

Committee on the Elimination of Discrimination against Women

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Report on implementation by Republic of Moldova of the Convention on the Elimination of all Forms of Discrimination against Women in the Republic of Moldova

Submission prepared by Promo-LEX Association /Moldova

Issue:

In Moldova, domestic violence is a serious human rights problem that has a strong gender character. Victims of domestic violence are mainly women – 90%.¹ Domestic violence is also a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.²

Regardless of the fact that Moldova has a Law on domestic violence, authorities still fail to adequately implement relevant law provisions and to provide real protection to victims of domestic violence – mainly women. The implementation of the legislation on combating and preventing domestic violence, especially in the execution of protection orders and criminal liability of perpetrators, is uneven, poor and often ignored by the police, prosecutors and social assistance. Thus, the state becomes an accomplice to the ill-treatment of victims of domestic violence and gender-based discrimination.

Background:

Every one in four women in Moldova is a victim of domestic violence. According to a recent Report, women are mainly subject to physical violence accompanied by psychological one – 59%. However, psychological, sexual, economic, as well as mixed violence against women is also frequent.³

During November 2009 - December 2011, the Trust Line for Women of International Centre “LaStrada” received 2978 phone calls incoming from the entire territory of Republic of

¹ In 2010, Moldova's Deputy Prosecutor-General E. Rusu confirmed that, according to a survey conducted by the prosecution service, 90% of the victims of domestic violence are women. See Prosecutor General media statement available at <http://www.procuratura.md/md/com/1211/1/3941/>;

² UN Committee on the Elimination of Discrimination against Women, General Recommendation 19: Violence against Women, 11th Session, 1992;

³ Trust Line for Women - Activity Report, 2011, International Centre for Women Rights Protection and Promotion “La Strada”, page 29. Report is available in English here: http://www.lastrada.md/publicatii/ebook/Raport_TI_2011_english.pdf

Moldova, as well as from abroad. Thus, the most numerous domestic violence cases were registered in 2011 – 1495 calls (of which 192 were repeated calls), with a 17% increase compared to 2010 - 1236 calls⁴. In the majority of cases, victims are subjected to domestic violence by their husbands - 62%, by former husbands - 10%, life partners – 9%, parents or children - 5%, brothers and other family members - 2%, in laws -1%.⁵ The lack of money, the lack of support from relatives and from the authorities, and the lack of a shelter determine these women to accept the role of a victim.

Starting with 18 September 2008, Moldova has a Law on domestic violence – “Law 45-XVI on Preventing and Combating Domestic Violence” (Law No. 45-XVI).⁶ Law No. 45-XVI aims to strengthen, protect and support the family, to ensure respect for fundamental principles of law in the family, and to ensure equal opportunities between women and men in their human right to a life without violence.

When it came into force, however, the Law No. 45-XVI proved itself to be inapt, as there was no mechanism for implementing its requirements. On 3 September 2010, a new Law No. 167 entered into force as an amendment to certain other pieces of legislation (including the Criminal Code, the Code of Criminal Procedure and Law No. 45-XVI).⁷ Law No. 167 aimed to solve the problems of non-implementation of Law No. 45-XVI. Thus, Law No. 167 inserted a new provision in the Criminal Code – Art 201¹ on domestic violence,⁸ according to which domestic violence is established as a criminal offence.⁹

Subsequently, a Protection Order for victims of domestic violence can now be issued both in the criminal and civil proceedings. Under both procedures the courts are required to issue Protection Order within 24 hours of receiving the claim.

In 2012, a series of decisions and acts aimed to explain the mechanism of implementation of legislation on domestic violence were adopted at the central level.

Here it is important to mention the Resolution of the Plenum of the Supreme Court of Justice No.1 dated of 28.05.2012 which provides with indications to the judges on how to examine applications for protection orders.

⁴ *ibid*, page 6.

⁵ *Ibid*, page 17.

⁶ Law on Preventing and Combating Family Violence, Law Number 45-XVI of 1 March 2007, Published 18 March 2008 in the Official Monitor Number 55-56/178. Entry in force 18 September, 2008. Available in Romanian at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=327246>

⁷Parliament of The Republic of Moldova, Law No. 167, available in Romanian at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335828>;

⁸ The Criminal Code of the Republic of Moldova, No. 985-XV dated 18.04.2002, as amended;

⁹ Art 201¹ of the Criminal Code of the Republic of Moldova, No. 985-XV dated 18.04.2002, as amended: “intentional action or inaction that is manifested physically or verbally, committed by a family member on another family member, causing physical pain, slight bodily injury, distress, material or moral damage. [...] For family violence causing consequences for the victims’ bodily integrity and health, the aggressor may be subjected to 15 years imprisonment especially if the victim died, attempted suicide or suffered serious bodily harm as a result of the violence.”;

Additionally, on 24.02.2012, by the order No.155 of the Ministry of Health of the Republic of Moldova, the Instruction on the intervention of the medical institutions in cases of domestic violence with reference to the actions of medical workers in cases of domestic violence was adopted. It is important to mention that data from interviews reveal problems in relation to providing medical care for victims of domestic violence.

Referring to Ministry of Labour Social Protection and Family (MLSPF), it should be mentioned that concrete steps and results were achieved as to establishing positive practices. Thus, on 09.02.2012 the order No. 22, was adopted, by which Instructions on intervention of the sections/divisions of social assistance, law enforcement bodies and medical institutions in cases of domestic violence was approved. The act stipulates practical recommendations on the intervention of sections/divisions of social assistance.

Subsequently, by order No.105 of 02.08.2012, the MLSPF approved a set of instructions for local authorities on how to enforce their obligations in relation to preventing and combating domestic violence. Thus, the MLSPF recommended that local public authorities should establish collaboration agreements with local social assistance bodies, educational institutions, health protection institutions and.

The Ministry of Internal Affairs also reviewed its methodical frame on examining the cases of domestic violence. Pursuant to the order No. 275 of 14.08.2012, new instructions on the police intervention to prevent and combat domestic violence were adopted.

Key issues:

Though the Law on Preventing and Combating Family Violence provides sufficient protection mechanisms, their application in practice remains a cause for serious concern. The key issues relating to the enactment of protection mechanisms are set out below.

Insufficient awareness of the law provisions and implementation mechanisms by the relevant authorities

According to a recent Report issued by Promo-LEX Association, it was found that, social workers and police officers are not fully aware of the provisions of the Law on Preventing and Combating Family Violence. Thus, for example, 44% of the social workers, interviewed by Promo-LEX, are not aware of their obligations under the Law on Preventing and Combating Family Violence. As for police officers, every 5th police officer is not aware of his duties and obligations under the Law and how to respond to cases of domestic violence¹⁰.

Additionally, the level of understanding of specific forms of domestic violence on behalf of relevant authorities is also problematic. Thus, for example, 44% of social workers, 40% of police officers and 75% of judges interviewed by Promo-LEX could not come with an explanation of

¹⁰ Assessment Report on the implementation of the provisions of the Law 45 on protection order in the Republic of Moldova during 2008-2011, Promo-LEX Association, page 164. Report is available in English here: http://promolex.md/upload/publications/ro/doc_1355814593.pdf

the term spiritual violence. 56% of social workers and 63% of prosecutors could not come with an explicit definition of what sexual violence means. 20% of police officers and 38% of prosecutors could not come with a definition of economic violence. Similarly, the judges also do not have a well-defined opinion on economic violence.¹¹

The only type of violence univocally defined by all actors involved in prevention and combating domestic violence is physical violence.

The insufficient awareness of their obligations and forms of domestic violence affect the correct identification and qualification of cases of domestic violence by all actors involved. Thus, many cases of cases of domestic violence remain ignored or are wrongly qualified under the law.

In case of social workers, the issue of insufficient awareness could be explained by the negative impact of staff turnover because it is not possible to provide social workers with qualitative specialized trainings. At the same time, police officers claimed to have sufficient trainings on the issue of domestic violence.

Recommendations

To provide trainings and to increase the quality of trainings on domestic violence (forms of domestic violence, law provisions and implementation mechanisms) for all actors involved in preventing and combating domestic violence. Trainings should be provided on a rolling basis for newly employed staff.

Failure to execute the Protection Orders

Another problem refers to the failure to execute the protection orders by both the aggressor and the authorities, who by law are responsible for its implementation in practice. In most cases the local social worker and the police are unaware of the existence of the protection order, let alone have the knowledge of enforcement of the order. Another situation is when the police know about domestic violence and about the protection order but limit their involvement to informing the aggressor about its existence, even when the protection order text imposes an obligation on the aggressor to leave the house. The most frequent explanation is the lack of space or alternative accommodation to which the aggressor could move. Till present, In Moldova there is only one rehabilitation centre for aggressors where they can benefit of temporary housing and rehabilitation services¹².

Recommendations

- To ensure immediate transmission of protection orders to the authorities responsible for the enforcement thereof;

¹¹ For the elaboration of the Assessment Report on the implementation of the provisions of the Law 45 on protection order in the Republic of Moldova during 2008-2011, Promo-LEX Association conducted 47 in-depth interviews throughout Moldova with relevant authorities: 8 judges, 8 prosecutors, 15 police officers, 16 social workers.

¹² Centre for aggressors Artemida, Drochia city <http://www.artemida.md/contact.php>

- To ensure mutual information and effective collaboration between the police officer and social worker in respect of the enforcement of protection orders;
- To establish rehabilitation centres or specialized services for aggressors in all rayons.

Ineffective supervision of the execution Protection Order

In many cases, both, police and social worker responsible for the supervision on the execution of the protection order fail to monitor the cases accordingly (periodic visits, phone calls, etc) and only react when called by the victim. There are also cases when neither reacts to the victims' appeal regarding the violation of the protection order by the aggressor, thus living the victim without any protection. In such cases the victims have to flee their homes and seek shelter. Most frequent justification provided by police is *"they cannot supervise victims and aggressors all day long because they have more important things to do"* or *"call me when you really get beaten"*. However, according to the data provided by the Ministry of Internal Affairs, during the period of 2009-2011 there were no cases registered where the police would fail to execute the Protection Orders and no policemen were sanctioned for failing to execute or to supervise the enforcement of the Protection Orders.¹³ According to the same source, in 2011 only two cases were registered, where 2 or more Protection Orders were issued within the same case. No such cases were registered during 2009-2010. However, numerous such cases continue to be reported by NGOs working in this area.¹⁴

Recommendations

- To sanction the aggressors for not executing the provisions of the protection order and/or for violating the provisions of the protection order;
- To sanction relevant authorities who fail to execute their obligations under the law.

Refusal or Delayed initiation of the criminal prosecution by the prosecution

Although since 3 September 2010, domestic violence has been a crime under the Criminal Code, police prefers to apply administrative sanctions against aggressors based on art. 78 and/or art 69 of the Code of Contraventions of the Republic of Moldova rather than criminal sanctions based on the art 201/1 of the Criminal Code of the Republic of Moldova. In some cases the petitions submitted to the prosecution on behalf of the victims remained unsolved. While many petitions have been filed, the ongoing subjection of the victims to domestic violence continued.

Recommendations

- To adjust the legislation so it will be clear which provisions should be applied to sanction aggressors for acts of domestic violence and to exclude the possibility for police to chose between administrative sanctions and criminal sanctions (art 69 of the Code of Contraventions which refers to psychological violence, art 78 of the Code of Contraventions

¹³ Official data provided to Promo-LEX Association by the Ministry of Internal Affairs as a response to an interpellation. Document No 6/3205 of 14 December 2011;

¹⁴ Such cases were registered by Promo-LEX Association, "Refugiul Casa Marioarei" Association and International Centre for Women Rights Protection and Promotion "La Strada" during 2011;

which refers to physical violence and art 201/1 of the Criminal Code which criminalizes domestic violence).

- To oblige the investigative bodies to take note of all the complaints on committing acts of domestic violence, to initiate criminal action against aggressors and to conduct prompt prosecution of cases of domestic violence.

Refusal to issue Protection Orders

There are cases when the court has refused to issue the Protection Order on the grounds that the aggressor did not recognise the acts of violence, and also presented witnesses who submitted statements in their favour. In these situations, the statements of the victim are often disregarded. Victims often face a hostile and discriminatory attitude from the court, particularly from judges. It often results in having the credibility of the reported offence further disregarded, and the risk faced by the victims not minimised. In some cases, both, the victim and the aggressor are invited to attend the court session for issuance of the Protection Order. The presence of the aggressor proves to be stressful for the victims. Thus, due to pressure and fear, the latter withdraw their complaints or request administrative sanctions instead of criminal punishment for aggressors.¹⁵

Recommendations

- To ensure the security and welfare of victims of domestic violence.
- To eliminate the misconceptions of judges that a woman – victim of domestic violence is lying in order to gain a material benefit (for example the common apartment).

Delay in issuing Protection Orders

The essence of the Protection Order is to provide immediate protection for victims of domestic violence, and this is the reason for the 24 hour time-limits imposed under both the civil and criminal procedures. In many cases, delays mean that a Protection Order is not granted until, for example, two weeks after the application is made, which is often too late to prevent the victim from being subjected to further violence. There are no mechanisms to urgently issue the protection orders contrary to the fact that the Law stipulates that the protection orders should be issued within 24 hours. There is also no mechanism to appeal the delay of execution of the protection order.

Recommendations

- To ensure a prompt protection of victims it is needed to amend the legislation so that a police officer could issue a protection order at the door for up to 10 days, with the right to further request in Court a protection order for up to six months.
- To establish a mechanism that would ensure the observance of the term of 24 hours for issuing a protection order;

¹⁵ Such cases were registered by International Centre for Women Rights Protection and Promotion “La Strada” during 2011;

- To establish a mechanism that would allow appealing and/or sanctioning the violation of the 24 hour term.

The lack of a uniform legal practice

Till the spring of 2012 there was no uniform legal practice in relation to protection of victims of domestic violence. There were registered cases when a Judge issues a Protection Order and later annuls it, although such suspension is not stipulated by the law. The Resolution of the Plenum of the Supreme Court of Justice No.1 adopted on 28.05.2012 provides with indications to the judges on how to apply the provisions of the Chapter XXX/1 Code of Civil Procedure of the Republic of Moldova. Thus, it is hoped that such cases will no longer occur.

Another issue refers to classification of cases of domestic violence. Thus, similar cases are qualified under Code of Contraventions in some cases and under Criminal Code in other cases. Moreover, law-enforcement tends to qualify cases of domestic violence under the Art 78 “Deliberate slight bodily injury” of the Code of Contraventions that provides milder sanctions for aggressors, rather than under the Criminal Code.

Recommendations

To create a uniform legal practice regarding the protection of the victims of domestic violence and liability of aggressors based on the provisions of the criminal law.

Sanctioning the victims of domestic violence

There were registered cases when the police would sanction not the aggressors but the victims of domestic violence. In the majority of such cases victims are punished administratively. However, there are cases where criminal cases are initiated against them. In such cases the law-enforcement bodies disregard the evidences of violence against victims and even the fact that the victim was in legitimate self-defence and was the one who called the police and requested protection first place.¹⁶

Recommendations

To sanction relevant bodies and authorities for failure or ineffective execution of their obligations under the law on domestic violence.

The facts above are based on the Promo-LEX Association caseload and findings of the “Report on Discriminatory Ill-treatment in Moldova” released by the Promo-LEX Association and The Equal Rights Trust in March 2012, with the funding provided by the EU (EIDHR) and UNDP Moldova (report available in Romanian and English here: http://www.promolex.md/upload/publications/en/doc_1332167124.pdf, and Assessment Report

¹⁶ Such cases were registered by Promo-LEX Association, “Refugiul Casa Marioarei” Association and International Centre for Women Rights Protection and Promotion “La Strada” during 2011.

on the implementation of the provisions of the Law 45 on protection order in the Republic of Moldova during 2008-2011, released by the Promo-LEX Association with the support of the Soros-Foundation Moldova and the United Nations Office of the High Commissioner for Human Rights (report is available in Romanian and English here: http://promolex.md/upload/publications/ro/doc_1355814593.pdf)

This submission was prepared by Promo-LEX Association.

Promo-LEX Association is a civil society organization whose purpose is to advance democracy in the Republic of Moldova, including the Transnistrian region through promoting and defending human rights, monitoring democratic processes and strengthening the civil society. Promo-LEX Association was established as a human rights and advocacy organization in 2002 by a group of dedicated human rights defenders.

Promo-LEX operates within its three Programs: Human Rights; Monitoring Democratic Processes and Civil Society.

The Overall Goal of the Program Human Rights is to promote and implement international human rights standards in Moldova through advocacy activities. Under this Program, Promo-LEX provides legal protection of human rights in Moldova, including the Transnistrian region.

Human Rights Program focused on the following priority areas: Combating Torture and Inhuman or Degrading Treatment; Promoting Liberty and Security of Person; Access to justice and effective remedy for inhabitants of the Transnistrian region; Combating Violence and discrimination against women.

Main methods of work: pro bono legal assistance, strategic litigation, research, monitoring, developing reports and studies, lobby, information dissemination, trainings, other.

For more information please visit www.promolex.md

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