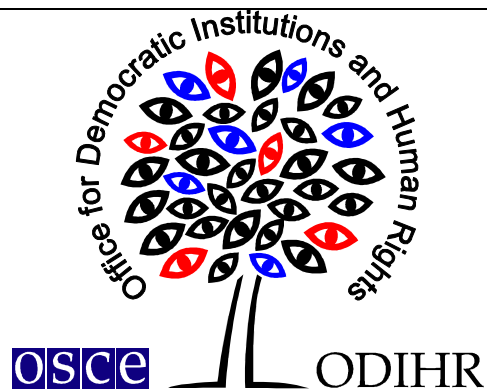


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## **OPINION**

### **ON AMENDMENTS AND ADDENDA**

### **ENHANCING GENDER EQUALITY IN CERTAIN LEGAL ACTS OF THE REPUBLIC OF MOLDOVA**

**Based on an unofficial English translation of the  
Moldovan draft Law on Amendments and Addenda to some Legal Acts**

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**1. INTRODUCTION**

1. *On 8 December 2010, the Minister of Labor, Social Protection and Family (hereinafter “the Minister”) of the Republic of Moldova sent a letter to the UN Fund for Population, the OSCE Mission to Moldova and the International Organization for Migration. In this letter, she requested comments on the draft Government Decision on approving the draft Law for the amendment and completion of certain legislative acts (hereinafter “the draft Law”). This draft Law had been prepared jointly with an inter-ministerial working group with the participation of national experts. It was based on recommendations from a previously issued Compatibility Report of the legislation of the Republic of Moldova with provisions of Law No. 5 of 9 February 2006 on Ensuring Equal Opportunities between Women and Men.*
2. *On 18 January 2011, the OSCE Mission to Moldova forwarded an English translation of the Minister’s letter and the draft Law to the ODIHR.*
3. *This Opinion is provided in response to the above request and is conducted based on the OSCE/ODIHR’s mandate to promote gender equality and review related legislation established by the OSCE Action Plan for the Promotion of Gender Equality<sup>1</sup>.*

**2. SCOPE OF REVIEW**

4. The scope of the Opinion covers only the above-mentioned draft Law, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of all available framework legislation governing gender equality and gender mainstreaming in Moldova.
5. The Opinion raises key issues and indicates areas of concern. The ensuing recommendations are based on international gender equality standards and good practices, as found in the international agreements and commitments ratified and entered into by the Republic of Moldova. Additionally, the Opinion refers not only to international standards that are legally binding on the Republic of Moldova, but also to those which the State is aspiring to.<sup>2</sup> The Opinion also reflects the contents of previous OSCE/ODIHR reviews on Moldovan draft legislation, as applicable.
6. This Opinion is based on an unofficial translation of the draft Law provided by the OSCE Mission to Moldova. Errors from translation may result.
7. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the draft Law or related legislation that the OSCE/ODIHR may make in the future.

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<sup>1</sup> OSCE Ministerial Council Decision MC DEC/14/04 on the 2004 OSCE Action Plan for the Promotion of Gender Equality of 7 December, 2004, Chapter 5, par 44(b).

<sup>2</sup> Although Moldova is not a member of the EU, it aspires to meet the standards set by the EU in the field of gender equality. The EU/Moldova Action Plan requires that Moldova continues efforts to ensure equality of men and women in society and economic life. See EU/Moldova Action Plan, to be found under: <[http://ec.europa.eu/world/enp/pdf/action\\_plans/moldova\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/moldova_enp_ap_final_en.pdf)>.

**3. EXECUTIVE SUMMARY**

8. Overall, the OSCE/ODIHR welcomes these gender-related amendments to Moldovan legislation and considers them a very important step in the harmonization of domestic policy with international gender equality instruments. At the same time, in order to ensure the full compliance of said legislation with international standards, it is recommended as follows:

***3.1 Key Recommendations***

- A. to clarify the composition and the appointment and decision-making procedures of the Government Committee for Gender Equality, as well as which government organ the Committee is accountable to and its relationship to other gender equality bodies, [pars 27-28]
- B. to outline the reporting process and lines of responsibility of various gender equality bodies within government structures mentioned in the draft Law; [pars 31 and 24]
- C. to remove Article 176 from the Criminal Code and incorporate it into administrative or civil legislation, or a comprehensive Anti-Discrimination Law; [par 46]
- D. to specify the nature of prohibited media publications under relevant provisions of the Law on Press and the Equal Opportunities Law, as amended by Articles II and XVIII of the draft Law, while bearing in mind the freedom of expression of media outlets; [par 52]
- E. to provide adequate funding and training to ensure the proper implementation of the Law once passed; [pars 54-55]

***3.2 Additional Recommendations***

- F. to amend Article I of the draft Law as follows:
  - 1) include in Article 14 of the Law on Government the requirement for government authorities related to labour and personnel policy in the civil service to promote gender equality; [par 22]
  - 2) combine the promotion of gender equality under Articles 21 and 22 of the Law on Government with the requirement to plan and implement temporary affirmative action measures, where needed; [par 23]
- G. to amend Article XVIII as follows:
  - 1) indicate the nature of the proposals made by the Government Committee on Gender Equality under Article 18 of the Equal Opportunities Law; [par 26]
  - 2) clarify in Article 19 par 2 the specialized body's competences as a gender unit; [par 29]

- 3) Ensure that the Law on Labour Inspection is sufficiently clear as to the consequences of non-compliance with the obligation to prevent and exclude gender discrimination; [par 32]
- H. to change the wording of Article VII so that it amends Article 4 of the Law on Ombudsmen, not Article 11 of that Law, to the effect that the Gender Equality Ombudsman is appointed by the Parliament; [par 34]
- I. to clarify in Article XVIII (amending parts of the Equal Opportunities Law) whether the Ombudsman shall file lawsuits before court on behalf of a discriminated person, or whether such lawsuits shall be filed *ex officio* on the Ombudsman's behalf; [par 36]
- J. to review Article III amending Article 22 of the Law on Civil Protection with regard to:
  - 1) maintaining certain exceptions for families with small children; [par 39]
  - 2) the necessity and justifiability of different age limitations for men and women; [par 40]
- K. to include in Article 329 of the Labour Code, as amended by Article XIV of the draft Law, specific references to exceptions for employer liability in the Labour Code and other relevant legislation; [par 41]
- L. to specify the liability of trade unions under Article 16 of the Law on Trade Unions, as amended by Article XI; [par 42]
- M. to incorporate in Article XVIII (amending Article 10 of the Equal Opportunities Law) information on the disciplinary sanctions and related procedures faced by employees committing acts of discrimination; [par 43] and
- N. to specify the nature of individual liability under Article 24 of the Equal Opportunities Law and the procedure to follow in order to establish such liability. [par 44]

#### **4. ANALYSIS AND RECOMMENDATIONS**

##### **4.1 International Gender Equality Standards**

9. This Opinion analyzes the current draft Law from the viewpoint of its compatibility with relevant international human rights standards and OSCE commitments. International equality standards can be found in generic human rights instruments such as the International Covenant on Civil and Political Rights<sup>3</sup> (hereinafter “the ICCPR”). Article 26 of the ICCPR states that all persons are equal before the law and that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection from discrimination on any ground, including one's sex. This principle is also found

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<sup>3</sup> The United Nations International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966 and ratified by the Republic of Moldova on 26 January 1993.

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in the European Convention on Human Rights and Fundamental Freedoms<sup>4</sup> (hereinafter “the ECHR” or “the Convention”), mainly in Article 14, which prohibits discrimination in the enjoyment of the Convention’s other rights on the grounds of, *inter alia*, a person’s sex.

10. In addition to these generic instruments, the UN Convention on the Elimination of All Forms of Discrimination Against Women<sup>5</sup> (hereinafter “CEDAW”) for the first time adopted a definition for “discrimination against women”, which stressed that the effect of this type of discrimination is such as to impair or nullify the recognition, enjoyment or exercise by women of human rights in the political, economic, cultural, social, civil or other fields on the same footing as men.<sup>6</sup> States party to CEDAW are bound to work towards eliminating discrimination of women in all areas of life, including, *inter alia*, legal status, political participation, employment, education, healthcare, and family structures.
11. The Council of Europe has issued numerous documents on topics related to gender equality, starting with resolution 855 (1986) on the equality between men and women,<sup>7</sup> which was followed by other resolutions or recommendations covering, *inter alia*, the equality of rights between men and women<sup>8</sup>, the choice of and passing on of surnames<sup>9</sup>, progress in women’s rights<sup>10</sup>, the situation of women in rural society<sup>11</sup>, and the elimination of sexism from language<sup>12</sup>. The latest document issued in this context is a recommendation of the Committee of Ministers to Member States on measures to combat discrimination on grounds of sexual orientation and gender identity.<sup>13</sup>

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<sup>4</sup> The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950, entered into force on 3 September 1953. The Republic of Moldova ratified the Convention on 12 September 1997.

<sup>5</sup> Convention on the Elimination of All Forms of Discrimination against Women, adopted by resolution 34/180 of the General Assembly at its thirty-fourth session, 18 December 1979. The Republic of Moldova acceded to this Convention on 1 July 1994.

<sup>6</sup> See Article 2 of the CEDAW: “[...] the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

<sup>7</sup> Resolution 855(1986) of the Parliamentary Assembly on equality between men and women, adopted on 27 January 1986 at the 21<sup>st</sup> Sitting.

<sup>8</sup> Recommendation 1229 (1994) of the Parliamentary Assembly on equality of rights between men and women, adopted on 24 January 1994 at the 1<sup>st</sup> Sitting.

<sup>9</sup> Recommendation 1271 (1995) of the Parliamentary Assembly on discrimination between men and women in the choice of a surname and in the passing on of parents' surnames to children, adopted on 28 April 1995 at the 16<sup>th</sup> Sitting.

<sup>10</sup> Recommendation 1269 (1995) of the Parliamentary Assembly on achieving real progress in women's rights as from 1995, adopted on 27 April 1995 at the 15<sup>th</sup> Sitting.

<sup>11</sup> Recommendation 1321 (1997) of the Parliamentary Assembly on improving the situation of women in rural society, adopted by the Standing Committee on behalf of the Parliamentary Assembly on 19 March 1997.

<sup>12</sup> Recommendation (90)4E of the Committee of Ministers to the Member States on the elimination of sexism from language, adopted on 21 February 1990 at the 434<sup>th</sup> Meeting of the Ministers’ Deputies.

<sup>13</sup> Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted by the Committee of Ministers on 31 March 2010 at the 1081<sup>st</sup> Meeting of the Ministers’ Deputies.

12. Under European Union law, two main directives (hereinafter “EU Gender Directives”) have reflected EU countries’ commitment to protecting equality between men and women, namely Council Directive 2004/113/EC on the principle of equal treatment between men and women in the access to and supply of goods and services and Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.<sup>14</sup> Both EU Gender Directives contain definitions of discrimination (direct and indirect), including sexual harassment, and stipulate the equality of treatment in the above areas (goods and services and employment), while also focusing on remedies and enforcement.
13. Of the various OSCE Commitments focusing on equal treatment, the Vienna Document is perhaps one of the most specific in stressing that all OSCE participating States commit to ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind based on such characteristics as, *inter alia*, a person’s sex.<sup>15</sup> This principle is reiterated in a more detailed manner in par 40.4 of the Moscow Concluding Document<sup>16</sup>, where OSCE participating States affirmed their goal to achieve equality of opportunity between men and women not only *de jure*, but also *de facto*, as well as the promotion of effective measures to that end. In the same Document, OSCE participating States recognized that “true and full equality between men and women is a fundamental aspect of a just and democratic society based on the rule of law”.<sup>17</sup> The OSCE Action Plan for the Promotion of Gender Equality of 2004, in its Chapter IV, also calls on OSCE participating States to develop policies and establish mechanisms to promote and strengthen gender equality, and to comply with the relevant international instruments that they have ratified or acceded to.<sup>18</sup>

#### **4.2. Gender Equality-Related Legislation in the Republic of Moldova**

14. The Constitution of the Republic of Moldova (hereinafter “the Constitution”) outlines, in its Article 16 par 2, that all citizens of Moldova shall be equal before the law and public authorities, regardless of, *inter alia*, their sex.<sup>19</sup>

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<sup>14</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; and Council Directive 2004/113/EC of 13 December 2004 on the principle of equal treatment between men and women in the access to and supply of goods and services.

<sup>15</sup> The Concluding Document of Vienna – The Third Follow-Up Meeting, Vienna, 15 January 1989, Questions Relating to Security in Europe, Principles, par 13.8. <sup>15</sup> The Ministerial Council Decision 7/09 on Women’s Participation in Political and Public of 2 December 2009 called upon all OSCE participating States to consider specific measures to achieve gender balance in all legislative, judicial and executive bodies and legislation to facilitate gender equality in political and public life, and especially in decision-making (pars 1 and 2).

<sup>16</sup> The Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991.

<sup>17</sup> *Ibid*, par 40.

<sup>18</sup> OSCE Ministerial Council Decision MC DEC/14/04 on the 2004 OSCE Action Plan for the Promotion of Gender Equality of 7 December, 2004, Chapter 4, par 42.

<sup>19</sup> Based on Article 19 of the Constitution, this also applies to non-citizens, as this provision states that foreign citizens and stateless persons generally enjoy the same rights and duties as citizens of Moldova.

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15. In 2006, the Parliament of Moldova adopted the Law on Ensuring Equal Opportunities for Women and Men (hereinafter “the Equal Opportunities Law”), which aimed at achieving equal rights for men and women in the political, economic, social, cultural, and other spheres of life and at preventing and eliminating all forms of discrimination based on sex. The Equal Opportunities Law stipulates equal opportunities for women and men in public office, the mass media, employment, education, and healthcare and includes provisions national mechanisms and public institutions responsible for promoting gender equality. This Law also foresees liability for discrimination based on a person’s sex.
16. In 2010, a group of experts issued a report on the compatibility of Moldovan legislation with the provisions of the Equal Opportunities Law. This report was accompanied by a series of recommendations on how to amend domestic legislation so as to be in line with both the Equal Opportunities Law, and Moldova’s obligations under international human rights instruments.
17. Based on these recommendations, a working group headed by the Ministry of Labour, Social Protection and Family prepared the draft Law, which foresees gender-related amendments to various pieces of legislation in Moldova. Next to amendments to the Gender Equality Law, these also include amendments to the Law on Government, the Law on Press, the Law on Civil Protection, the Law on Health Care, the Law on Education, the Law on the Penitentiary System, the Law on Ombudsmen, the Tax Code, the Electoral Code, the Law on Political Parties, the Law on Trade Unions, the Law on Labour Inspection, the Criminal Code, the Labour Code, the Law on Veterans, the Law on Official Statistics, the Broadcasting Code, the Law on Local Public Administration, the Law on the Status of the Intelligence and Security Officer, the Contraventions Code and the Law on Public Service and Status of the Public Servant.
18. Many of the amendments included in the draft Law aim at making the language of the above laws more gender neutral or at providing men and women with equal rights. Numerous public institutions receive specific obligations to promote gender equality and prevent and combat all forms of discrimination based on a person’s sex.
19. The initiative to amend many different laws is an important first step to ensuring real gender equality throughout the Republic of Moldova and gender-sensitivity in its legislative framework. It helps implement the above-mentioned OSCE Commitment to achieve equal opportunities for men and women not only *de jure*, but also *de facto* through special measures.<sup>20</sup> Both the enormous work effort that must have gone into identifying the legislation to be changed, and the working group’s joint endeavors to prepare the draft Law are greatly commended in this context.
20. While large parts of the draft Law are well-written, and good attempts to foster gender equality in Moldovan legislation have been made, other parts are still in need of some improvement. It should be noted that solely in the interests of concision, this Opinion will focus mostly on the latter.

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<sup>20</sup> See par 40.4 of the Moscow Concluding Document (cited in footnote 16).



**4.3. The Competences of Public Institutions in the Promotion of Gender Equality and the Prevention of Discrimination Based on Sex**

***Government Bodies***

21. Based on the draft Law, all tiers of government of the Republic of Moldova shall have responsibility to promote gender equality. At a state level, this includes, *inter alia*, the Government, Parliament, central administration authorities, state inspectorates, government committees and councils, and the management of penitentiary institutions. Amendments to Article 15 of the Gender Equality Law expanding the list of authorities mandated to address and promote gender equality specifically include the National Bureau of Statistics, the Ombudsman for Gender Equality, labour inspection and local public administration authorities.
22. According to Article I of the draft Law, the Law on Government shall be amended so that its Article 14 obliges the government authorities related to labour and personnel policy in the civil service to not only promote and improve the policy on use of labour, work and remuneration, but also to prohibit gender-based discrimination. In order to enhance the effectiveness of this provision, it is recommended to include in Article 14 of the Law on Government the requirement for such government authorities to also promote gender equality, as is explicitly required of government powers in social development, education, youth and sports, culture and health care (Article 11 of the Law on Government).
23. Article I of the draft Law also proposes to oblige government ministries, other central administration authorities, state inspectorates and government committees and councils to promote State personnel policy on the basis of the gender equality principle and at the same time ensure protection against gender-based discrimination (Articles 21 and 22 of the Law on Government). This promotion of gender equality could well be combined with the requirement to plan and implement temporary affirmative action measures within the meaning of Article 4 of CEDAW to enhance the percentage of women in government positions.<sup>21</sup> It is recommended to consider such an approach.
24. In this context, it should be mentioned that neither the Law on Government, nor the Gender Equality Law mentioned in the ensuing paragraphs regulate the lines of responsibility and reporting within the government bodies tasked with promoting gender equality and preventing gender-based discrimination. This would be helpful to improve coordination, lines of communication and responsibility.<sup>22</sup> It should be borne in mind here that the successful functioning of national mechanisms to promote gender equality is best guaranteed if the

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<sup>21</sup> Examples for such affirmative action measures could be giving qualified women preference when hiring government employees or engaging in special training programs for women to enhance their qualifications for such positions.

<sup>22</sup> In this context, see the CEDAW Committee's Concluding Comments for Moldova (2006) issued at its thirty-sixth session on 7-25 August 2006, where concerns were raised regarding the lack of authority/ decision-making power and resources of national mechanisms for women (par 13). The same Concluding Remarks also called for a comprehensive approach encompassing all policies and programmes aimed at achieving formal and substantive equality between women and men (par 11).

responsibility for such mechanisms is at the highest possible level in government, falling under the responsibility of a Cabinet minister and is accompanied by sufficient resources (budget and professional capacity) and sufficient opportunities to influence development of all government policies.<sup>23</sup>

25. Article XVIII of the draft Law foresees changes to the Gender Equality Law. These changes aim to form a solid system of institutions tasked with the promotion of gender equality and the prevention of gender discrimination throughout both central and local public administrative bodies. On the central level, this system is already made up of a consultative body, namely the Government Committee for Gender Equality (Article 18 of the Equal Opportunities Law) and a specialized body within the Ministry of Labour, Social Protection and Family, which is tasked with developing and promoting policies on gender equality (Article 19 of the Equal Opportunities Law).
26. The tasks of the Government Committee for Gender Equality laid down in Article 18 of the Equal Opportunities Law have now been expanded to include, *inter alia*, the submission of proposals on prevention and elimination of gender-based discrimination to the Government for examination and decision-making. It would be advisable to clarify the nature of such proposals here – specifically, whether these are policy proposals or amendments to legislation, or both.
27. Also, it is noted that the Equal Opportunities Law does not outline the composition of the Committee – it is not clear whether this body is composed of external experts, members of ministries, or of a whole range of persons from various public institutions and civil society. It would be preferable if the composition of the Committee were as pluralistic as possible.
28. The procedure and criteria for appointing members to the Committee should also be clear and transparent. The Equal Opportunities Law should reveal which Government body the Committee is responsible to and how its decisions are reached. The Equal Opportunities Law should also provide greater clarity on how the Committee cooperates with the other main gender equality-promoting bodies mentioned in this law, namely the specialized body of the Ministry of Labour, Social Protection and Family, and the Gender Coordinating Councils in central public administration authorities.
29. In addition to its previous functions, the specialized public authority within the Ministry shall now be tasked to organize the “current and secretariat activity” of the Government Committee for Gender Equality (Article 19 par 2 (g)), as well as perform the duties of the gender units or officers<sup>24</sup> (par 2 (h)). The duties of gender units are laid down in the new par 6 of Article 19 and include the review of petitions from legal entities and individuals on cases of gender-based discrimination, as well as the preparation of activity reports for submission to specialized bodies. It could lead to confusion if the specialized body within the Ministry would on the one hand coordinate the activities of gender units (Article 19 par 2 (e)) and receive their reports, and on the other

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<sup>23</sup> See the Beijing Declaration and Platform for Action, adopted on 15 September 1995 at the 16<sup>th</sup> plenary meeting of the Fourth Conference of Women, par 201.

<sup>24</sup> While the English translation of the draft Law speaks of “gender officers”, the original text speaks of *unități gender*, which is more appropriately translated as “gender units”. For this reason, the Opinion speaks of gender units even if, in practice, these may be composed of only one person.

hand act as a gender unit itself. As gender units report to the Gender Coordinating Body and this body reports to the specialized body within the Ministry, this would essentially lead to a situation where the specialized body would be reporting to itself. It is recommended to amend the new Article 19 par 2 (h) to clarify this aspect of the specialized body's competences.

30. Within each central public administrative authority, Article XVIII of the draft Law has foreseen the creation of a Gender Coordinating Council, formed of gender units, tasked to, *inter alia*, monitor compliance with gender equality legislation in the public authority, approve reports and resolve cases of gender discrimination in the institution's area of activity (Article 19 pars 4 and 5 of the Equal Opportunities Law).
31. The gender units (Article 19 par 6) themselves have more or less retained the competences originally given to them under the current Article 19 par 4 of the Equal Opportunities Law. It is not, however, quite clear whom these units will report to – while Article 19 par 5 states that the Gender Coordinating Council of each central public administrative authority shall approve reports on gender equality, par 6 of this provision states that activity reports prepared by the gender equality units shall be submitted to specialized bodies. At the same time, it is noted that the draft Law speaks of only one specialized body created for gender equality matters within the Ministry of Labour, Social Protection and Family. It is thus recommended to clarify the exact procedure of submitting reports within the central administration authority. Presumably, these reports are then passed on to the specialized body, which then uses them for its further monitoring and reporting on matters related to gender equality under Article 19 par 2 of the Equal Opportunities Law. It is further assumed that the Government report to the Parliament (Article 17 par 2 (c)) is also drafted mainly by the specialized body within the Ministry, even though this is not mentioned specifically. It is recommended to review the process of reporting to higher authorities and lines of responsibility to ensure that, either in the draft Law or through relevant by-laws, the competences of various actors become clear in this context.
32. Next to the above general administrative institutions, Article XVIII of the draft Law also includes very specific competences for certain institutions, e.g. the Labour Inspection, which under the new Article 19<sup>1</sup> of the Equal Opportunities Law, shall now ensure compliance of employers with the obligations of “preventing and excluding” cases of gender-based discrimination (see also Article XII of the draft Law amending Article 11 of the Law on Labour Inspection). The Labour Inspection may conduct such controlling visits on request or *ex officio*. Presumably, relevant legislation on labour inspection already specifies what the consequences of an employer's non-compliance with certain obligations may be – it is nevertheless recommended to review whether the relevant law is equally clear with regard to consequences of non-compliance with the obligation to “prevent and exclude” gender discrimination.

***The Ombudsman on Gender Equality***

33. Article VII of the draft Law introduces amendments to Article 11 of the Law on Ombudsmen. According to Article 4 of the Law on Ombudsmen, the Parliament shall appoint four Ombudsmen (or parliamentary advocates) with equal rights, one of which shall be specialized in the protection of children's rights. Together with the Center's officials, these four Ombudsmen form the Human Rights Center of Moldova (hereinafter "the Human Rights Center") (Article 11 par 3 of the Law on Ombudsmen). Based on Article 11 par 3, the four Ombudsmen shall take a unanimous decision on the distribution of areas of activity amongst each other, which shall be approved by an order of the Human Rights Center. According to Article VII of the draft Law, this provision would be enhanced by an additional sentence stating that gender equality shall be a separate area of the Ombudsmen's activity that shall be performed by one of them.
34. It is noted that while the specialized Ombudsman for Children's Rights is appointed by the Parliament (presumably based on a candidate's specific background in this field), this is not the case with the Gender Equality Ombudsman. Instead, the three general human rights Ombudsmen and the fourth Ombudsman specialized in children's rights shall ensure that one of them will take on activities in the field of gender equality. In order to ensure that the best possible candidate is chosen to function as a representative of the gender equality body (and perhaps, at a later stage, as a general anti-discrimination body), it would be preferable to have a candidate appointed for this task by the Parliament under Article 4 of the Law on Ombudsmen and to thus include in the draft Law a relevant amendment to Article 4 instead of to Article 11.
35. Article XVIII of the draft Law foresees certain changes to the Equal Opportunities Law with regard to the Gender Equality Ombudsman. One of them is to provide this Ombudsman with the right to file suits in courts of justice to defend the discriminated person (Article 21 par 1 b) of the Equal Opportunities Law).
36. It would be good to specify in the draft Law whether this means that the Ombudsman shall file claims on behalf of the discriminated person, or whether the Ombudsman may file such claims on his/her own behalf, as a measure to enforce the Equal Opportunities Law. So far, it would appear that only the Ombudsman responsible for protecting children's rights is permitted to initiate cases *ex officio* (Article 13 par 2 of the Law on Ombudsmen). It is recommended to clarify this point in the draft Law.

**4.4. Selected Gender Equality- Related Provisions and Topics of the Draft Law**

37. Next to the competences of public institutions and the Ombudsman discussed above, the following paragraphs will focus on individual provisions of the draft Law that would benefit from improvement.

***Equality of Treatment in the Law on Civil Protection***

38. Article III of the draft Law proposes changing Article 22 of the Law on Civil Protection, which currently states that women with children under the age of eight are not obliged to be part of the civil protection structures. Amending this part of Article 22 is a positive step, as the current wording of this provision could be construed as being discriminatory. On the one hand, it prevents men caring for children under the age of eight from enjoying the same benefits as women, and on the other hand this part of Article 22 appears to suggest that only women shall be responsible for the care of small children.
39. However, deleting exemptions of parents with children from the wording of Article 22 could lead to problems in families with small children. If both parents are obliged to participate in civil protection structures at the same time, then this could leave the children without proper care. It is recommended to review this amendment to see whether in practice, it may be worthwhile to introduce an exemption from civil protection structures for one parent of families with small children.
40. At the same time, it is noted that in the draft Law, Article 22 retains a difference between men and women, to the effect that men are obliged to participate in these structures two years earlier than women (16 years of age, as opposed to 18 years of age), and five years later (60 years of age, as opposed to 55 years of age). It is recommended to review whether such a difference in treatment of men and women is really necessary and justifiable and if not, to replace it with a general age limitation that would apply to everyone, regardless of a person's gender.

***Liability for Gender-Based Discrimination***

41. The draft Law also contains specific provisions aimed at enhancing legislation pertaining to labour rights and trade unions. Article XIV focuses on amendments to the Labour Code, including to Article 329 of the Labour Code, to the effect that an employer shall be liable for material and moral damage caused by discriminating treatment or sexual harassment at the workplace, unless the Labour Code or other regulatory acts provide otherwise. In order to enhance clarity and foreseeability of the law in this case, it would be preferable if Article 329 would contain references to the provisions outlining such exceptions in both the Labour Code and other legislation.
42. Further, Article XI of the draft Law proposes an amendment to Article 16 of the Law on Trade Unions, based on which trade unions are liable to ask managers of economic units and public authorities to take necessary measures to put an end to cases of gender discrimination and of sexual harassment, and cases where people are persecuted for having complained about discrimination. The exact nature of such liability is not clear – the new Article 16 does not specify whether this shall be disciplinary or criminal liability, and what the consequences of such inaction shall be. Clarification of this issue is recommended.
43. According to Article XVIII of the draft Law, Article 10 of the Equal Opportunities Law shall be amended to the effect that employers shall provide for disciplinary sanctions for employees who committed acts of sexual

harassment. It would be helpful to include here a reference to the law and procedure on which such disciplinary sanctions will be based, along with a reference to possible disciplinary sanctions in such cases. Such references will allow employees to know in advance what type of consequence sexual harassment may have.

44. Generally, it is reiterated at this point that in its 2006 Concluding Comments for Moldova, the CEDAW Committee had criticized a lack of proper legal remedies in the Equal Opportunities Law.<sup>25</sup> The current Article 24 of the Equal Opportunities Law states that victims of gender discrimination are entitled to reparation of damage based on the conditions established by legislation (par 1) and that persons committing actions of gender discrimination shall bear liability established by law “for the breach of legislation in the field of equality between women and men” (par 2). Both paragraphs of this provision are equally vague – par 1 does not specify the exact procedure available to victims who wish to seek damages and before which courts. At the same time, par 2 gives no information on the type of liability that gender discrimination shall give rise to for persons or bodies discriminating individuals. It is thus recommended to review Article 24 of the Equal Opportunities Law and specify exactly which type of behaviour will lead to which type of liability before which body.
45. Article XIII of the draft Law concerns amending Article 176 of the Criminal Code on “the violation of citizens’ equality rights”, so that next to officials in positions of responsibility, persons managing commercial, social or other non-government organizations shall also be criminally liable for violations of citizens’ rights and freedoms based on certain personal characteristics.
46. At this point, it should be noted that the OSCE/ODIHR, in its 2010 Opinion on draft Amendments to the Moldovan Criminal Code Related to Hate Crimes<sup>26</sup>, had noted that due to its vague formulation, Article 176 by its very nature was an anti-discrimination provision, and not a criminal provision. In this Opinion, ODIHR had thus recommended that Article 176 be removed from the Criminal Code and incorporated into administrative or civil legislation, or a comprehensive Anti-Discrimination Law.<sup>27</sup> The ODIHR takes this opportunity to reiterate this recommendation here.
47. Next to general liability for discrimination based on a person’s gender and sexual harassment, Articles II and XVIII of the draft Law foresee changes to relevant provisions of the Law on Press and the Equal Opportunities Law to ensure the prevention and punishment of the publication of materials and information that “present the image of a gender in such a manner that it humiliates the dignity and/or contains an open or hidden incentive to promote in various areas one gender to the detriment of the other”.

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<sup>25</sup> See the CEDAW Committee’s Concluding Comments for Moldova (2006) issued at its thirty-sixth session on 7-25 August 2006, pars 14 and 15.

<sup>26</sup> OSCE/ODIHR Opinion on draft Amendments to the Moldovan Criminal Code Related to Hate Crimes (Opinion Nr. HCRIM– MOL/156/2010 (AT)), of 7 June 2010.

<sup>27</sup> See OSCE/ODIHR Opinion on draft Amendments to the Moldovan Criminal Code Related to Hate Crimes, pars 17-22.

48. As also reiterated in the OSCE/ODIHR's Opinion on draft Amendments to the Moldovan Criminal Code Related to Hate Crimes<sup>28</sup>, the limitation of a person's freedom of speech is permissible in cases where it interferes with the basic rights and freedoms of others. At the same time, such limitation should not be too general or extensive, in particular when, as here, it explicitly covers media outlets, otherwise it risks going beyond the permissible limitations to the right to freedom of expression. Both Article 19 of the ICCPR and Article 10 of the ECHR stress the importance of freedom of opinion, respectively expression and both provisions list specific exceptional situations where this right may be curtailed.<sup>29</sup> According to the case law of the ECtHR, the notion of freedom of expression is also applicable to information or ideas that "offend, shock or disturb".<sup>30</sup> The exceptions listed in Article 10, par. 2 of the ECHR must be narrowly interpreted and the necessity for restrictions must be convincingly established.<sup>31</sup>
49. Particularly the press, due to the important function that it fulfills in a democratic society, has a relatively wide margin of appreciation in this respect, provided it reports about matters of public interest in good faith.<sup>32</sup> Although the press must not overstep certain bounds, journalistic freedom also covers "possible recourse to a degree of exaggeration, or even provocation".<sup>33</sup>
50. The additions to Article 4 of the Law on Press and Article 8 of the Equal Opportunities Law, as proposed by Articles II and XVIII of the draft Law, speak of prevention of the publication of materials and information that could humiliate the dignity of a person for being of a certain gender, or that contains a hidden incentive to promote one gender to the detriment of others. According to these same provisions, media outlets shall also be punished for such publications. Presumably, such publications could lead to the application of Article 176 of the Criminal Code in its revised form (see par 45 *supra*), but this is not specified in the above provisions.
51. In practice, it may be difficult to differentiate between permissible publications that offend, shock or disturb, and publications that humiliate a person's dignity and gender to such a degree that they would warrant prohibition and the punishment of a media outlet. Also, the principle of

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<sup>28</sup> See OSCE/ODIHR Opinion on draft Amendments to the Moldovan Criminal Code Related to Hate Crimes, pars 31-33.

<sup>29</sup> According to Article 19, par. 3 of the ICCPR: "The exercise of the rights provided for in paragraph 2 of this article [namely the right to freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals." According to Article 10, par. 2 of the ECHR, "The exercise of these freedoms [i.e. the freedom of expression] [...] may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary, in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

<sup>30</sup> See the ECtHR judgment of *Bodrožić v. Serbia* of 23 June 2009, no. 32550/05, pars. 46 and 56. See also, instead of others, the judgment *Vogt v. Germany* of 26 September 1995, Series A no. 323, pp. 25-26, par. 52.

<sup>31</sup> See the *Vogt v. Germany* judgment, par. 52.

<sup>32</sup> See, in this context, the *Bodrožić v. Serbia* judgment, par. 46.

<sup>33</sup> *Ibid.*, par. 47.

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legality dictates that legislation speaking of liability and punishment for certain acts should specify the type of punishment ensuing from such actions, as well as the procedures and body imposing such punishment.

52. In order to clarify these questions, it is recommended to specify in Articles II and XVIII of the draft Law the exact nature of prohibited publications leading to punishment of the respective media outlets, while bearing in mind the freedom of expression of media outlets.
53. While it is noted that the media plays an important role in perpetuating or breaking down stereotypes, e.g. with regard to different genders, it is generally stressed that generally, discriminating publications should be addressed with other means, but not through sanctions that prohibit media freedoms. Examples for this would be proper training of employees working for media outlets, or public campaigns against the above-mentioned stereotypes. Only in cases where training and awareness-raising fail to prevent continuous and serious disregard for the equality of men and women in such publications should sanctions be contemplated. These sanctions should, however, be limited to administrative sanctions.

**4.5. Training and Funding**

54. In order to ensure that all parts of the draft Law are implemented properly in practice, it will be extremely important for the passing of this Law to go hand in hand with sufficient funding and training, which could be elaborated in strategies and national action plans for gender equality. Training will need to be provided to all institutions and organs with special obligations in terms of promoting gender equality and preventing gender discrimination, in particular if they could be held liable following certain changes in the law, such as employers and representatives of the media. The media should be instrumental in raising awareness of gender equality and the need for equal treatment and should thus itself be made aware of its responsibilities in breaking down gender stereotypes, as opposed to perpetuating such prejudices.
55. Such training will need to be funded properly, as will awareness-raising campaigns mentioned throughout the draft Law. The National Fund for Equal Opportunities mentioned in Article 23 of the Equal Opportunities Law, as revised by Article XVIII of the draft Law needs to receive sufficient revenues (Article 23 par 3). The management of this fund will need to be conducted with the greatest possible transparency (Article 23 par 4).

*[END OF TEXT]*