
**Study on Homophobia, Transphobia and Discrimination on
Grounds of Sexual Orientation and Gender Identity**

Legal Report: Moldova

by independent researcher Vera Turcanu-Spatari

Disclaimer:

This report was drafted by an independent expert and is published for information purposes only. Any views or opinions expressed in the report are those of the author and do not represent or engage the Council of Europe or the Office of the Commissioner for Human Rights.

Table of Contents

A. EXECUTIVE SUMMARY	3
B. FINDINGS	8
B.1. Overall legal framework	8
B.2. Freedom of assembly and association	10
B.3. Freedom of expression	12
B.4. Hate crime - hate speech	13
B.5. Family issues	14
B.6. Asylum and refugee issues	16
B.7. Social, security, social care and insurance	17
B.8. Education	18
B.9. Employment	19
B.10. Housing	20
B.11. Health care	20
B.12. Access to goods and services	21
B.13. Media	22
B.14. Transgender issues	23
B.15. Miscellaneous	24

A. Executive summary

1. The Republic of Moldova is a country where discrimination on the ground of sexual orientation is widespread and advocated by public figures both in the political and religious spheres. There is a marked reluctance by the authorities to take any action to prevent and fight against sexual orientation and gender identity discrimination.
2. There is a complete absence of any variable data related to sexual orientation and gender identity; the only data regarding the LGBT groups are available only from the non-governmental organisations. Surveys show that LGBT persons are a stigmatised minority group, with few rights on paper and almost no rights in reality facing discrimination both from the society and public authorities. Till this time the LGBT rights and interests are not grounded in the Moldovan legislation.
3. The LGBT Information Centre "GenderDoc-M" and other Human Rights Organisations continue to report multiple violations of the right to freedom of assembly, police abuse, and failure by the government ministries to observe the basics of equality and non-discriminatory principles, and oppressive use of legal processes.

Overall legislation

4. The overall legal framework of the Republic of Moldova does not define the terms of discrimination, sexual orientation and gender identity; and it does not provide mechanisms of redressing discrimination.
5. Within the current Moldovan legislation there are three laws that mention sexual orientation: the Law on Application of Lie Detector/Polygraph nr. 269 from 12.12.2008; the Law on Asylum nr. 270 from 18.12.2008 and the Law on Freedom of Expression nr. 64 from 23.04.2010.
6. There is no reference to gender identity – transgender/transsexual in any Moldovan legislation.
7. The Government fails to fulfil its obligations to ensure the non-discrimination towards LGBT people and to adopt a legislation that prevents and combats discrimination.
8. There are no national anti-discrimination policies in Moldova, or educational programmes to eliminate the prejudicial and discriminatory attitudes and behaviours towards lesbian, gay, bisexual and transgender persons.

Freedom of assembly

9. Over the past years, freedom of assembly in Moldova can be analyzed in the light of two different legal frameworks that regulate the exercise of this right. In 2008 a new law on assemblies came into force. The period prior to this date is characterized by multiple violations of freedom of assembly.
10. The new Law on Assembly nr. 26-XVI from 22.02.2008 stipulates that a public manifestation can be organised without any prior request to the public authorities if it involves up to 50 participants. Any manifestation gathering more than 50 participants

should be notified to the public administration, which authorises the manifestation and provides police security and medical assistance.

11. Even though the new Law is more permissible and liberal, the right to freedom of assembly is not guaranteed to the LGBT organisations in Moldova and for the past years all attempts to organize peaceful assemblies in Moldova have failed. In 2005-2008, all the requests coming from GenderDoc-M to organise public manifestations were denied. After the adoption of the new Law on Assembly, in 2008, the manifestation of GenderDoc-M was banned even if it involved less than 50 participants. The reason invoked by the public administration was that they could not provide the necessary security and that there was a risk of the manifestation to encounter a violent contra manifestation

Freedom of expression

12. The Moldovan legislation does not guarantee specific protection of freedom of expression in the context of homophobia/transphobia or discrimination on the ground of sexual orientation or gender identity.
13. Art 2 of the Law on Freedom of Expression nr. 64 from 23.04.2010 defines hate speech; art 3 of the same law states that 'the guarantees of freedom of speech does not extend to the speech that incites hatred or violence.
14. LGBT persons have the right to expression, but once the sexual orientation or gender identity is revealed, the person risks losing job, being excluded from social groups, facing misunderstanding and rejection.

Hate crimes and hate speech

15. Art 2 of the Law on Freedom of Expression nr. 64 from 23.04.2010 defines hate speech; art 3 of the same law states that 'the guarantees of freedom of speech does not extend to the speech that incites hatred or violence.
16. In the Republic of Moldova most common types of hate incidents against the LGBT persons are verbal aggressions (bullying and name calling) which often happen in hospitals, schools/ high schools, discos and bars.
17. Cases are not reported to the police or other specialized authorities due to fear of repeated violence and lack or little trust in law enforcement bodies.
18. Information Centre GenderDoc-M and other Human Rights Organisations provide legal and psychological counselling; document and monitor cases of hate speech and hate crimes.

Family issues

19. The Moldovan legislation does not recognize registered partnership or same-sex marriage as marriage is considered a "union between man and woman"- art.2 and 11 of the Family Code. There are no alternative schemes or cohabitation provisions in national legislation at all, neither for heterosexual nor same-sex couples.
20. The legislation does not make any references to transgender persons. After the successful changing of the identification documents, the transgender persons that are heterosexual do not encounter any difficulties when they decide to marry.

21. The majority of LGBT persons hide their sexual orientation or gender identity from family members. In what concerns transgender persons, some do not enter (or complete) gender reassignment process, or move away from their families (in bigger cities or abroad).
22. The Law on Adoption nr. 99 from 28.05.2010 art. 12 does not contain explicit prohibitions for LGBT persons to adopt. The Law provides unclear and contradictory provisions in regards to adoption.

Asylum and refugee issues

23. The Law on Asylum nr. 270 from 18.12.2008 and has been in force since 13.03.2009 is in compliance with the European and international standards. Art. 10 explicitly states sexual orientation as one of the criteria on which discrimination is prohibited when applying for asylum and/or subsidiary protection.
24. There are no cases recorded of refusal or approval of refugee status or asylum on the grounds of sexual orientation or gender identity.

Social security, social care and insurance

25. The Law on Social Services nr. 123 from 18.06.2010, the Law on Public System of Social Services nr. 489-XIV from 08.07.1999 and other acts regarding social security, social care and insurance has no explicit specifications about LGBT persons.
26. There is a total lack of social support, social security and psychological support to LGBT people in the process of coming out and acceptance from the authorities.
27. GenderDoc-M collaborates with the Ministry of Health on issues concerning transgender persons, however, only up to the moment of obtaining by them the medical certificate determining their transsexuality. Only GenderDoc-M and HomoDiversus Pro are offering support to this group.

Education

28. The Law on Education nr. 547 adopted on 21.07.95 Art. 4 and 5 contain several contradictory provisions stating that state education policy is based on the principles of humanity, accessibility, adaptation, creativity and diversity and state education is secular. The contradiction is due to the fact that while on the one hand legislation and policy on education are based on the principles of fundamental human rights, on the other hand what is taught in schools in different subjects (religion, biology, etc), carries a condemnation of homosexuality.
29. Bullying appears to be a problem in educational institutions and no mechanisms or any school policies exist in monitoring and sanctioning these cases.
30. Life skills course has been developed, however it was removed from the curricula.

Employment

31. The Labour Code nr. 154 from 28.03.2003 lists the grounds (sex, race, nationality, language, social origin and status, residence, opinion and religious beliefs, affiliation to

public associations, and other grounds that are not linked to professional skills) on which the discrimination is prohibited in labour relations; however no definitions, types of discrimination are stated.

32. There are a few cases documented on LGBT discrimination in employment by Information Centre GenderDoc-M, but no applications filed in courts.

Housing

33. The Civil Code nr. 1107 from 06.06.2002 of the Republic of Moldova states no restrictions on the right of gay couples to live in the same house.
34. In practice, however, as reported by Information Centre GenderDoc-M, there were instances when the owner terminated the contract because the tenants were gay.

Health care

35. The current Moldovan health policy does not reflect the needs of the LGBT community. LGBT persons face discriminative attitude when accessing medical services.
36. Medical workers manifest lack of knowledge, tolerance and professionalism when dealing with LGBT health issues.
37. LGBT sensitive programs have been developed and carried out so far largely by civil society actors.
38. The Ministry of Health started working on transgender issues only after the advocacy work of GenderDoc-M.

Access to goods and services

39. The Constitution of the Republic of Moldova stipulates that State must ensure that every citizen should have a decent living, to assure health and welfare of the person and his/her family, including food, clothing, housing and medical care and necessary social services.

The majority of cases documented by the Information Centre "GenderDoc-M" reflect cases of discrimination of LGBT persons in different recreation and entertainment places, public transportation, shops, printing companies.

Media

40. Media in the Republic of Moldova is regulated by the Constitution, Audiovisual Code Nr. 260-XVI from 27.07.2006, the Law of Media nr. 243-XIII from 26.10.1994 and other related relevant normative acts.
41. Media in the Republic of Moldova reflects events and activities organised by LGBT organisations or individuals as high pick news looking for sensationalism rather than delivering a message.
42. The media publishes positive messages and news when paid for.

43. The Internet is the platform where most homophobic and transphobic messages are promoted.
44. There is no Institution/ Body to monitor Internet homophobic and transphobic messages, instigation to hate and violence.

Transgender Issues

45. Transgender persons are not so visible in Moldovan society. Since 2007, GenderDoc-M included in its advocacy strategy the transgender issues as one of the priorities and the work is at its incipient phase.
46. The only legislative provision which refers to “transsexual persons” is an article of the Law on Identity Documents providing for a person to change the surname in I.Ds only upon presenting a medical certificate on gender reassignment.

B. Findings

B.1. Overall legal framework

47. The Republic of Moldova has been a member of the Council of Europe since 1995. Moldova ratified the European Convention on Human Rights and its additional protocols on 12.09.1997, as well as the Revised European Social Charter on 01.01.2002 through which it undertook to ensure and realize universal rights and provide the necessary security and support to all beings without any discrimination.
48. The Constitution of the Republic of Moldova guarantees the fundamental principles. The principles refer to enjoyment of all universal human rights without any discrimination as to race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin. Sex in all Moldovan legislation is used in relation to man/woman.
49. The equality principle can be found in the national legislation of the Republic of Moldova in the Constitution,¹ Criminal Code,² Law on Assemblies,³ Family Code,⁴ Labour Code,⁵ the Law on Equal Opportunities between Men and Women⁶ and other normative acts.
50. Although the equality principle is the basis of the Moldovan legislation, the enforcement and its implementation are not fully realised.
51. Homosexuality was decriminalized in 1995. Generally, the Moldovan laws guarantee security and provide forms of sanctions in relation to human rights violations, but there are no specific provisions against homophobia/ transphobia.
52. Neither the Constitution of the Republic of Moldova, nor any other legislation defines the terms of discrimination, sexual orientation and gender identity, or makes specific reference

1 Art 15. Universalitatea Cetățenii Republicii Moldova beneficiază de drepturile și de libertățile consacrate prin Constituție și prin alte legi și au obligațiile prevăzute de acestea. Art 16, (2) Toți cetățenii Republicii Moldova sînt egali în fața legii și a autorităților publice, fără deosebire de rasă, naționalitate, origine etnică, limbă, religie, sex, opinie, apartenență politică, avere sau de origine socială.

2 Art. 5. Principiul democratismului. Persoanele care au săvîrșit infracțiuni sînt egale în fața legii și sînt supuse răspunderii penale fără deosebire de sex, rasă, culoare, limbă, religie, opinii politice sau orice alte opinii, origine națională sau socială, apartenență la o minoritate națională, avere, naștere sau orice altă situație.

3 Articolul 4. Principii de baza (b) nediscriminarea, conform căreia dreptul la întrunire este garantat tuturor persoanelor, indiferent de rasă, de naționalitate, de origine etnică, de limbă, de religie, de sex, de opinie, de apartenență politică, de avere, de origine socială sau de oricare alt criteriu;

4 Articolul 2. Principiile de baza ale legislației familiale (3) Relațiile familiale sînt reglementate în conformitate cu următoarele principii: monogamie, casatorie liber consimțita între barbat și femeie, egalitate în drepturi a soților în familie, sprijin reciproc moral și material, fidelitate conjugală... liber acces la apărarea, pe cale judecătorească a drepturilor și intereselor legitime ale membrilor familiei.

5 Articolul 5. Principiile de bază ale reglementării raporturilor de muncă și a altor raporturi legate nemijlocit de acestea g) asigurarea egalității salariaților, fără nici o discriminare, la avansare în serviciu, luîndu-se în considerare productivitatea muncii, calificarea și vechimea în muncă în specialitate, precum și la formare profesională, reciclare și perfecționare

6 Articolul 5. Interzicerea discriminării după criteriul de sex

(1) În Republica Moldova, femeile și bărbații beneficiază de drepturi și libertăți egale, fiindu-le garantate și șanse egale pentru exercitarea lor.

(2) Promovarea unei politici sau efectuarea de acțiuni care nu asigură egalitatea de șanse între femei și bărbați se consideră discriminare și trebuie să fie înlăturată de autoritățile publice competente, conform legislației.

to gender identity as a prohibited ground of discrimination. Most laws contain an in-exhaustive/open list of criteria by stipulating “any other situation” or “any other ground.”⁷

53. There are three laws that mention sexual orientation: the Law on Application of Lie Detector/Polygraph⁸ nr. 269 from 12.12.2008; the Law on Asylum⁹ nr. 270 from 18.12.2008 and the Law on Freedom of Expression¹⁰ nr. 64 from 23.04.2010.
54. The Law on Asylum explicitly states sexual orientation as one of the criteria on which discrimination is prohibited; while the Law on Application of Lie Detector/Polygraph and the Law on Freedom of Expression mention sexual orientation as part of other definitions within the text.
55. Several documents contain the terms ‘moral conduct and norms’ and ‘immoral conduct’, with no further definition of these. These terms are usually used by representatives of authorities and religious organisations restraining the rights of the LGBT community as a threat to the morality of the society of Moldova. Examples of such acts are: Family Code art 67 and art 150¹¹; Law on Education¹² nr. 547 from 21.07.1995, Law on the Citizenship of the Republic of Moldova¹³ nr. 596 from 05.06.1991, etc.
56. In 2004, the Moldovan Government adopted the National Human Rights Action Plan for 2004-2008¹⁴ and Action Plan as part of the Moldova – EU Agreement. Chapter 12 “The ensuring of the right to freedom from discrimination (the rights of sexual minorities)” of the NHRAP aimed at promoting equality and banning discrimination on the grounds of sexual orientation. The Government failed to fulfil its obligations and repeatedly postponed the subject of discrimination on its agenda.
57. Several lobbying initiatives have been carried out by civil society groups, which unfortunately did not succeed.
 - In 2007, a group of civil society organisations, together with Information Centre “GenderDoc-M” initiated a lobby process to amend the Criminal Code, in order to expand the range of situations when the non-discrimination principle can be violated. Thus, they have requested that Article 176 of the Code which stipulates: “bringing to responsibility for violating equality on the basis of sex, race, colour, language, religion, political views or any other opinion, national or social background, affiliation

7 Example: Legea privind întrunirile nr 26 din 22.02.2008 Art.4 b) nediscriminarea, conform căreia dreptul la întrunire este garantat tuturor persoanelor, indiferent de rasă, de naționalitate, de origine etnică, de limbă, de religie, de sex, de opinie, de apartenență politică, de avere, de origine socială sau de oricare alt criteriu.

8 Art 22. Obligațiile și drepturile poligrafologului (3) Poligrafologul nu are dreptul:

a) să efectueze testări în cazul existenței temeiului indicat la art.6;

b) să adreseze în timpul testării întrebări ce țin de apartenența rasială sau etnică a persoanei testate, de convingerile ei religioase sau politice, de viața și orientarea ei sexuală, cu excepția cazurilor când formularea unor astfel de întrebări ține de efectuarea cercetărilor de către organele competente;

9 Legea privind azilul în Republica Moldova Articolul 10. Nediscriminarea-Prevederile legislației naționale se aplică solicitanților de azil și beneficiarilor unei forme de protecție fără discriminare, indiferent de rasă, cetățenie, etnie, limbă, religie, apartenență politică, categorie socială, convingeri, sex, orientare sexuală, vîrstă.

10 Articolul 2. Noțiuni principale informație despre viața privată și de familie – orice informație, inclusiv imagine, privind viața familială, viața la domiciliu, corespondența și conținutul ei, sănătatea și defectele fizice, orientarea și viața sexuală, precum și comportamentul persoanei, în condițiile în care persoana contează, în mod rezonabil, pe intimitate;

11 Articolul 67. Decăderea din drepturile părintești e) prin comportare amorală, influențează negativ asupra copilului; Articolul 150. Părinții educatori (1) Pot fi părinți educatori persoanele cu domiciliul pe teritoriul Republicii Moldova, care au atins vîrsta de 25 de ani și ale căror calități morale și stare a sănătății permit îndeplinirea obligațiilor respective.

12 Art 56. Obligațiile cadrelor didactice.Cadrelor didactice sînt obligate: să respecte în activitate normele de etică, să cultive, prin propriul exemplu, principiile morale de dreptate, echitate, umanism, generozitate, hărnicie, patriotism și alte virtuți;

13 Art 20. Temeiurile refuzului de acordare a cetățeniei Republicii Moldova.Cetățenia Republicii Moldova nu se acordă persoanelor care: 5) desfășoară o activitate ce periclitează securitatea statului, ordinea publică, sănătatea moralitatea populației.

14 *National Human Rights Action Plan (NHRAP)* for 2004-2008 adopted by Parliament Decision No. 415 of 24 October 2003, Chapter 12 “ensuring the right not to be discriminated on the ground of sexual orientation”.

to a national minority, wealth, and birth” would also ensure incrimination of discrimination based on sexual orientation. This law makes no references to gender identity.

Unfortunately, this attempt failed because the Government rejected the proposal, even if the work on the amendments was coordinated with the full involvement of the Ministry of Justice.

- In the same year, the Anti-Discrimination Coalition¹⁵ in cooperation with the Organisation on Security and Cooperation in Europe Mission to Moldova (OSCE Moldova) proposed to the Ministry of Justice a draft law on preventing and combating discrimination in Moldova.

The draft law aims at strengthening the institutional and legal framework that will ensure the implementation of non-discriminatory policies, particularly the establishment of an independent body that will be responsible for implementation of the Anti-Discrimination Law and will coordinate the work in the field of anti-discrimination.

The Ministry of Justice, in 2008, started to draft a new law which differed much from the civil society initiative through its mechanism of implementation.

On the other hand, religious groups and organisations lobbied the Ministry of Justice to exclude from the draft law the provision regarding “sexual orientation as ground of discrimination” by submitting letters and lists of signatures of people against the law¹⁶.

The Anti-Discrimination Coalition endeavoured to introduce “sexual orientation” as a ground of discrimination in the list of protected criteria.

In August 2010 the Ministry of Justice published the Anti-Discrimination Law on its website and opened the process for submitting comments and recommendations.

The clause of discrimination on the grounds of “sexual orientation” is included in the draft law; no reference to gender identity is made though.

58. The Government did not elaborate any special educational policies to work on elimination of prejudicial, discriminatory attitudes and behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation, gender identity or gender expression.

B.2. Freedom of assembly and association

59. The outset of this section reflects the provisions of the Law on Assembly which was adopted in 1995 and modified in 2008,¹⁷ the Constitution¹⁸, Code of Administrative Offences¹⁹ nr. 218-XVI from 24.10.2008, Criminal Code²⁰ and the Law on Public Associations²¹ nr. 837 from 17.05.1996.

15 Anti-Discrimination Coalition was established in 2005 with the purpose to lobby for the draft law for preventing and combating the discrimination in Moldova. The Anti-Discrimination Coalition included 24 member organisations among which is Information Centre “Gender Doc M., www.nediscriminare.md, accessed 29 September 2010.

16 Christian Moldova, www.moldovacrestina.net/politica/legea-nediscriminare/noi-am-trimis-o-petitie-adresata-ministerului-justitiei/, accessed 29 September 2010; Moldova Azi, <http://old.azi.md/news?ID=51600>, accessed 29 September 2010; Blogosfera, <http://blogosfera.md/view-post-v-36705-0-romana.html>, accessed September 2010.

17 *Law on Assembly* from 21.07.1995 and abrogated on 22 April 2008, Article 3. Definitions: “Assembly shall mean a temporary and intentional gathering of a group of persons together to express some attitudes and ideas”.

18 *Constitution of Republic of Moldova*, Article 40, Freedom of Assembly “ All meetings, demonstrations, manifestations, processions or other assemblies are free, and shall be organised and conducted in a peaceful manner and without the use of any kind of weapon

19 Art. 67. “Încălcarea legislației privind întrunirile (1) Organizarea și desfășurarea întrunirii fără a fi notificată primăria, precum și încălcarea condițiilor (forma, locul, timpul) privind desfășurarea întrunirii indicate în declarația prealabilă...; (2)

60. According to the Law on Public Associations (Art. 3, Art. 11) anyone can register a public association without any restrictions. In practice, however, there are cases of denial and rejection, some of which have been solved through court.²²
61. In the Republic of Moldova there are officially registered two LGBT organisations: Information Centre "GenderDoc-M,"²³ registered in 1998, and "Homo Diversus Pro" , registered in 2008.
62. The old law on assembly had been the source of constraints on the realization of freedom of assembly, and in some cases before the European Court of Human Rights, the Court found violations against the Republic of Moldova for violations of freedom of assembly rights.
63. The Law on Assemblies has been subjected to several amendments during the last years, and the provisions of the new Law constitute clear progress compared to the previous law. According to the old law the authorization for an assembly had to be requested from the local or municipal authorities and the issuing of an assembly permit was done by a commission on assembly permits. The commission was preparing a draft permit and submitting it for the mayor's signature for approval or disapproval of an assembly.
64. The new Law on Assembly stipulates that any manifestation can take place without prior notification if it gathers less than 50 participants. In case the manifestation gathers more than 50 people, the organisers have to notify the local authorities 5 days prior to the event the intention to hold an assembly. Notifications are necessary in order to ensure that no other assemblies are organized in the same place at the same time.
65. From 2005 to 2008, all the request letters for authorization of an assembly on behalf of the LGBT organisation, the Information Centre "GenderDoc-M", were denied and rejected without any legal motivation and reason. The reasons provided by the public administration were based on morality and risk of public disorder on behalf of contra-manifestations²⁴.
66. In 2005, the Information Centre "GenderDoc-M" challenged the decision of the municipal Council Chişinău in court to contest the legality for banning the assembly. The organisation lost in the national courts, therefore in 2006 the organisation filed a case with the European Court of Human Rights.²⁵
67. In 2006 and 2007, the officials of the municipality of Chişinău have violated the right to peaceful assembly on several occasions, by prohibiting three requests for public manifestations. In addition, in 2006, the municipality refused the request of Amnesty International Moldova due to the fact that the Information Centre "GenderDoc-M" was in the list of participant organisations.²⁶

Împiedicarea organizării ori a desfășurării întrunirilor conforme legii, precum și împiedicarea participării ori constrângerea de a participa la ele... ”

20 Criminal Code Art.184. "Violarea dreptului la libertatea întrunirilor (1) Violarea dreptului la libertatea întrunirilor prin împiedicarea ilegală a desfășurării mitingului, demonstrației, manifestației, procesiunii sau oricărei alte întruniri ori a participării cetățenilor la acestea fie prin constrângerea lor la participare: a) săvârșită de o persoană cu funcție de răspundere; b) săvârșită de două sau mai multe persoane; c) însoțită de violență nepericuloasă pentru viață sau sănătate,....."

21 Art 24. Drepturi n) să organizeze, în condițiile legii, întruniri și alte acțiuni publice.

22 Center for Human Rights (CReDO), Moldovan Institute for Human Rights (IDOM), National Roma Center, Promo-Lex, Chişinău, *Implementation of Assembly Rights in Moldova*, September 2009.

23 LGBT, www.lgbt.md, accessed 29 September 2010.

24 LGBT, www.lgbt.md/eng/story.php?sid=99, accessed 29 September 2010; LGBT, www.lgbt.md/rom/story.php?sid=428, accessed 29 September 2010.

25 The case is still on roll registered under the number Nr. 9106/06 GenderDoc-M c/ MOLDOVA.

26 LGBT, www.lgbt.md/eng/story.php?sid=99, accessed 29 September 2010; Credo, <http://credo.md/arhiva/documente/MoldovaAssemblyMonitoring2008%20en%20v4.pdf>, accessed 29 September 2010.

68. Even if the current Law incorporates a shift from an authorization to a notification procedure, LGBT organisations and groups still can not receive the necessary protection and support on behalf of the responsible authority.²⁷
69. Police presence at the assemblies decreased specifically when it was needed in the case of counterdemonstrations or violent aggression from third parties; therefore police failed to exercise their obligation to protect the assembly and its participants. Based on the monitoring reports on public assemblies, policemen are present at the assemblies in civilian clothes rather than in uniform.²⁸
70. The motivations for banning the assemblies are based on prejudicial attitudes and personal views. The explanations are not based on any legal framework, but rather on stereotypes and intolerance, such as: “our society is not ready to tolerate such “sights”; the population does not accept “people like you”, we will receive many letters against you”, etc.²⁹
71. The extremist religious groups, the neo-fascist movements hindered public activities conducted by the organisation “GenderDoc-M”, assaulting its participants coming from both national and international context.³⁰
72. The banned assemblies and incidents that happened prove once more that the Moldovan Government does not respect its obligations and responsibilities to effectively implement the Law on Assemblies, to protect LGBT persons and provide necessary security for them and their supporters.

B.3. Freedom of expression

73. In the Moldovan legislation, the right to freedom of expression is guaranteed in several laws: the Constitution of the Republic of Moldova³¹, Audiovisual Code³² nr. 260-XVI from 27.07.2006, the Law on Freedom of Expression nr. 64 from 23.04.2010, Law on Press 243-XIII³³ from 26.10.1994 and other normative acts. However, these acts are not efficiently implemented in practice and not fully respected by the authorities.

27 Ilga Europe, http://ilga-europe.org/home/guide/country_by_country/moldova/comprehensive_denial_to_moldova_s_principal_lgbt_organisation_or_the_right_to_freedom_of_assembly, accessed 29 September 2010.

28 Center for Human Rights (CReDO), Moldovan Institute for Human Rights (IDOM), National Roma Center, Promo-Lex, Chişinău, *Implementation of Assembly Rights in Moldova*, September 2009.

29 http://ilga-europe.org/home/news/latest_news/moldovan_lgbt_pride_2008/lgbt_pride_march_in_the_moldovan_capital_of_chisinau_is_banned_by_the_mayor

30 Information Centre “Gender Doc-M”, *Collection of cases of violation of LGBT Human Rights, 2007 and 2008*.

31 Art. 32 Libertatea opiniei și a exprimării (1) Oricărui cetățean îi este garantată libertatea gândirii, a opiniei, precum și libertatea exprimării în public prin cuvînt, imagine sau prin alt mijloc posibil. (2) Libertatea exprimării nu poate prejudicia onoarea, demnitatea sau dreptul altei persoane la viziune proprie. (3) Sînt interzise și pedepsite prin lege contestarea și defăimarea statului și a poporului, îndemnul la război de agresiune, la ură națională, rasială sau religioasă, incitarea la discriminare, la separatism teritorial, la violență publică, precum și alte manifestări ce atentează la regimul constituțional.

32 Articolul 51. Atribuțiile companiei (1) Atribuțiile companiei sînt: a) elaborarea, producerea, difuzarea emisiunilor radiofonice și televizate despre realitățile sociale, politice și economice interne și internaționale, precum și din domeniile culturii, agrementului, învățămîntului, educației, sportului, emisiuni pluraliste, imparțiale, inovative, marcate de calitatea înaltă și integritatea programului, menite să asigure informarea corectă, imparțială, echidistantă a consumatorilor, respectînd echilibrul politic, libertatea de exprimare, de creație și de convingeri.

33 Art 4. Libertatea de exprimare și limitări de publicitate. Publicațiile periodice și agențiile de presă publică, potrivit aprecierilor proprii, orice fel de materiale și informații, ținînd cont de faptul că exercițiul acestor libertăți ce comportă datorii și responsabilități este supus unor formalități, condiții, restrîngerii și unor sancțiuni prevăzute de lege, care constituie măsuri necesare, într-o societate democratică, pentru securitatea națională, integritatea teritorială sau siguranța publică, apărarea ordinii și prevenirea crimei, ocrotirea sănătății, protecția moralei, protecția reputației sau apărarea drepturilor altora, pentru a împiedica divulgarea unor informații confidențiale sau pentru a garanta autoritatea și imparțialitatea puterii judiciare.

74. The legislation does not guarantee specific protection of freedom of expression in the context of homophobia/transphobia or discrimination on the ground of sexual orientation or gender identity.
75. According to the Moldovan legislation, hate speech and instigation to hatred, or expressions based on social hate are illegal,³⁴ nevertheless, there are no national mechanisms to monitor the implementations of the laws and to apply sanctions.
76. Citizens in the Republic of Moldova are intolerant towards sexual minorities, and often use hate speech in public, and aggression towards lesbian, gay, bisexual, and transgender persons. In a recent survey carried out by the Information Centre "GenderDoc-M", 32% of the 3500 respondents agreed fully with the proposition that homosexuality is a disease, while 35% agreed fully that homosexual people should not be allowed to organise public demonstrations.³⁵
77. LGBT persons have the right to the freedom of expression, but once having revealed their sexual orientation or gender identity they risk losing their jobs, being excluded from social groups, facing misunderstanding and rejection, etc.
78. Thus, the majority of LGBT persons in Moldova do not openly express their sexual orientation or gender identity and prefer to tolerate offences and threats if this can help them hide their sexual orientation from their relatives, colleagues, and friends.
79. Religious organisations³⁶ periodically conduct public manifestations³⁶ and organize street campaigns instigating at hatred and violence against the LGBT persons and distribute different kinds of printing materials containing discriminatory messages.³⁷ These actions are intensified during the festivals, prides and other public activities organized by the Information Centre "GenderDoc-M".
80. Electronic and press media are intensively used as means of promoting hatred messages and instigating to hate.

B.4. Hate crime - hate speech

81. The Criminal Code has several provisions related to "social hate": articles 145 Deliberate Murder, 146 Murder in the Heat of Passion, 151 Intentional Severe Bodily Injury or Damage to Health, 152 Intentional Less Severe Bodily Injury or Damage to Health, etc. The Criminal Code has no explanation what "social hate" would mean and refer to.
82. Art 2 of the Law on Freedom of Expression nr. 64 from 23.04.2010 defines hate speech; art 3 of the same law states that 'the guarantees of freedom of speech does not extend to the speech that incites hatred or violence.
83. Most common types of hate incidents in Moldova are verbal aggressions (bullying and name calling) used against LGBT persons. Usually, incidents expressing hate and inciting

³⁴ *The Constitution of the Republic of Moldova*, art 32; Criminal Code, art 346.

³⁵ Information Centre "GenderDoc-M" and ILGA Europe, *Needs and lifestyles of LGBT community*, 2007.

³⁶ Public Association "Pentru Familie", www.profamilia.md.

³⁷ Information Centre "Gender Doc-M", *Collection of cases of violation of LGBT Human Rights*, 2008.

to hate occur in public places with much audience just to increase the hate and stimulate negative attitudes of the people present at the incident.³⁸

84. Hospitals, schools/ high schools, discos and bars are most common places where LGBT persons are subject to verbal aggression and discrimination.³⁹
85. Most frequently, the young LGBT are those that experience verbal aggressions and assaults. Usually, the perpetrators of verbal aggressions are policemen⁴⁰ and young men who “attack” in groups.
86. At the police station in any cases (from identification to any investigation),⁴¹ if the sexual orientation or gender identity of the victim is revealed, the attitude of the policemen becomes negative and in most of the situations the police officers become perpetrators; more sanctions are applied; the person is interrogated in a humiliating manner about his/her sexual orientation or gender identity, which infringes upon his/her human dignity.⁴²
87. When LGBT persons complain or are subjects to felony, their cases are simply abandoned.⁴³
88. LGBT persons have no or little trust in law enforcement bodies. Cases are not reported by the LGBT victims to the police or other specialized authorities due to fear for repeated violence; verbal aggression; reluctance of most LGBT victims to disclose their sexual identity; inefficiency of justice.
89. This reality creates obstacles in collecting data and documenting cases even by LGBT and human rights organisations.
90. Underreporting makes lesbian, gay, bisexual and transgender persons in Moldova become invisible, and the authorities take advantage by keeping the subject out of their agenda and do not reveal the real situation of the problem.
91. Due to lack of information, legal mechanisms and will of authorities to deal with such incidents, cases are reported only as “physical violence” under the Criminal Code. Another major problem is that the perpetrators are not sanctioned and many more incidents happen.⁴⁴
92. Other type of hate incidents are the attacks on the LGBT office. The office of the Information Centre “GenderDoc-M” was vandalized several times.⁴⁵ The police officers refused to draw up a report alleging the impossibility of finding the guilty.

B.5. Family issues

93. The Constitution of the Republic of Moldova, in Article 48, guarantees the right to family, stating that the family is the natural and fundamental group unit of the society. The family is entitled to be protected by society and the state and it is based on the freely consented marriage of man and woman, their equal rights and the right and duty of parents to ensure the upbringing, education of children.

38 Information Centre “GenderDoc-M”, *Collection of cases of LGBT Human Rights Violation*, 2006 -2009.

39 Ibid.

40 By policemen here is to be understood the police officers on patrol.

41 Information Centre “Gender Doc-M”, *Collection of case of violation of LGBT Human Rights*, 2007, 2008.

42 Information Centre “GenderDoc-M”, *Collection of cases of LGBT Human Rights Violation*, 2006 -2009.

43 Ibid.

44 Ibid.

45 Discrimination reports for 2007 and 2008, Information Centre “GenderDoc-M”.

94. The Moldovan legislation does not recognize registered partnership or same-sex marriage. There are no alternative schemes or cohabitation provisions in national legislation at all, neither for heterosexual, nor for same-sex couples. A transgender person who is in a heterosexual couple/ relation/marriage is treated as a man or woman.
95. The Family Code⁴⁶ mentions explicitly in Article 2 (3) that “Family relations are based on the principles of ...freely consented marriage between a man and a woman”. The same wording is used in Article 11 on conditions of marriage, and Article 14 on the allowed age for marriage.
96. In Article 15 the legislator mentions the impediments to marriage (1H) “marriage is not allowed between same-sex persons”; no references are made to transgender or transsexual people. Therefore, the Family Code represents a direct discrimination against LGBT persons by prohibiting specifically the possibility of same-sex marriage.
97. According to legislation in cases of divorce mothers have priority in obtaining the custody of the child or children. In practice, if the sexual orientation or gender identity and expression of one of the partners are revealed there is a high risk of this person losing the custody and/or the right to visit the child/ children⁴⁷.
98. The majority of LGBT people come out to their friends rather than their family members.⁴⁸ This is due to the fear and risk of being chased away from the family and house, losing relations with the family and relatives. Due to the stereotypes in the society the family members tend to hide the sexual orientation or gender identity of the person in public, however, at the same time they exercise pressure and pry into the life of the person.⁴⁹
99. Due to lack of information, society rules and religious convictions parents are determined to “heal” their child by addressing the doctors and churches.⁵⁰
100. The national legislation does not contain any provisions that would refer to transgender persons. The Law on Identification Documents nr. 100-XV from 26.04.2001 Art. 66 Request for modification, correction or completion of civil status stipulates that the Civil Status Office deals with the modification, correction or completion of the act of civil status if the applicant shall submit an official document proving the sex correction/change. According to the information provided by “GenderDoc-M” there is a case of a FtM transgender who married after managing to change the birth certificate (sex and name).
101. The Law on Adoption nr. 99 from 28.05.2010 does not state any explicit prohibitions for adoption by LGBT people. Article 121 of the Family Code mentions that persons who are entitled to adopt may be (1) “persons of both sexes who have reached the age of 25.” The indirect restriction and contrary to the above-mentioned is the provision (3) of the same article mentioning that the “child adoption is not allowed in the case of an unmarried couple”. There is no specification if persons of both sexes must be married or not.
102. So far, there are no registered data/cases of when an ‘out’ member of the LGBT community has adopted a child.
103. According to the Law on Reproductive Health Care and Family Planning⁵¹ reproduction is recognized, regulated and guaranteed to all citizens, stateless persons or residents of

46 The modified Family Code Nr. 1316-XIV, 26 October 2000.

47 Information Centre GenderDoc-M has documented such cases, however, the people prefer to stay anonymous.

48 Needs and lifestyles of LGBT community in Moldova, research conducted by Information Centre GenderDoc-M and ILGA-Europe in 2007.

49 Information Centre “GenderDoc-M”, *Collection of cases of LGBT Human Rights Violation, 2006 -2009*.

50 Ibid.

51 *Law on Reproductive Health Care and Family Planning*; Nr. 185-XV, 24 May 2001.

Moldova. The provisions of this Law are in compliance with the constitutional right of protecting private life, family and ensure non-interference of state in private and family planning issues.

104. The State has monopoly on surgical sterilization and in vitro fertilization and only one Clinique⁵² is licensed in providing these services to the population.
105. The Law on Reproductive Health Care and Family Planning does not prohibit LGBT persons from accessing these services. Neither does the Law explicitly prohibit the right to fertilization of a single/ not-married woman. In practice, there is no available data when a single woman (lesbian or heterosexual) was fertilized in vitro.
106. Although the Law on Reproductive Health Care and Family Planning is permissive in practice the whole procedure is extremely bureaucratic and complicated. For example the Law guarantees the right of sperm donation but it does not specify information about the possibility of storing sperm/fertile eggs for future use.
107. There are no records when a married transgender person wanted to adopt a child. Though, there is a recent case when the wife of a transgender man wanted to access the artificial insemination service. They met difficulties (reluctant attitude of the medical worker) when the real reason of the husband's infertility was revealed.⁵³

B.6. Asylum and refugee issues

108. The Law on Asylum nr. 270 of the Republic of Moldova was adopted on 18.12.2008 and has been in force since 13.03.2009.
109. The Law on Asylum defines application for asylum and refugee status as forms of protection recognized by Moldova and meeting the conditions of the Convention on Refugees, concluded at Geneva on July 28, 1951, and Protocol on Refugees of 31 January 1967.
110. The Law expressly states in Art. 10 the non-discrimination principle applicable to asylum seekers, refugees and beneficiaries of temporary protection and stipulates that its legal provisions will be applied without discrimination based on race, citizenship, ethnicity, language, religion, political opinion, social status, beliefs, sex, sexual orientation and age.
111. According to the Law on Asylum, any person in the Republic of Moldova - foreign citizens, stateless persons, refugees and asylum seekers enjoy the same civil, social and cultural rights as citizens of Moldova.
112. The Law on Asylum also guarantees humanitarian protection for reasons other than those provided by the Geneva Convention of 28 July 1951. It also guarantees temporary protection of exceptional character to spontaneous displaced persons that cannot return to their country of origin.
113. However, this Law has no specific stipulations about persecution of LGBT persons due to their sexual orientation or gender identity as a ground for obtaining asylum and/or subsidiary protection. The legislation of the Republic of Moldova doesn't stipulate any interdictions in the realisation of the right to free movement, to emigrate, to seek asylum or temporary protection on the grounds or belonging to the LGBT community.

⁵² Health National Centre of Reproduction and Medical Genetics.

⁵³ Interview with Nadine Chilianu, coordinator of Trans Support Group, Information Centre GenderDoc-M.

114. In practice, no case is known when a person was refused entry into / exit from / country or given the refugee status or asylum because of sexual orientation.⁵⁴
115. The reports of the UNHCR Mission to Moldova⁵⁵ also show no case of asylum seekers or refugees on the ground of sexual orientation or gender identity.
116. The Law states that information on asylum seekers and refugees is confidential and may be notified to third parties only with the consent of the person; and that the State is liable for expulsion and deportation of the refugee to a country where there is threat to life or freedom for "belonging to a particular social group ", to a country where the refugee may be subjected to torture, inhuman or degrading treatment or punishment.
117. According to this Law, asylum is granted on the basis of "family unity" which can be benefited by family members of refugees, such as wife (husband), children up to age 18 years and other family members accompanying the refugee and are to his/her maintenance provided that these reside together with refugee, have no other nationality, and the marriage was registered before the asylum request.
118. LGBT persons may be restrained from their right to asylum, immigration because there is no legal recognition of family relationships, partnerships or other forms of legalization of relations between same-sex couples, relationships included as impediments to registration of marriages, or that the individuals belong to the sexual minority threaten the morality of the society by "immoral" conduct in Moldova.

B.7. Social, security, social care and insurance

119. The legislation of the Republic of Moldova concerning social security, social care and insurance is permissive and open to all the people of the country without any restrictions:
120. The Law on Social Services nr. 123 from 18.06.2010, the Law on Public System of Social Services nr. 489-XIV from 08.07.1999 and other acts regarding social security, social care and insurance has no explicit specifications about LGBT persons.
121. At the same time the legislation has no explicit specifications regarding LGBT persons.
122. No cases are known, nor are there any statistics reflecting cases of discrimination on the grounds of sexual orientation and gender identity in this regard.
123. Up to date, the LGBT community and LGBT organisations have not yet identified the necessity and issues of social security, social care and insurance.
124. There is a total lack of social support, social security and psychological support to LGBT people in the process of coming out and acceptance from the authorities. Therefore, there are cases of self-isolation and suicide attempts.⁵⁶

54 UNHCR, www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48d3b6, accessed 29 September 2010.

55 2003, 2004, 2005 UNHCR Statistical Yearbook; Refugee policy in Eurasia: The CIS Conference and EU Enlargement Process 1996-2005.

56 Information Centre "GenderDoc-M" and ILGA, *Analyzing the needs and lifestyles of LGBT community and its relations with medical services*, 2006.

B.8. Education

125. According to the Law on Education⁵⁷ in the Republic of Moldova education is a national priority.
126. According to Art. 6 the right to education is guaranteed, regardless of nationality, sex, age, origin and social status, political affiliation or religion, criminal record; the law guarantees equal opportunities of access to state institutions of secondary, vocational and higher education depending on skills and capabilities.
127. The Law contains controversial principles.
- On one hand state education policy is based on the principles of humanity, accessibility, adaptation, creativity and diversity. Education is democratic and humanist, open and flexible, formative and progressive and based on national and universal cultural values, secular, refractory to party ideological, political, racial, national discrimination;
 - On the other hand the education is moral and spiritual, religion is taught in school along with different subjects that condemn homosexuality.
128. Art. 4 states that moral and spiritual education in state primary education is a compulsory subject, and in secondary, vocational and higher education is of elective/voluntary subject of study. The Law also stipulates that these subjects are taught by people with special and appropriate training. The development of the concept, educational programs and training of teachers to teach the subject "Moral and Spiritual Education" is the prerogative of the Ministry of Education and Science⁵⁸.
129. The law embodies the recommended educational standards of pursuing:
- the cultivation of respect human rights and freedoms, regardless of ethnic belonging, social origin and attitude to religion - principles enshrined in the UN Charter;
 - the preparing/training of a child to embrace the responsibilities of living in a free society, in the spirit of understanding, peace, tolerance, gender equality and friendship among all peoples and ethnic national and religious groups.
130. There is no specification of LGBT in any legislation or regulations concerning education in Moldova.
131. Bullying appears to be a problem in educational institutions and LGBT persons are regularly used for bullying. There are cases of bullying children whose parents are from the LGBT community.⁵⁹
132. Although there are cases/instances of discrimination or bullying based on sexual orientation and gender identity both by students and by teachers, these have never been officially registered due to lack of legislation and legal mechanisms or attitude of leading persons of educational institutions.
133. There are situations when teachers are the ones making discriminating statements about LGBT people or encouraging discrimination against them as a pretext of 'moral education' norms.⁶⁰

⁵⁷ Law on Education nr. 547 adopted on 21.07.95, in force since 09.11.1995.

⁵⁸ This is the name of the Ministry when the law was elaborated and adopted.

⁵⁹ Field meeting with GenderDoc-M; annual reports of GenderDoc-M.

⁶⁰ Study on Mental Health of LGBT Community carried out by GenderDoc-M in 2006.

134. The Ministry of Education itself is showing no interest in working on or with LGBT issues and has been part of discrimination actions towards the community and the organisations representing them.
135. In 2006, during the All Different-All Equal Campaign whose main goal was promotion of tolerance, diversity and combating discrimination, the Ministry of Education and Youth failed to exercise fair and non-discriminatory coordination by pressuring Gender-Doc-M to withdraw from the National Committee of the All Different-All Equal Campaign.
136. The Ministry reintroduced the references about the organisation and its activities on the web-page of the campaign after raising this issue at the European level and after the recommendations of the Council of Europe have been made.⁶¹
137. In 2007, after a process of cooperation between Moldovan civil society organisations and UNICEF Moldova, the course of Life Skills was launched within schools. The course of Life Skills contained such information as: sexual education, healthy life style, diversity, tolerance, and some information about homosexuality.
138. This has created negative reactions and a number of pressure actions from the side of religious organisations, church- Orthodox, Baptist, etc, parents associations and in some cases pupils.
139. As a result the course of Life Skills generated large debates and was removed from the school curricula.

B.9. Employment

140. In the Republic of Moldova, there is no legislation explicitly prohibiting discrimination in employment on the ground of sexual orientation and gender identity.
141. The legal provisions which prohibit discrimination in employment are included in more than 15 legislations⁶², but the most general ones are the Labour Code nr. 154 from 28.03.2003 and the Law on Employment and Social Protection of People Looking for a Job nr.102-XV from 13.03.2003 which cover recruitment processes and employment in general. In order to implement these normative acts the Government has also elaborated a National Strategy on Employment for 2007-2015 adopted by the decision of the Government nr. 605 from 31.05.2007.
142. As most laws contain an un-exhaustive / open list of criteria by stipulating “any other situation” or “any other ground”, Art. 8 of the Labour Code states the grounds on which the discrimination is prohibited and includes the clause: “and also on other criteria which have not been connected to professional qualities”.
143. The Information Centre “GenderDoc-M,” in 2007, raised the issues regarding the discrimination in employment on the grounds of sexual orientation to the Ombudsman, as well as presenting a shadow report to the European Social Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe.⁶³
144. So far, the Government has ignored the recommendations and resolutions provided by the Committee on Economic and Social Rights of the Council of Europe and has not

61 The webpage of the former Ministry of Education and Youth has changed, therefore no record is to be found now.

62 Information contained on the official web page of the National Employment Agency www.anofm.md.

63 Shadow Report by GenderDoc-M (Moldova) and the International Lesbian and Gay Association (European Region) on the 4th National Report of Moldova on the implementation of the Revised European Social Charter.

undertaken any serious measures to prevent discrimination in employment on the grounds of sexual orientation and gender identity.⁶⁴

145. Due to the lack of legislation, social security, hostile environment which the employees have to support, there are few cases documented by the Information Centre "GenderDoc-M"; and none of these have been file before the courts.

B.10. Housing

146. The Civil Code⁶⁵ of the Republic of Moldova makes no restriction on the right of same-sex couples to live in the same house. The Civil Code regulates only the forms in which the contract may be concluded, the rights of the owner, on the one hand, and of the tenant, on the other.
147. In practice, as reported by Information Centre GenderDoc-M, there were instances when the owner, after the legal conclusion of the lease contract, terminated the contract because the tenants were gay. These cases were never officially reported and legal defence was not sought.

B.11. Health care

148. According to the Law on Compulsory Medical Care Insurance⁶⁶ the right to health care belongs to the category of fundamental rights. The Constitution of the Republic of Moldova in Art. 36 and the Law on Health Care⁶⁷ guarantee this right.
149. Article 36 of the Constitution states that the right to health protection is guaranteed and minimum health insurance shall be offered for free. Reports of GenderDoc-M show that LGB people benefit equally of medical assistance as long as their sexual orientation is not revealed. Once gender identity or sexual orientation is revealed, LGBT people face negative attitude, less care and are discriminated in hospitals.
150. Transgender persons do not fall into any of the specific categories of persons listed above or who should be offered the basic health care.
151. Access to quality health services by transgender persons is low due to high costs of medical services offered and non-performing medical technology available in the medical institutions. This is also due to lack of access and knowledge on transgender issues, the will of the medical institutions and staff as well as legislation.⁶⁸
152. The current Moldovan health policy does not reflect the needs of the LGBT community. In 2006, when the government was developing a new national health policy, the Information Centre "GenderDoc-M" came with suggestions to incorporate the needs of the LGBT persons. However, these were not taken into consideration.⁶⁹

64 Shadow Report by GenderDoc-M (Moldova) and the International Lesbian and Gay Association (European Region) on the 4th National Report of Moldova on the implementation of the Revised European Social Charter.

65 Civil Code Nr. 1107-XV from 06.06.2002.

66 *The Law on the Compulsory Medical Care Insurance* Nr.549-XV, 25 December 2003.

67 *The Law on Health Care* no. 411 of 28.03.1995.

68 Information Centre "GenderDoc-M", *Collection of cases of LGBT Human Rights Violation*, 2006 -2009.

69 LGBT, www.lgbt.md, accessed 29 September 2010.

153. LGBT sensitive projects and activities have been developed and carried out so far largely by civil society actors.⁷⁰
154. Medical professional staff and front-line bureaucrats manifest considerable negative attitude towards LGBT people; respectively services are rarely accessed by LGBT persons. Due to the presence of homophobia and the absence of LGBT mental health policies, the society incurs large social loss. LGBT mental health needs could be effectively addressed through several alternative policy venues, based on the existing evidence-proven policies.
155. The Code of Ethics for Health Professionals and the Law on Health care⁷¹ provide confidentiality on the patient's health.
156. However, national legislation does not expressly provide confidentiality on the sexual orientation and gender identity of individuals, or in the case of people infected with HIV/AIDS.
157. LGBT persons are guaranteed the right to medical privacy under the general principles as any other person-patient. Article 14 of the Law on Health care requires that physicians, other health workers and pharmacists are under a duty to keep secret information on the disease.
158. According to the legislation a same-sex partner is not considered as next of kin. As required by Law, if the patient is unconscious or considered irresponsible, the physician should inform the family doctor. If the information disclosed harms the dignity of the patient, or the physician demonstrates negligence in service, making information accessible to the third parties, then the doctor is liable to punishment (disciplinary, civil, criminal and / or offenses) if the patient files a complaint with the court.
159. The Law on HIV/AIDS Prevention⁷² has no stipulations on LGBT or MsM.
160. In the National Programme on Prevention and Control of HIV/AIDS and STIs 2006-2010,⁷³ sexual minorities are considered to be amongst key risk groups.
161. The Law on Blood Donation⁷⁴ is quite inclusive and open. However, in practice, before blood donation people have to fill in a questionnaire which contains discriminatory questions related to the sexual life of the person during the last six months. Same-sex sexual intercourse is considered a "dangerous practice" and as a result, this may ban a person from donating blood.

B.12. Access to goods and services

162. The Constitution of the Republic of Moldova stipulates that State must ensure that every citizen should have a decent living, to assure health and welfare of the person and his/her family, including food, clothing, housing and medical care and necessary social services.
163. In practice, once the person reveals his/her sexual orientation, gender identity or expression, or performs actions that may hint at this, the attitude and actions of the service providers change into negative and discriminatory response. The majority of cases documented by the Information Centre "GenderDoc-M" reflect discrimination of LGBT

70 GenderDoc-M, Hyde Park, TDV Balti, Anti-Discrimination Coalition, IDOM, CReDO

71 Code of Ethics for Health Professionals and the Law on Health Care, Nr. 411-XIII of 28.06.1995

72 The Law on HIV/AIDS Prevention Nr. 23-XVI from 16.02.2007; http://www.ms.gov.md/_files/971-law-hiv-aids-2007-ro.pdf

73 <http://aids.md/files/nap/national-aids-programme-20062010.pdf>

74 Law on Blood Donation Nr.1458-XII from 25.05.1993

persons in different recreational and entertainment places (cafes, bars, and discos), public transportation (taxi), shops, printing companies, etc.

164. On several cases, complaints have been filed to the police, however, no case has been brought before the courts.
165. The Information Centre "GenderDoc-M", as a representative organisation of LGBT community, has encountered hurdles in acquiring services such as printing of materials, accommodation in hotels, postal offices, renting spaces for activities.⁷⁵
166. The draft of Anti-Discrimination Law contains a separate chapter on Access to Goods and Services to ensure the equal access to all public goods and services with no discrimination.

B.13. Media

167. Media is regulated by the Constitution, Audiovisual Code⁷⁶, the Law of Media⁷⁷ and other related relevant normative acts. According to the legislation, the Council for Coordination on Audiovisual supervises, investigates and sanctions in cases of violation of the legal regulations by broadcasters.
168. The Moldovan Press Council⁷⁸, founded on October 1, 2009, is an independent self-regulatory institution of the Moldovan press by six associations (institutions) which reviews complaints related to the editorial activity of the newspapers and magazines published in Moldova that have a national, regional and local coverage; the news agencies, their websites, and the informational portals. The Press Council develops recommendations on strengthening professional standards in Moldovan press, drafts proposals of public policies for the media and carries out campaigns to promote accountability of journalism.⁷⁹
169. Most of the events with negative character and proposing violence regarding LGBT people appear in the Moldovan media.⁸⁰
170. Such events as the Gay Pride Festivals and Drag Queen Shows serve as significant news, but the media look for sensational stories rather than to deliver a message.
171. The media publishes positive messages and news when paid for. There is media like Publika TV and Jurnal TV that offer open space for debate on LGBT issues without being biased.⁸¹
172. Most of the written press in Moldova belongs to different political parties. The written press belonging to the Christian Democratic Party always uses hate messages in its articles and reflects events in a very negative and discriminatory manner.⁸²

⁷⁵ *Collection of cases of violation of the LGBT Human Rights for 2006, 2007 and 2008.*

⁷⁶ Audiovisual Code of the Republic of Moldova Nr. 260-XVI from 27.07.2006.

⁷⁷ *Law of Media* nr. 243-XIII from 26.10.1994.

⁷⁸ Press Council, <http://consiliuldepresa.md/en/moldovan-press-council.html>, accessed 29 September 2010.

⁷⁹ Press Council, www.consiliuldepresa.md, accessed 29 September 2010; Press Council,

<http://consiliuldepresa.md/documente-coduri.html>, accessed 29 September 2010.

⁸⁰ Unimedia, <http://unimedia.md/?mod=news&id=18330>, accessed 29 September 2010; Pro TV,

<http://m.protv.md/stiri/social/organizatia-homosexualilor-din-moldova-trebuie-scoasa-in-afara.html>, accessed 29

September 2010; Publika, [www.publika.md/homosexualii-din-moldova-vor-o-parada-in-perioada-27-aprilie-2-](http://www.publika.md/homosexualii-din-moldova-vor-o-parada-in-perioada-27-aprilie-2-mai_4671.html)

[mai_4671.html](http://www.publika.md/homosexualii-din-moldova-vor-o-parada-in-perioada-27-aprilie-2-mai_4671.html), accessed 29 September 2010; Flux, www.flux.md, accessed 29 September 2010.

⁸¹ Publika, www.publika.md/inegali-in-drepturi_13321.html, accessed 29 September 2010; Publika,

www.publika.md/homosexualii-din-moldova-vor-o-parada-in-perioada-27-aprilie-2-mai_4671.html, accessed 29

September 2010; Viddler, www.viddler.com/explore/marianvitalie/videos/4/, accessed 29 September 2010; Jurnal TV,

www.jurnaltv.md/ro/news_block/89379/info.html, accessed September 2010.

173. Media homophobic statements of the political and religious figures appear in the media. In such statements, LGBT persons are often depicted as unnatural, diseased, deviant, linked to crime, immoral or socially destabilizing.⁸³
174. Internet forums and mailing lists are of major concern. It is very difficult to identify the perpetrators and instigators of hate speech as there are no legal provisions to regulate them.
175. The Information Centre "GenderDoc-M" publishes the "Zerkalo" magazine which is distributed to LGBT community members, different organisations and institutions. A number of magazine copies are distributed to the national post office "Poșta Moldovei" in the regions.
176. The "Zerkalo" magazine has never been prohibited to be printed and distributed. However, the post office clerks and distributors have hidden the magazines instead of selling them. The copies of the magazines were returned to the organisation with the explanation that these are not purchased.⁸⁴

B.14. Transgender issues

177. Besides the Law on Identification Documents 100-XV from 26.04.2001, there are no legislative acts in the Republic of Moldova that define gender identity or transgender persons. Also, there is no legislation on family law issues regulating the situation of transgender/transsexual persons, and no legislation for the partners of transgender/transsexual persons on the rights to pension, social security, health insurance etc. The existing cases of transgender/transsexual persons (documented by the Information Centre "GenderDoc-M") show that these persons are further treated according to their assigned natal gender (rather than their preferred gender).
178. The only legislative provision which refers to "transsexual persons" is Article 66 (2)c of the Law on Identification Documents⁸⁵ providing for a person to change their surname in identification documents only upon presenting a medical certificate on gender correction – one that proves that the person underwent a surgical intervention on sex reassignment.
179. Nonetheless, legislation provides no mechanisms for obtaining such a medical certificate.
180. From the information presented by GenderDoc-M, from 2009 till present three persons succeed in changing their birth certificates, identity cards and national passports based on the unclear legislation, without having their gender reassigned surgically. This was done upon the people presenting the document certifying the diagnoses of transsexuality. After the modifications in the identification documents the transgender persons act based on the new legal gender.
181. This was due the legislation being permissive, leaving space for interpretation, which contributed to the success of these three cases due to a successful precedent.⁸⁶
182. According to the Information Centre "GenderDoc-M", since 1990 there have been several more successful cases of this kind; however no information of the procedures followed were documented.

82 Flux, www.flux.md, accessed 29 September 2010; www.moldovacrestina.md www.infoprim.md

83 The web page of Association "Pro Familia" www.profamilia.md.

84 Information Centre "GenderDoc-M", *Collection of cases of LGBT Human Rights Violation, 2006 -2009*.

85 *Law on Identification Documents* no.100-XV from 26.04.2001.

86 Meeting with Nadine Chilianu, Coordinator of Transgender Support Group, GenderDoc-M.

183. The compulsory medical insurance provided by state does not cover the needs of transgender persons, despite the hormonal examination. LGBT organisations are advocating the Ombudsman Institution and the Ministry of Health on including the basic medical support to transgender persons.
184. At the moment, the Ministry of Health together with the Information Centre "GenderDoc-M" are initiating a working group on suggesting necessary adjustments to the legislation as well as drafting mechanisms that will make the hormonal treatment and gender reassignment treatments available for transgender persons.
185. Transgender persons are on their own. They cover the treatment expenses by themselves. Only few doctors can provide services/ consultations regarding the investigations and prescriptions when referring to transsexualism. Most of the transgender persons do not have this information and are using internet or other ways when looking for the necessary information of the medication and treatment. These last being very dangerous for their health and lives.
186. There is no legislation protecting the rights and freedoms of intersex people in the Republic of Moldova. In these cases the doctors present the situation to parents and they are the last to decide on the preferred gender of the baby. There is no legal term provided for indeterminate sex of the new born babies to be corrected /changed.

B.15. Miscellaneous

187. The present study contains data and statistics collected from a number of reports and analysis of different organisations and institutions.⁸⁷
188. The reports and documentations of cases made by the Information Centre "GenderDoc-M" have been of a great help. These, however, represent just a small part of the numerous discrimination cases that take place in the Republic of Moldova.
189. Many representatives of the LGBT community prefer to tolerate offenses and threats if this can help them hide their sexual orientation from their relatives and friends.
190. For this reason, many cases of discrimination against LGBT people are not recorded by the Information Centre "GenderDoc-M" or other institutions or organisations and, consequently, by the law enforcement bodies.
191. So far, no Moldovan jurisprudence (court's decisions) on direct/indirect discrimination has taken into consideration the EU standards or recommendations on anti-discrimination.

⁸⁷ As an example please see *Shadow Report on the Implementation of the UN Covenant on Economic, Cultural and Social Rights*, 2003-09, <http://credo.md/arhiva/documente/ShadowReportCESCR%20v6.pdf>, accessed 29 September 2010.

ANNEX 1: CASE LAW

Case title	2005 Ban of the Moldovan LGBT organisation Information Centre "GenderDoc-M" to organise a peaceful manifestation/ pride festival
Decision date	08.02.2006 - the issuing date of the Supreme Court decision
Reference details (type and title of court/body; in original language and English (official translation if possible))	1. Primăria Municipiului Chişinău (City Hall Office of Chişinău Municipality) 2. Curtea de Apel (Appeal Court of Moldova) 3. Curtea Supremă de Justiție (Supreme Court of Moldova)
Key facts of the case (max. 500 chars)	In May 2005, GenderDoc-M was refused the permission to organize a peaceful demonstration by the Chişinău City Hall. GenderDoc-M challenged this ban in the Appeal Court and the Court found the municipal authorities' decision illegal. However, the municipal authorities appealed to the Supreme Court and the Court passed the case back to the Appeal Court for re-examination. The Appeal Court then reversed its earlier decision, rejecting GenderDoc-M's case. GenderDoc-M appealed to the Supreme Court, which, in October 2006, upheld the ruling of the Appeal Court.
Main reasoning/argumentation (max. 500 chars)	The City Hall Commission on issuing the permit for public manifestations banned the intent of organisation to organise the peaceful manifestation by invoking the fact that Republic of Moldova already adopted a law on national minorities and there is no reason to promote other similar normative acts. This decision was signed by the General Acting Mayor, Vasile Ursu".
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The decision of the Chişinău municipality had no legal ground. It was based on stereotyped and prejudiced attitude towards LGBT persons, by this infringed the fundamental human right on assembly guaranteed by law. Even the Appeal Court emphasised that "making a decision on authorisation or refusal to authorise a public gathering cannot be conditioned by the nature of the problems to which the public manifestation participants want to draw the attention of society".
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Information Centre "GenderDoc-M" exhausted all legal instruments of remedy at national level, therefore, the organisation filed an application to the European Court of Human Rights under the Nb. 9106/06 GenderDoc-M c/ MOLDOVA. The case is still on roll.

ANNEX 2: STATISTICS

	2004	2005	2006	2007	2008
Number of demonstrations in favour of LGBT people / LGBT rights, gay pride parades, etc.	0	0	0	0	0
Number of demonstrations against LGBT people / LGBT rights	1	0	0	2	3
Number of planned demonstrations / public events organised by LGBT people denied	0	1	3	3	1

	2005	2006	2007	2008	2009
Number of cases of homophobic/transphobic bullying and harassment of LGBT students and teachers your in schools	NA	NA	1	1	
Number of convictions regarding homophobic/transphobic bullying and harassment of LGBT students and teachers your in schools (please indicate range of sanctions ordered)	0	0	0	0	0
Range of sanctions issued for homophobic/transphobic bullying and harassment of LGBT your in schools	0	0	0	0	0

	2005	2006	2007	2008	2009
Number of cases where LGB persons have been deprived of the right to access to health care facilities due to homophobic motivations?	NA	NA	NA	NA	NA
Number of cases where transgender persons have been deprived of the right to access to health care facilities due to transphobic motivations?	NA	1	NA	NA	NA
Number of convictions regarding the violation of the right to access to health care facilities due to homophobic motivations?	0	0	0	0	0
Number of convictions regarding the right to access to health care facilities due to transphobic motivations?	0	0	0	0	0
Range of sanctions issued for the violation of the right to access to health care facilities due to homophobic/transphobic motivations?	0	0	0	0	0
Number of persons receiving gender-confirming treatment	NA	NA	NA	NA	NA

	2005	2006	2007	2008	2009
Number of cases where LGBT people have been deprived of the right to access goods and services due to homophobic/transphobic motivations?	NA	5	2	3	1
Number of convictions regarding the violation of the right to goods and services due to homophobic/transphobic motivations?	0	0	0	0	0
Range of sanctions issued for the violation of the right to access to goods and services due to homophobic/transphobic motivations?	0	0	0	0	0

	2005	2006	2007	2008	2009
Number of name changes affected due to change of gender/ the gender identity of the applicant	NA	NA	NA	1	NA
Number of persons who changed their gender/sex in your country under the applicable legislation (if relevant split between transgender/intersex applicants)	0	0	0	0	0