup>1</sup> Family Violence

(1) Deliberate action committed by a family member against another family member, manifested by:

a) ill-treatment, beatings, other violent actions that caused physical pain or light bodily or health injuries;

b) deprivation of liberty, isolation, stalking, intimidation, in order to impose one’s volition or personal control of the victim;

c) deprivation of basic means for living or of objects that represent first necessity, if this caused physical or mental suffering

shall be punished with community service for 180 to 240 hours or with imprisonment for 1 to 3 years

(2) Actions indicated in paragraph (1):

a) committed against two or more family members;

b) committed in relation to request for protective measures;

c) committed by a person who earlier committed similar actions;

d) which caused bodily or health injuries of medium gravity;

shall be punished with community service from 180 to 240 hours or with imprisonment for 3 to 6 years.”;

(3) The same action, which:

a) caused grave bodily or health injuries;

b) determined a person to commit suicide or suicide attempt;

shall be punished with imprisonment for 6 to 12 years.

(4) Violent actions against a family member that caused victim’s death shall be punished with imprisonment for 8 to 15 years.”.

(5) The person who committed actions envisaged by paragraph (1), letter a) of this Article in self-defence or defence of other persons against acts of violence or other illegal or immoral acts of the victim shall not be held criminally liable.”.

7. After Article 320, a new Article 320 shall be introduced with the following content:

“Article 320<sup>1</sup> . Non-enforcement of Measures included in Protective Order of the Victim of Family Violence Deliberate non-enforcement or avoiding to enforce measures established by the court in the protective order of the victim of family violence, shall be punished by community service for 150 to 200 hours or by imprisonment until 2 years.”.

**Article X. - Contravention Code of the Republic Moldova No. 218-XVI of 24 October 2008** //Official Monitor, 2009, No. 3-6/15 of 16.01.2009//, with subsequent amendments and completions, shall be amended and supplemented, as follows:

1. Article 78 shall be supplemented by a new paragraph, paragraph (4), which shall read as follows:  
*"(4) Provisions of paragraphs (1), (2), (3) shall not apply in cases of family violence acts."*;

2. Article 364:  
in paragraph (6), after the word "immoral," the word "sexist" shall be introduced and shall read further according to the text.

3. Article 423<sup>5</sup>:  
paragraph (1) shall be supplemented with the following text " , as necessary, by the specialists acting as gender units within the specialized central public administration authorities and local public administration authorities.

paragraph (2) shall be formulated in the new version as follows:  
*"(2) Members of the Council for Preventing and Eliminating Discrimination and Ensuring Gender Equality are entitled to establish contraventions and sign minutes in a collegial manner."*

**Article XI. – Criminal Procedure Code of the Republic of Moldova No. 122-XV of 14.03.2003**, //Official Monitor, 2003, No. 104-110/447 of 07.06.2003//, with subsequent amendments and completions, shall be amended and supplemented, as follows:

1. Article 69:  
paragraph (1) shall be supplemented with point 13) and point 14) reading as follows:  
*, 13) damaged party is a minor;  
14) is recognized damaged party in the case of family violence."*

paragraph (2) shall be supplemented with point 4) reading as follows:  
*,4) was recognized damaged party – in case regulated by paragraph (1) point 13)-14)."."*

2. Article 70:  
paragraph (3) point 2) after the phrase *,and suspect, accused, defendant"* shall be supplemented by the phrase *„ damaged party"* and further according to the text.

3. Article 166 shall be supplemented with a new paragraph (11) as follows:  
*„(11) When, following the circumstances established at the scene of crime, there is reasonable ground to believe that a family violence crime was committed and there is an imminent danger that violent actions will be committed again, criminal investigation body must decide on apprehension of the perpetrator."*

4. Article 2151:  
paragraph (1) and (2) shall be formulated as follows:  
*„(1) When during criminal proceedings it is established that the victim of family violence is in danger of being subjected to violence or other illegal actions, including destruction of assets, criminal investigation body or prosecutor must immediately request application of protective measures.*

(2) Request for application of protective measures may be submitted by the criminal investigation body or prosecutor also based on the request of the damaged party."

5. Article 276:  
to exclude from paragraph (5) the following text *„In cases of family violence, prosecutor or the court shall examine whether victim's wish for reconciliation is freely expressed, by ensuring that victim had real access to assistance and protection."*

**Article XII. – Civil Procedure Code of the Republic of Moldova No. 225-XV of 30 May 2003** //Official Monitor of the Republic of Moldova, 2003, No. 111-115/451 of 12.06.2003, with subsequent amendments and completions, shall be amended and supplemented, as follows:

1. Article 77:  
paragraph (1) letter c) the phrase *„Article 304 and 316"* shall be replaced with the phrase *„Article 304, 316 and 318<sup>3</sup>;"*

2. Article 92 shall be supplemented with a new paragraph, par.(3) in the new version:

*„(3) The victim of family violence shall be exempted of expenses related to examining of the request for protection measures. All expenses in these cases shall be performed from the state budget.”.*

3. Article 256: paragraph (1) shall be supplemented with the letter e), as follows:

*„ e) protection measures envisaged by the article 3184 par. (2) let. a'), e), e') and f) from this Code.”;*

4. Article 318 : paragraph (1) shall read as follows:

*“(1) The request to issue a protective order shall be filed by the victim personally or by the legal representative. In case of impossibility for the victim to file the request, the application for issuance of protective order may be filed on behalf of the victim, at victim's request, by police authority, social workers' agency or prosecutor. The request to issue a protective order on behalf of the child or disabled person, may be filed by the prosecutor or guardianship authority, whether or not there is a request of the victim or victim's legal representative.”;*

5. Article 318<sup>3</sup> shall be supplemented with a new paragraph, paragraph (11) as follows:

*„(11) For protection of victim's interests during the trial, the court shall request from the coordinator of the territorial office of the National Council for State Guaranteed Legal Aid, to assign an attorney. In this case the legal aid is free of charge.”;*

Shall be supplemented by a new paragraph (4):  
*“Victim's complaint is sufficient for issuing protective order in case when there is a real risk of physical violence*

6. Article 318<sup>4</sup>: paragraph (2) shall be supplemented by letter a1) and letter e1) as follows:

*“a') limiting the right of the aggressor to use a part of the common dwelling, when it can be divided in such a way that aggressor does not have any contact with the victim;*

*e<sup>1</sup>) obliging the aggressor to bear the costs related to maintaining the dwelling where the victim lives, or will temporary live as a result of impossibility to stay in the family dwelling.”;*

from paragraph (4) the phrase *„and social assistance body”* shall be excluded;

in paragraph (5) the phrase *„paragraph (2) letter e) and f)”* shall be replaced with the phrase *„paragraph (2) letter a1), e), e1) and f)”;*

paragraph (5) shall be supplemented with the following new sentence:

*„Execution costs are to be borne by the aggressor, and he/she is the debtor of the execution procedure.”*

7. Article 3186 shall be formulated as follows:

*„Article 3186. Contesting decision on admitting or dismissing request for application of protective measures*

*(1) Decisions on application of protective order or dismissal of the request for application of protective measures could be appealed with recourse.*

*(2) Contesting decision on application of protective order does not suspend execution of the applied measure.”.*

Article XIII. – Enforcement Code of the Republic of Moldova No. 443-XVI of 24.12.2004 (Official Monitor No. 34-35/112 of 03.03.2005) with subsequent amendments and additions, shall be amended as follows:

Article 11 letter b) of the Enforcement Code shall be supplemented by the following phrase *“, ordinances regarding the protection measures, set forth in the Article 3184 paragraph (2) letter a1), e), e1) and f) from this Code.”.*

# Annex Form for Risk Assessment

## RISC ASSESSMENT FOR POLICE IN CASES OF FAMILY VIOLENCE

Evaluation of the risk in cases of family violence is based on a structured professional reasoning. It structures and informs about actions or decisions that were already taken within the respective case of family violence. The process of risk evaluation should stay dynamic. In cases of family violence, events and circumstances may develop rapidly and with frequent changes, in these cases the report on risk evaluation needs to be constantly and totally re-evaluated in respect of its compliance with new events and circumstances emerged.

### Form No. 1 to fill in for establishing the case of family violence

	Data:	
	Last name, first name, address of the victim	
	Last name, first name, address of the aggressor	
1.	Were there criminal records related to family violence?	Yes/No
2	Is there a possibility that the incident will transform in a critical/more serious incident?	Yes/No
3	Are there minor children at victim's address?	Yes/No
4	Were minor children present at the moment of the incident?	Yes/No
5	Was the aggressor apprehended following the incident?	Yes/No

### 6 Factors of High Risk

1	Separation of parents-parties of common children (contact with children)	Yes/No
2	Pregnancy (new-borns)	Yes/No
3	Escalation of violence (abuses become more frequent and/or more violent)	Yes/No
4	Cultural problems and sensibility of the parties to these problems	Yes/No
5	Stalking	Yes/No
6	Sexual abuse	Yes/No

### Imminent risk for the victim

Low	Average	High
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Last name, first name and signature of the police officer



## Evaluation guide for the Form No. 1

### Separation:

Often victims, who want to leave the aggressor or who left him/her and live separately, are subjected to a high risk of revenge from the aggressor. Many incidents happen as a result of the contact between the parties that occurs in the context of visiting minor children or in the context of court hearings related to establishing the domicile of minor children at the place of one of the parents.

### Pregnancy (new-borns):

Family violence may start or may worsen during victim's pregnancy

### Escalation of violence (abuses become more frequent and/or more violent):

There is a real need to identify the repeated abuse and its aggravation. Comparing to any other offence, victims of domestic violence are subjected to a high risk that aggression might repeat, and repeated abuse becomes more serious.

### Cultural problems and sensibility of the parties to these problems:

Relations with cultural problems related to religion, culture, racism, etc. could increase the risk of emergence or negative evolution of the case of family violence.

### Stalking:

There is a high risk that an act of family violence may emerge or degenerate, if aggressor is constantly and continuously stalking the victim, is calling him/her on the phone, is sending him/her messages by any methods (telephone, fax, post, internet, through other persons).

### Sexual abuse:

Statistics prove that victims subjected to sexual aggression within family relations are often also victims of physical and verbal abuse, and their aggressors are considered of a high risk.

## IMMINENT RISK FOR THE VICTIM:

### Low:

there are no significant indicators of the risk

### Average:

there are identifiable risk indicators, and there is a possibility that aggressor will abuse the victim in case the circumstances change, such as: the fact that he/she did not take medicines in time, losing housing, separation from the victim or deterioration of the relationship with the victim, abuse of alcohol or drugs, etc.

### High:

there are identifiable risk indicators, and there is a high probability that some serious consequences may occur, and the case might deteriorate any moment and have a serious negative impact.

## RISK MANAGEMENT:

Risk management or administration has an important role in risk evaluation.

**Eliminating the risk:** by apprehending the aggressor and receiving a protective order

**Avoiding the risk:** by placing the victim in a center/refuge for victims of family violence, and the location of the center/refuge is kept in secret from the aggressor, and receiving a protective order

**Reducing the risk:** by creating a safety plan elaborated by the policeman together with the victim and receiving a protective order

**Accepting the risk:** by continuous intervention of the police officer and social assistant, and as the case may be, of the representatives of local public administration in order to settle the conflict of family violence; by referring the aggressor to the institutions/organizations that provide rehabilitation/counselling services for aggressors.

## Form No. 2 to fill in during investigation of the family violence case

These questions are addressed to the victim:

CURRENT SITUATION		
1	Do you feel safe in your daily life? (Comment if necessary)	Yes/No
2	Did you say someone about this case? (To whom and why?)	Yes/No
3	Do you benefit from someone's support? (Comment if necessary)	Yes/No
4	Are you financially dependent on the aggressor?	Yes/No
5	Does he/she prevents you from seeing your relatives, friends, colleagues, or going to the doctor when you need?	Yes/No
6	Does the aggressor follow you, call you or contact you by any other method, and is thus harassing you?	Yes/No
7	Do you feel depressed?	Yes/No
Children and other persons who benefit of victim's support and care		
1	Are you pregnant?	Yes/No
2	Do you have children (your own children or children common with the aggressor)?	Yes/No
3	Do you support or take care of other persons who are living together with you?	Yes/No
4	Did children ever witness actions of violence committed by the aggressor?	Yes/No
5	Has he/she ever abused children?	Yes/No
6	Has he/she ever threatened children with aggression?	Yes/No
HISTORY OF THE FAMILY VIOLENCE CASE		
1	Do actions of violence become more frequent?	Yes/No
2	Do actions of violence become more serious?	Yes/No
3	Does he/she refuse to understand that is hurting you?	Yes/No
4	Has he/she ever threatened you with murder, did you believe this?	Yes/No
5	Does he/she say or does things of sexual nature, which make you feel bad or cause you physical pain?	Yes/No
6	Has he/she ever used weapons or other objects against you to hurt you?	Yes/No
7	Has he/she ever accused you or made you feel responsible for his/her aggressive behaviour?	Yes/No
8	Is he/she excessively jealous and tries to control everything you do?	Yes/No

9	Has he/she ever aggressed another member of the family or another person he/she was in a relationship with? (Please mention whom exactly)	
10	Has he/she ever attacked an unknown person? (Whom and why?)	

Questions about the aggressor:

1	Have you tried to leave the family/relationship during the last year?	Yes/No
2	Has he/she lost the job during the last year?	Yes/No
3	Has he/she had problems with alcohol and drugs during the last year?	Yes/No
4	Was he/she a victim or witness of the family violence in the past?	Yes/No
5	Does he/she have sudden and uncontrollable changes in the mood?	Yes/No
6	Has he/she ever threatened you with suicide or has he/she ever tried to commit a suicide?	Yes/No
7	Is he/she involved in other criminal activities? If yes, in which activities?	Yes/No
8	Has he/she ever violated the protective order or a contract related to meeting his/her minor children?	Yes/No
Do you want to add anything else to this report? (Any other relevant information presented by the victim)		Yes/No

### 6 Factors of High Risk

1	Separation of parents-parties of common children (contact with children)	Yes/No
2	Pregnancy (newborns)	Yes/No
3	Escalation of violence (abuses become more frequent and/or more violent)	Yes/No
4	Cultural problems and sensibility of the parties to these problems	Yes/No
5	Stalking	Yes/No
6	Sexual abuse	Yes/No

### Imminent risk for the victim

Low	Average	High
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Name, first name and signature of the police officer

**UN WOMEN IS THE UNITED NATIONS** organization dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide. UN Women supports UN Member States as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to implement these standards. It stands behind women's equal participation in all aspects of life, focusing on five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system's work in advancing gender equality. For more information please visit: [www.unwomen.org](http://www.unwomen.org)

**WOMEN'S LAW CENTER (WLC)** is a non-governmental organization that was registered in 2009 and started its activities in 2011. WLC was established by a number of women-lawyers from Moldova to ensure that a gender perspective is present during the law-making process and in the application of law, and that women and men are equal before the law. The Centre advocates for equal status opportunities for women and men in public life and within the family. The organization has been involved in the advocacy and development of effective legislation on gender equality and domestic violence and is supporting women exposed to domestic violence by providing legal counselling and representation. The WLC's mission is to ensure protection of women's human rights and combat domestic violence in Moldova. The WLC supports a human rights based approach and strives for change at the individual, community and systemic levels. The organization's activities and efforts focus on several strategic directions: policy advocacy, monitoring implementation of new laws and protection mechanisms, service provision and networking and coalition building.



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United Nations Entity for Gender Equality  
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131, 31 August 1989 str.,  
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