



LEGISLATIVE ANALYSIS RELATED TO SOGI AND HIV IN MOLDOVA

2022
ECOM



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ACRONYMS AND ABBREVIATIONS

EECA Eastern Europe and Central Asia

HC Hate crimes

HIV Human immunodeficiency virus

LGBT Lesbian, gay, bisexual and trans people

MSM Men who have sex with men

NGO Non-governmental organization

PLH People living with HIV

SOGI Sexual orientation and gender identity

Trans Describes a person who identifies as transgender, non-binary, or otherwise gender non-conforming, including but not limited to transgender, genderqueer, gender-mutable, agender, third gender, bigender

WHO World Health Organization



The aim of this comparative country analysis is to identify legal barriers and issues in areas where the necessary legislation already exists, but does not fully ensure the implementation of rights and freedoms for gay men, other MSM and trans people. In order to carry out this analysis, ECOM developed a methodology and questionnaire, which our local partners helped us to fill out. The analysis of legal practice took into account both judicial practice and government statistics, as well as reports of activists, information and statistics of organizations involved in documenting cases of violations and protecting human rights, press reports, and reports of non-governmental organizations to international bodies.

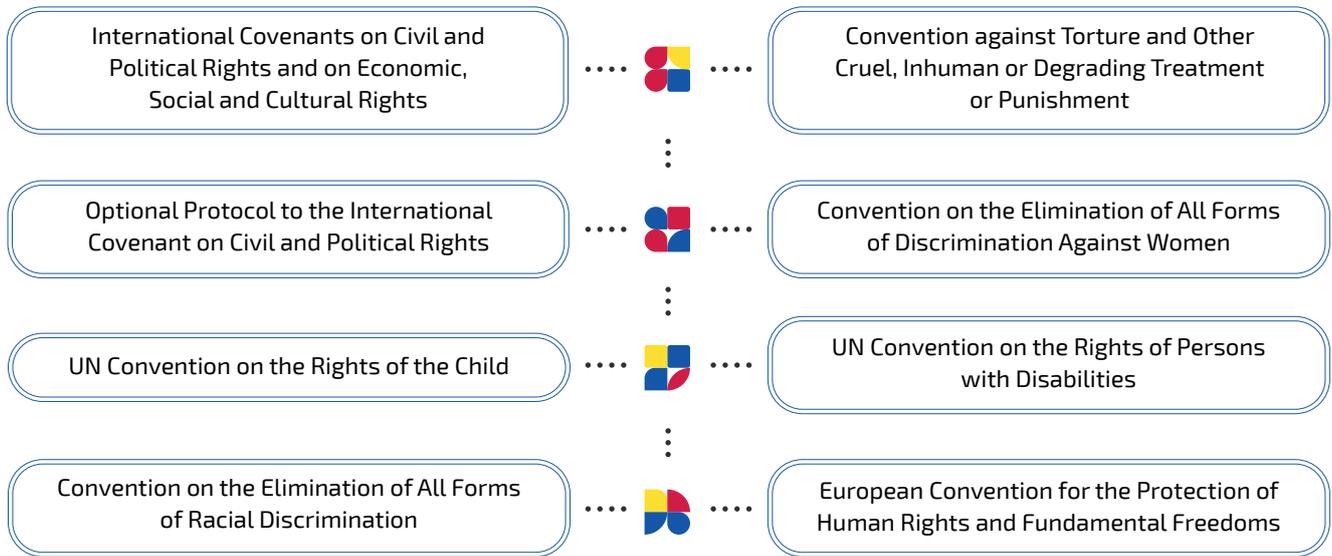
Two dimensions of legislation and law enforcement practice were reviewed. The first is their compliance with international standards of human rights and freedoms. The second is the actual ability of community members to receive protection and realize the rights and freedoms guaranteed under international obligations and national law. A situation where a law exists in a particular country, but a part of the population cannot avail themselves of its protection, indicates that barriers exist in the legal environment.

As part of this analysis, extracts from and references to regulatory legal acts were provided in order to provide information on current legislation. Unfortunately, these are not always correctly formulated and do not always comply with international standards of terminology. In this case, the original formulations are presented to objectively reflect the existing legal framework and the formal terminology adopted in the country regarding the issues under study. All citations from regulatory legal acts are in italics and have references provided.

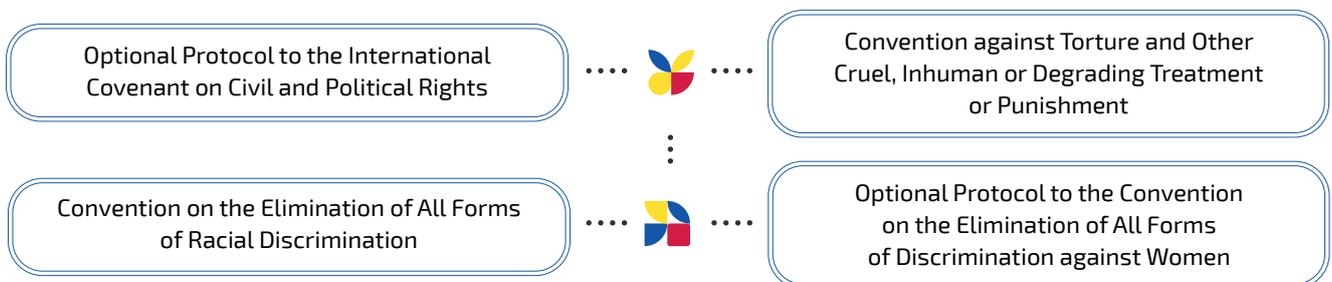
The information presented in this document can be useful for non-governmental organizations, community activists, and government representatives when planning advocacy processes and promoting the rights of PLH, gay men and other MSM, and trans people, addressing and eliminating barriers that prevent their access to healthcare services, and for protecting their rights and freedoms.



INTERNATIONAL HUMAN RIGHTS STANDARDS RATIFIED BY THE COUNTRY



HOWEVER, THE COUNTRY RECOGNIZED INDIVIDUAL COMPLAINT MECHANISMS ONLY IN RELATION TO FOUR UN INSTRUMENTS¹



¹ List https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=8&Lang=EN



**AT THE NATIONAL LEVEL, INTERNATIONAL HUMAN RIGHTS STANDARDS
HAVE BEEN TRANSLATED INTO THE FOLLOWING LAWS**

LEGISLATION	YES	NO
PROTECTION AGAINST DISCRIMINATION		
A provision on the prohibition of discrimination in the Constitution,	✓	
a separate law defining and prohibiting discrimination (yes), incl. on the grounds of SOGI (only in the workplace, but on October 5, 2022, amendments were adopted in the first reading to include SOGI in all cases of discrimination)	✓	
A law on the prohibition of domestic violence,		✗
incl. on the grounds of SOGI		✗
A provision on hate crimes in the Criminal Code	✓	
including on the grounds of SOGI	✓	
THE RIGHT TO HEALTH		
A separate law on the rights of people living with HIV	✓	
A provision on the prohibition of discrimination (unequal treatment) in the field of healthcare in relation to PLHIV	✓	
A provision on the prohibition of discrimination in education on the basis of HIV+	✓	
Prohibited immigration or entry into the country for PLHIV		✗
Criminal liability for intentional	✓	
and/or unintentional transmission of HIV		✗
Prohibited blood donation for MSM		✗
special screening procedures for MSM donors	✓	
THE RIGHT TO HEALTH FOR TRANS PEOPLE		
A legally defined procedure for legal gender recognition	✓	
Mandatory psychological and psychiatric examination	✓	
Mandatory surgical procedures for legal gender recognition		✗
Adopted medical protocol for trans people according to ICD-11		✗
Permission to use international medical protocols for doctors working with trans people	✓	
Legally fixed list of contraindications for legal gender recognition	✓	

LEGISLATION	YES	NO
 THE RIGHT TO PRIVATE AND FAMILY LIFE		
Recognition of same-sex partnerships at the legislative level		
Court recognition of unregistered same-sex couples living together as a legal marriage		
Criminalization of consensual homosexual relationships		
Opportunity for trans people to enter into heterosexual marriages after a legal transition		
Adoption for same-sex couples		
Adoption for a single LGBT person		
Adoption for trans people after a legal transition		
Adoption for PLHIV		
Age of consent for voluntary heterosexual and homosexual relationships (the same)		
 THE RIGHT TO FREEDOM OF SPEECH AND PEACEFUL ASSEMBLY		
Legislation governing the conduct of peaceful assemblies		
Required permission from local authorities to hold a peaceful assembly		
Prohibited peaceful assembly for LGBT people		
Penalties for holding a peaceful assembly that is not agreed with the authorities		
A law on «prohibition of gay propaganda»		
Attempts to introduce draft laws that restrict freedom of speech for LGBT people, incl. draft laws on «prohibition of gay propaganda»		
 FREEDOM OF ASSOCIATION AND NGO FUNDING		
Opportunity for NGOs to receive funding from national and/or local budgets		
Working mechanisms for the distribution of public funds for NGOs working in the social sphere, excluding health care, for example, in the field of education, culture, sports, youth, social protection		
Working mechanisms for the distribution of public funds for NGOs working in the field of healthcare		
Mandatory licensing procedure to register a public organization		
Registration of an LGBT public organization		
Opportunity to receive donor support from international organizations and foundations		



INTRODUCTION

The Republic of Moldova is a state with a population whose characteristics are heterogeneous – we are different, starting with the ethnicity, identity, and sexual orientation of each one of us and ending with the language we speak, our beliefs, social status and the political views that we share.

Statement by the Information Center «GENDERDOC-M» in connection with the pre-election speech of a presidential candidate¹

The modern Republic of Moldova (hereinafter — Moldova) is an independent, constitutional and democratic state, striving for close partnership with the European Union (EU), which, on the one hand, must comply with requirements to bring national legislation in line with EU standards, and, on the other hand, is quite strongly influenced by its neighbors and other players in the region (for example, the Russian Federation), which also influence the formation of policies and standards within the country.

It is a former Soviet republic with a parliamentary form of government and a small population (about 2.6 million people, according to the 2020 census), and which has an unrecognized state on its territory — the Pridnestrovian Moldavian Republic, supported by the Russian Federation. The population of Transnistria adheres to extremely conservative and religious views. The existence of the LGBT community is hushed up, and the topic of the rights of its representatives is taboo².

According to the annual rating «Freedom in the World 2022: Democracy under Siege» by Freedom House³, Moldova scored 62 out of a possible 100 points (1 point more than last year). The organization evaluates the observance of the right to equal participation in political life in relation to women, ethnic minorities and LGBT+ people at 3 out of 4 points, noting the low percentage of women in power (despite the fact that it is the second among the former Soviet republics to have a woman president) and the unwillingness (impossibility) of the open participation of LGBT+ people in political processes due to high levels of stigma and open harassment. The degree of observance of the principles of the rule of law and the independence of the judiciary are also given low ratings. Despite the existence of the Law on Equality in the country, there is still a rather high level of discrimination in Moldova and frequent complaints of discrimination from LGBT+ people.

On October 14, 2021, the Parliament of Moldova ratified the Istanbul Convention, which it signed back in 2017. The convention is in force on May 1, 2022. According to the NGO «GENDERDOC-M», the level of domestic violence against LGBT+ people⁴ is also high.

¹ More information at: <http://gdm.md/ru/content/zayavlenie-centra-informacii-genderdok-m-po-povodu-predvybornogo-vystupleniya-kandidata-v>

² More in Karolina Dutka's photo project «No silence»: <https://www.opendemocracy.net/ru/mne-skazali-cto-lgbt-v-pridnestrovie/>

³ Report for 2020 available at: <https://freedomhouse.org/country/moldova/freedom-world/2022>

According to GENDERDOC-M, most often the aggression is shown by relatives, and the stories presented in the report are only a small part of what is happening (the names in the stories have been changed for ethical reasons). More in Russian at: <https://newsmaker.md/rus/novosti/kak-v-moldove-otnosyatsya-k-lgbt-lyudyam-realnye-istorii/> and in Romanian at: http://gdm.md/files/untitled%20folder/Raport-GENDERDOC-M-2019_romana.pdf?fbclid=IwAR2WYz_Nj1DNdOVneMkE1vjLn-CqqtD-JM1iSB8qquayHlyj5bL4JD_kH5Q

According to Rainbow Europe⁵, Moldova ranks 36th among the 49 member states of the Council of Europe. Among its shortcomings, this rating highlights the lack of a prohibition on discrimination based on SOGI at the constitutional level, the lack of investigations of hate crimes, as well as inequalities with respect to the social and economic rights of LGBT+ people.

Data from sociological surveys over the last 5-10 years shows a high level of conservatism in Moldovan society and an extremely low level of acceptance of homosexual relations and LGBT+ people⁶.

The Republic of Moldova has signed and ratified the required minimum of international instruments in the field of human rights and *is a party to the following international instruments*:

- International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights;
- Optional Protocol to the International Covenant on Civil and Political Rights;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- UN Convention on the Rights of the Child;
- Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women;
- UN Convention on the Rights of Persons with Disabilities;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- European Convention for the Protection of Human Rights and Fundamental Freedoms

However, the country has only recognized individual complaint mechanisms in relation to four UN instruments⁷:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination against Women.

According to the statistics of the European Court of Human Rights (ECtHR), Moldovan citizens actively use the human rights protection mechanism under the Convention for the Protection of Human Rights and Fundamental Freedoms. During the entire period of the country's membership in the Council of Europe, the ECtHR adopted 573 decisions, of which only 5 dealt with issues of discrimination, including the decision in the case of «GENDERDOC-M» v. Republic of Moldova, concerning the violation of the right to freedom of peaceful assembly⁸.

⁵ More at: <https://rainbow-europe.org/#8648/0/0>

⁶ More in Romanian at: https://www.soros.md/files/publications/documents/Studiu_Biserica%20si%20Stat%20in%20RM.pdf, in English at: <https://www.pewforum.org/2017/05/10/social-views-and-morality/> and in Russian at: <https://www.bbc.com/ukrainian/features-russian-39985114>

⁷ List https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=8&Lang=EN

⁸ More at: Genderdoc-M 9106/06 Final Resolution CM/ResDH(2019)239



PARTICULAR PROBLEMATIC ASPECTS OF LEGISLATION AND LAW ENFORCEMENT PRACTICE

Moldova was the first country in the region to adopt a separate Law «on ensuring equality» in 2013⁹ in order to implement the requirements of Directives 2000/43/EC of 29 June 2000 and 2000/78/EC of 27 November 2000¹⁰ in national legislation (according to the conditions that were set for the country by the Visa Liberalization Plan with the EU). The prohibition on discrimination based on sexual orientation under this law applies only to the field employment and occupation. The presence of the prohibition on discrimination based on sexual orientation in the text of the law caused a lot of debate; local media called this law «a law recognizing homosexuality as a norm»¹¹ once again showing the level of (non-)acceptance of LGBT+ people in Moldovan society. The law provides for the establishment of a special Council for the Prevention and Elimination of Discrimination and Ensuring Equality, whose powers include reviewing complaints of discrimination and making appropriate decisions¹². The law does not establish fines and/or other forms of administrative or criminal liability for acts of discrimination. On the Russian version of the Council's website, the search function shows only six decision on a complaint of discrimination based on sexual orientation. In addition, there are a number of decisions in cases of discrimination on the basis of HIV+ status¹³.

On October 5, 2022, the Parliament of Moldova voted in the first reading for changes to the Law on «Ensuring Equality». These changes introduce sexual orientation and gender identity as protected grounds in all cases of discrimination¹⁴. Public hearings have been announced, after which voting will take place in the second reading. The draft law also provides for some changes in the work of the Equality Council.

There is also concern among human rights organizations that the Equality Council is not working closely enough with the Ombudsman, as much more can be achieved by leveraging synergies in mandates and strategies. In reality, the Equality Council and the Ombudsman refer cases to each other and cooperate on equality issues in other ways¹⁵.

⁹ Full text of the law in Russian: <http://lex.justice.md/index.php?action=view&view=doc&lang=2&id=343361>

¹⁰ The directives are designed to guarantee equality of opportunity for citizens, regardless of their race, color, nationality, ethnic origin, language, religion or belief, gender, age, disability, opinion, political affiliation, or any other similar characteristic

¹¹ More at: <http://www.interfax-religion.ru/mold/print.php?act=news&id=45730> and <https://www.vesti.md/?-mod=news&id=13866>

¹² Website of the Council: <https://egalitate.md/ru/>

¹³ Decision on the complaint: https://egalitate.md/wp-content/uploads/2016/04/a_o_o_o_028_7997418.pdf; cases on complaints of discrimination based HIV+ status, see the annual reports of the Council in Russian, for example at: https://egalitate.md/wp-content/uploads/2016/04/Raport_CPEDAE_2019_-FINALru.pdf

¹⁴ The draft law can be downloaded in Russian and Romanian from this link <https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislativ/tabid/61/LegislativId/6132/Language/ro-R0/Default.aspx>

¹⁵ More in the study «Legal analysis of the decisions of the Equality Council and decisions of the national courts of the Republic of Moldova in cases of discrimination» in Russian: https://egalitate.md/wp-content/uploads/2016/04/raport_ru_final_1551862.pdf

Analysis of the work of the Council and jurisprudence in cases of discrimination, conducted by independent consultants in 2016¹⁶, showed several important problems in the entire system of protection against discrimination in the Republic of Moldova:

- low quality of judicial decisions, different approaches in similar cases;
- insufficient knowledge of judges about the need to find a balance between different rights and freedoms, for example, in cases related to freedom of conscience and religion, freedom of speech and protection from discrimination (including on the grounds of SOGI);
- unwillingness of victims to turn to the courts, including due to ignorance and fear of litigation (including fear of the high costs associated with them);
- inability of the courts to apply the principle of shifting the burden of proof and, accordingly, an exorbitant burden of proof on the applicant.

All of these factors, among other things, prevent members of the LGBT+ community from actively using these tools of protection against discrimination and from reporting violations of their rights more often. Separate decisions of both the Council and the courts in cases of allegations of rights violations based on SOGI are the result of the work of the team of the only LGBT+ human rights organization in the country, the Information Center «GENDERDOC-M», and individual complaints from members of the Board of this organization¹⁷. The adoption of the Law «On Ensuring Equality» did not affect the Constitution of the Republic of Moldova in any way, which contains a closed list of characteristics based on which equality is guaranteed (without any mention of SOGI)¹⁸, and recognizes the family only as a union between a man and a woman¹⁹.

The significant change that can be noted is the amendment of the so-called «Media Law», which entered into force on January 1, 2019 and prohibits the media from discriminating against people on the basis of sexual orientation. Article 11 of the law states that «audiovisual programs are prohibited: ... from promoting incitement, propaganda, or the justification of racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance or discrimination based on sex, race, nationality, religion, disability or sexual orientation»²⁰.

Of the positive changes, it is worth noting that on April 21, 2022, the Parliament of the Republic of Moldova voted for amendments to the Criminal Code, initiating crimes on the basis of prejudice and inciting criminal liability and incitement to violent actions on the basis of prejudice. Sexual orientation and gender identity are included in the list of protected grounds²¹.

¹⁶ Id.

¹⁷ See, for example, the decision of the Municipal Council of Balti No. 02/16 of 23 February 2012, and the decision of the Supreme Court No. 3ra-318/14 of 11 June 2014, «GENDERDOC-M» v. Municipal Council of Balti.

¹⁸ Article 16. Equality: «(1) The respect and protection of the individual shall constitute the foremost duty of the State. (2) All citizens of the Republic of Moldova are equal before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin». Full text of the Constitution of the Republic of Moldova in Russian at: <https://www.presedinte.md/titul2#2>.

¹⁹ Article 48. Family: «The family shall be founded on a freely consented marriage between man and woman, on their equality of rights and on the right and obligation of parents to ensure the upbringing and education of their children». Id.

²⁰ More at: <https://www.rferl.org/a/moldova-parliament-speaker-approves-russia-media-law/28966975.html>

²¹ More at: https://www.legis.md/cautare/getResults?doc_id=131558&lang=ru

The Republic of Moldova regularly submits reports to the UN treaty bodies and receives sets of recommendations on the necessary actions to improve the human rights situation, including in relation to LGBT+ people. As part of the second cycle of the Universal Periodic Review (UPR), the country received 14 recommendations²² to improve anti-discrimination legislation and policies, which included amending existing laws, and improving data collection and outreach.



OTHER LEGISLATIVE RESTRICTIONS FOR LGBT+ PEOPLE

LGBT+ people are not able to register their relationship in any form, or to share custody of children. In addition, Moldova does not yet recognize same-sex marriages concluded in other countries..

There is a restriction on access to blood donation²³ for LGBT+ people and to assisted reproductive technologies for lesbian and bisexual women, and no access to surrogacy services for gay men.

The country has established criminal liability for intentional HIV infection, while there is no separate liability for unintentional infection. There is no openly available data on the number of cases of punishment under the article «intentional infection with HIV». The state maintains regular statistics on newly diagnosed and previously registered cases of HIV infection, while separately identifying risk groups, including MSM. According to «GENDERDOC-M», it is highly likely that internalized stigma and high levels of homophobia prevent many MSM from being tested for HIV. Data on cases of HIV detected among MSM began to be regularly collected only after the start of cooperation with NGOs.

There are no entry or immigration bans for PLH, and people who are not citizens of Moldova have the possibility of temporarily receiving ART until the issue of obtaining a residence permit and/or citizenship is resolved.



FREEDOM OF PEACEFUL ASSEMBLY AND FREEDOM OF SPEECH

In Moldova, LGBT+ people have not been able to exercise their right to freedom of peaceful assembly and freedom of speech for a long time. In 2005, representatives of «GENDERDOC M» appealed to the Chisinau Municipal Council to hold a peaceful assembly and were refused, which later, after the completion of the appeal procedures in national courts, became the subject of a lawsuit on behalf of the organization against the Republic of Moldova in the European Court of Human Rights. The consideration of this case ended in 2012 with the recognition that Moldova violated articles 11, 13 together with 11, and 14 together with 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms²⁴.

²² Full text at: http://www.justice.gov.md/public/files/noutati/UPR_Moldova_Final_Report.pdf

²³ There is a question about same-sex relationships among the questions in the donor's questionnaire, more in Romanian: <https://cnts.md>

²⁴ Text of the decision in the case, «GENDERDOC-M» v. Republic of Moldova in English: <https://hudoc.echr.coe.int/fre#%22ite%22mid%22:%22001-111394%22>

The next prohibition of a peaceful assembly in Chisinau took place in 2013, when the local municipality again went to court to stop the LGBT+ community from exercising their right to freedom of peaceful assembly. In this case, a court decision prohibited the holding of a peaceful march, but as an alternative, it was proposed to hold a picket in the park. Activists called this decision a «trap»²⁵, pointing out that such an «alternative» runs counter to common sense and, on the contrary, puts the event at risk of disruption due to security issues, since it is difficult to avoid confrontation with opponents of the march and ensure the safety of all protesters in the closed space of the park.

In May 2017, when activists again organized a march to mark the International Day against Homophobia, Biphobia and Transphobia²⁶, law enforcement agencies announced the cancellation of the event shortly after it began, deeming the situation unsafe as right-wing radical opponents of the march began to attack participants²⁷.

It was only in 2018 that the country managed to hold Pride with the support of numerous foreign embassies and international organizations²⁸. The second peaceful Pride took place in 2019²⁹, while in 2020 in Moldova, as well as around the world, Pride Month was held online due to the restrictions related to COVID-19. In 2022, the largest and longest march in the history of Moldova took place under the protection of the police. The march was attended by 6 representatives of the Parliament of Moldova from the right party PAS.



LEGAL BARRIERS FOR TRANS PEOPLE

The only normative act that regulates the issues of legal gender recognition is Order N1268 of December 17, 2012 «On the establishment of a commission for the determination of gender dysphoria». The lack of written clear, transparent and accessible procedures leads to unjustified difficulties for trans people and their ability to access medical care and change documents.

The only document that trans people can receive in order to begin the process of transition is a diagnosis, which is established by the commission. This diagnosis serves as the basis for the initiation of hormone therapy and surgical interventions.

Moldovan legislation mentions the possibility of amending civil status records, provided that **«the applicant has submitted an official document regarding change of gender»**³⁰.

According to the procedure, a trans person can apply with a relevant application to the civil registry office, which considers this application and makes a decision on whether to amend the civil status record.

²⁵ More at: <http://gdm.md/ru/content/mirnyy-marsh-soobshchestva-lgbt-v-moldove>

²⁶ More at: <http://www.dayagainsthomophobia.org>

²⁷ More at: <https://www.rferl.org/a/moldova-lgbt-march-police-repel-orthodox-activists/29237375.html>

²⁸ More at: <https://www.pinknews.co.uk/2017/05/24/moldova-lgbt-march-halted-as-president-says-i-am-not-president-of-the-gays/>

²⁹ More in Russian at: <http://gdm.md/ru/content/marsh-solidarnosti-soobshchestva-lgbt-v-moldove-sostoyalsya>

³⁰ Law «On acts of civil status», Article 66(2)(c) <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312727&lang=2>

The vagueness of this procedure and the fact that differing decisions can be taken by the civil registry office means that trans people only receive permission to legally change their gender marker through the courts. In other words, each specific case is reviewed separately, which in some cases leads to refusals to satisfy claims. Thus, despite the absence of prohibition on married people undergoing gender confirmation, the court in one case refused to make changes to the documents of a trans woman.



WORK OF NON-GOVERNMENTAL ORGANIZATIONS

The only registered LGBT+ human rights organization, the Information Center "GENDERDOC-M" has been operating in the country since 1998. Over the years, the NGO team has also assembled and trained a network of friendly lawyers in different cities that LGBT+ people can turn to if they need legal advice. There are no barriers to the creation and registration of an NGO for the protection of the rights of LGBT+ people or any other type of human rights organization at the legislative level or in law enforcement practice. As part of state orders for social services, NGOs can receive funding to work in the field of HIV prevention.



RECOMMENDATIONS

- 1** Amend Article 1 of the Law on Ensuring Equality, by adding characteristics such as social origin, material status, health status, sexual orientation, gender identity and gender expression to the main list of characteristics protected from discrimination.
- 2** Improve legal guarantees and practices for the protection of victims of domestic violence, including guarantees of protection for LGBT+ people.
- 3** Develop and implement non-discriminatory procedures and rules for trans people, including the possibility of legally changing one's gender marker.
- 4** Conduct regular training of key government officials on the basics of the proper provision of public services without discrimination, including on the basis of SOGI (trainings for police, government officials, doctors, etc.).
- 5** Design and implement progressive sexual and reproductive education programs in schools in all geographic regions, and introduce educational approaches based on human rights and human dignity.

