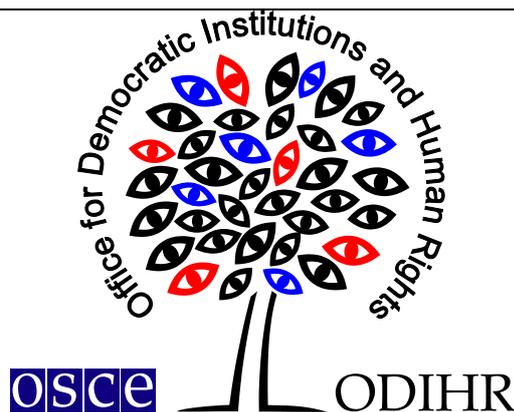


Warsaw, 26 April 2019

Opinion-Nr.: Opinion Nr. HCRIM-  
MDA/342/2018 [JG]

[www.legislationline.org](http://www.legislationline.org)



**OPINION ON THE DRAFT LAW “HATE CRIMES AND  
HOLOCAUST DENIAL – AMENDING AND  
SUPPLEMENTING CERTAIN ACTS” OF THE  
REPUBLIC OF MOLDOVA**

**based on an [unofficial] English translation of the draft amendments  
provided by the Ministry of Justice of the Republic of Moldova**

OSCE Office for Democratic Institutions and Human Rights  
Ulica Miodowa 10 PL-00-251 Warsaw ph. +48 22 520 06 00 fax. +48 22 520 0605

*This Opinion is also available in Romanian.  
However, the English version remains the only official version of the document.*

## **TABLE OF CONTENTS**

<b>I. INTRODUCTION</b> .....	<b>3</b>
<b>II. SCOPE OF REVIEW</b> .....	<b>4</b>
<b>III. EXECUTIVE SUMMARY</b> .....	<b>4</b>
<b>IV. ANALYSIS AND RECOMMENDATIONS</b> .....	<b>6</b>
<b>1. International Standards on Bias-Motivated Crimes</b> .....	<b>6</b>
<b>2. General Comments</b> .....	<b>6</b>
<b>3. Protected Characteristics</b> .....	<b>7</b>
<b>4. Bias Motivation</b> .....	<b>9</b>
<b>5. Intentional Actions aimed at Incitement to Hatred, Discrimination or Division</b> ....	<b>10</b>
5.1 Protected Characteristics in Cases of Incitement to Hatred, Discrimination or Division .....	11
5.2 Intentional Actions, Public Calls Aimed at Other Discriminatory Practices .....	13
<b>6. Propaganda of Genocide or Crimes against Humanity</b> .....	<b>14</b>
<b>7. Final Comments</b> .....	<b>16</b>

**Annex: Draft Amendments to the Draft Law “Hate Crimes and Holocaust Denial – Amending and Supplementing Certain Acts” of the Republic of Moldova**

## **I. INTRODUCTION**

1. *On 30 October 2018, the Ministry of Justice of the Republic of Moldova sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for a legal review of the draft amendments of the Criminal Code and the Contravention Code of the Republic of Moldova entitled “„Hate Crimes and Holocaust denial – amending and supplementing certain acts” (hereinafter “the Draft Amendments”) and the Law on Countering Extremist Activity of the Republic of Moldova of 2003. The Ministry of Justice informed ODIHR that the draft was submitted in the context of the National Action Plan 2017-2019 on the Implementation of the Declaration of Parliament of the Republic of Moldova on the Acceptance of the Final Report of the International Commission on the Holocaust Study [sic]. Item 4.1 of the Action Plan provides for conducting “a pertinent analysis of the national legislation in force for the purpose of its adjustment to international norms on counteracting racism, xenophobia, anti-Semitism and intolerance.”*
2. *On 6 November 2018, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of these draft amendments with OSCE commitments and international human rights standards.*
3. *On 20 February 2019, the Ministry of Justice of the Republic of Moldova specified that both the Draft Amendments and the 2003 Law on Countering Extremist Activity should be reviewed in their entirety to assess their compliance with OSCE human dimension commitments and international human rights standards. The 2003 Law on Countering Extremist Activity will hence be subject to a separate opinion.*
4. *The present Opinion follows an earlier opinion of 15 March 2016 which was also requested by the Ministry of Justice of Moldova on similar amendments (hereinafter “2016 Opinion”) <sup>1</sup> as well as an Opinion of 2010 on another set of draft amendments on bias-motivated crimes. <sup>2</sup>*
5. *This Opinion was prepared in response to the above request. The OSCE/ODIHR conducted this assessment within its mandate as established by the OSCE Ministerial Council Decision No. 4/03 on Tolerance and Non-discrimination whereby the OSCE participating States committed to “where appropriate, seek the ODIHR’s assistance in the drafting and review of such legislation [to combat hate crimes]” <sup>3</sup>.*

---

<sup>1</sup> OSCE/ODIHR Opinion on Draft Amendments to the Moldovan Criminal and Contravention Codes relating to Bias-motivated Offences, issued on 15 March 2016, available at <http://www.legislationline.org/documents/id/19901> (hereinafter “2016 Opinion”).

<sup>2</sup> OSCE/ODIHR Opinion on Draft Amendments to the Moldovan Criminal Code Related to Hate Crimes, HCRIM-MOL/156/2010, issued on 7 June 2010, available at <http://www.legislationline.org/documents/id/15840> (“hereinafter 2010 Opinion”).

<sup>3</sup> See par 6 of the OSCE Ministerial Council Decision No. 4/03 on Tolerance and Non-discrimination, taken at the Maastricht Ministerial Council Meeting on 2 December 2003, available at <http://www.osce.org/mc/19382> (hereinafter “OSCE Ministerial Council Decision 4/03”).

## **II. SCOPE OF REVIEW**

6. The scope of this Opinion covers only the Draft Amendments, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework dealing with bias-motivated crimes in Moldova.
7. The Opinion raises key issues and provides indications of areas of concern. In the interests of conciseness, the Opinion focuses more on those provisions that require improvements rather than on the positive aspects of the Draft Amendments. The ensuing recommendations are based on international standards and practices related bias-motivated crimes. The Opinion will also seek to highlight, as appropriate, good practices from other OSCE participating States in this field.
8. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women<sup>4</sup> (hereinafter “CEDAW”) and the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, ODIHR opinions analyse the potentially different impact of the Draft Amendments on women and men.<sup>5</sup>
9. This Opinion is based on an unofficial English translation of the Draft Amendments provided by the Ministry of Justice, which is attached to this document as an Annex. Errors from translation may result. This Opinion is also available in Romanian. However, the English version remains the only official version of the document.
10. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation of Moldova that the OSCE/ODIHR may wish to make in the future.

## **III. EXECUTIVE SUMMARY**

11. The Draft Amendments under review are an updated version of the amendments which were assessed by ODIHR in 2016. The current Draft Amendments implement some of ODIHR’s recommendations but, overall, only differ in some instances from the amendments already reviewed which is why this Opinion heavily refers to the 2016 Opinion.
12. At the outset, the lawmakers are commended for attempting to strengthen the legal framework to prosecute and punish crimes committed with a bias motive (also referred to as “hate crimes”).<sup>6</sup> It is welcomed that the reform of Moldova’s legislation on bias-

---

<sup>4</sup> UN Convention on the Elimination of All Forms of Discrimination against Women, adopted by General Assembly resolution 34/180 on 18 December 1979. The Republic of Moldova acceded to this Convention on 1 July 1994.

<sup>5</sup> See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), available at <http://www.osce.org/mc/23295?download=true>.

<sup>6</sup> While “hate” is not necessary as a motivation of bias-motivated crime and, therefore, “bias-motivated” is the preferred term, the term “hate crime” is common and the “bias-motivated crime” and “hate crime” are often used interchangeably; see also OSCE/ODIHR, *Hate Crime Laws: A Practical Guide* (2009) (hereinafter “2009 ODIHR Practical Guide on Hate Crime Laws”), pages 17-18, available at <http://www.osce.org/odihr/36426?download=true>.

motivated crime is situated within a broader context of fighting against intolerance and aiming to adjust legislation in the area of bias-motivated crime and anti-discrimination to international standards.

13. The Draft Amendments broaden the scope of general sentence-enhancing provisions in the Criminal and Contravention Codes, while also providing enhanced penalties under a variety of offences when committed with a bias motivation. This approach is much welcomed and largely corresponds to good practice in this field at international levels. It is particularly positive that additional protected characteristics have been included beyond the limited “social ethnic, racial or religious” grounds currently mentioned in the Criminal Code. Overall, as stated in the 2016 Opinion, the Draft Amendments remain a powerful statement confirming the Moldovan State’s and society’s rejection of and zero tolerance for bias-motivated offences, and recognition of their special nature and particular gravity.
14. At the same time, many of the concerns voiced by ODIHR in its 2016 Opinion (and some voiced in its 2010 Opinion) have not been addressed in the current Draft Amendments. Some of the provisions in the Draft Amendments are drafted in an overly broad manner and do not meet the requirements of legal certainty, foreseeability and specificity. This is particularly the case for Draft Article 346 of the Criminal Code which also unduly restricts freedom of expression.
15. More specifically, and in addition to what was stated above, OSCE/ODIHR makes the following recommendations to further enhance the Draft Amendments:
  - A. To amend Article 134<sup>14</sup> of the Criminal Code and Article 46<sup>2</sup> of the Contravention Code as follows:
    - remove references to “reason [of prejudice...]”, “reasoning [of perpetrator]”, or “reasons” in Article 134<sup>14</sup> of the Criminal Code and Article 46<sup>2</sup> of the Contravention Code and replace with a more neutral formulation – such as “due to”, “because of” or “motivated by”; [pars 29-31]
    - Supplement both provisions to clearly state that offences motivated in whole or in part by the offender’s bias against the victim due to his or her protected characteristics are covered; [par 23]
    - add entities and property belonging to or associated with persons identified by protected characteristics in Article 134<sup>14</sup> of the Criminal Code and Article 46<sup>2</sup> of the Contravention Code; [par 31]
    - Delete the reference to “social origin”, “property” “genetic features”, political opinions, “membership or non-membership to a group, “birth or ancestry” “health condition” and “age;” as protected characteristics while providing for a definition of “disability” that would also encompass certain types of diseases, and thus protect persons living with HIV; [pars 24-28]
  - B. To clarify in the Draft Amendments how a bias motive is established, while specifying that the fact that a victim presents certain protected characteristics, while relevant, should not be in itself be sufficient to conclude that a bias-motivated offence was committed; [pars 32-34]
  - C. To revise new Article 346 of the Criminal Code as follows:

- - to specify what the criminal offences that a call for violence refers to are and to include robust definitions of key terms such as “hatred”, “discrimination”, “violence” and/or “hostility” into the domestic legal framework; [par 39]
- - include additional protected characteristics based on which an incitement to hatred, violence, discrimination and non-peaceful split under this provision may take place, at a minimum “colour”, “sexual orientation or gender identity”, “religion or belief,” and “disability” [par 40];
- - to remove vague references to limitations of rights and provisions of advantages altogether and to instead provide a clear definition of what is considered to be “discrimination” for the purposes of the Criminal Code; [par 41]
- - consider including defences and exceptions, for instance when the statements mentioned in Article 34 were intended as part of a good faith discussion or a public debate on an issue of public importance [par 44];

**D. To take measures to render Article 135<sup>2</sup> more concrete. At a minimum, the Draft Amendment should focus on public statements rendered in a manner that is likely to incite violence [pars 45-50 ].**

*Additional Recommendations, highlighted in bold, are also included in the text of the opinion.*

#### **IV. ANALYSIS AND RECOMMENDATIONS**

##### **1. International Standards on Bias-Motivated Crimes**

16. For a detailed and concise overview of OSCE commitments and international standards related to bias-motivated crime, the OSCE/ODIHR hereby refers to paras 11-24 of the 2016 Opinion which is annexed to this opinion as Annex 2.<sup>7</sup>

##### **2. General Comments**

17. The Draft Amendments submitted for review are an updated draft of the Draft amendments which were assessed by ODIHR in its 2016 Opinion. The Opinion at hand focuses on changes to the draft which differ from what has previously been reviewed. Insofar as Key Recommendations of the 2016 Opinions are still relevant, they will be repeated in this Opinion, otherwise the present Opinion refers extensively to the 2016 Opinion.
18. The new Draft Amendments are similar in nature, aim and text to the ones reviewed in 2016. Currently, the Criminal Code in force in Moldova already includes penalty-enhancing provisions in several articles when the offence is committed “from motives of social, racial and religious hatred”. Additionally, Article 77 par 1 (d) of the Criminal Code contains a general sentencing-enhancing provision which judges shall take into

---

<sup>7</sup> See *op. cit.* footnote 1 (2016 Opinion).

account when sentencing perpetrators who commit crimes “due to social, ethnic, racial or religious hatred”.

19. Both the current and the 2016 Drafts address bias-motivated crimes and contraventions, certain forms of “hate speech” as well as some forms of criminal discriminatory behavior. The new Draft Amendments also contain the prohibition of “propaganda of genocide or crimes against humanity” in a new Article 135<sup>2</sup>. The new Draft Amendments extend the scope of Article 77 par 1 (d) by replacing “social, ethnic or religious hatred” with “prejudice, contempt or hatred.” “Prejudice, contempt or hatred” is also replacing the current wording in the existing specific sentencing-enhancing provisions and in additional new ones added in the Draft Amendments.<sup>8</sup>
20. Compared to the 2016 Draft, the Draft Amendments no longer include penalty-enhancing provisions to the crimes of incitement to suicide (Article 150(2)), slavery (Article 167), forced labor (Article 168), blackmail (Article 189 (3)), infecting with venereal disease or AIDS (Articles 211, 212) and deliberate intoxication with narcotics or other similar substances (Article 217<sup>6</sup>). This is welcome and in line with what has been suggested in the 2016 Opinion.<sup>9</sup>

### **3. Protected Characteristics**

21. The 2016 Opinion made a number of recommendations with respect to the protected characteristics listed in new Article 134<sup>14</sup> of the Criminal Code and Article 46<sup>2</sup> of the Contravention Code. It recommended to also include cases of association, affiliation and mixed motives in the provision.<sup>10</sup> It also recommended reformulation, clarification or deletion of some characteristics and inclusion of missing ones.<sup>11</sup>
22. The new Draft Amendments take some of these recommendations into account. It is welcome that it now, as recommended, also includes victims by affiliation or association.<sup>12</sup> Furthermore, while the Draft reviewed in the 2016 Opinion included an open-ended list of characteristics “based on any other criteria, towards persons who can be individualized by any such criteria”, the current Draft, as recommended in the 2016 Opinion, deleted this part of the provision, thus making sure that the protected characteristics mentioned in 134<sup>14</sup> of the Criminal Code and Article 46<sup>2</sup> of the Contravention Code are the only possible protected characteristics.<sup>13</sup>
23. However, many of the concerns which had previously been expressed regarding the list of protected characteristics remain valid when assessing the new Draft Amendments. In particular, **it is recommended to explicitly clarify that crimes which are only in part motivated by bias (so-called “mixed motives”) are covered by the Draft Amendments.**<sup>14</sup>

---

<sup>8</sup> See also *Ibid*, par. 25.

<sup>9</sup> *Ibid* pars 30-35.

<sup>10</sup> *Ibid* pars 39, 40.

<sup>11</sup> *Ibid* pars 41-56.

<sup>12</sup> *Ibid* par 39.

<sup>13</sup> *Ibid* pars 42-4.

<sup>14</sup> See also *op. cit.* footnote pages 55-56 (2009 ODIHR Practical Guide on Hate Crimes Laws).

24. The list of protected characteristics remains quite extensive<sup>15</sup> and, at times, too vague to meet the requirements of legal certainty, foreseeability and specificity of criminal law. Broadening the scope of bias-motivated crimes too much may have the unintended consequence of watering down the protection these provisions seek to provide. The prosecution of bias-motivated crimes sends out the strong message that criminal justice systems and society as whole do not tolerate crimes motivated, in whole or in part, by bias against a specific group of persons. If the protected characteristics do not relate to immutable or fundamental markers of group identity, there is the risk that this message gets lost and the law becomes less likely to be applied in practice.<sup>16</sup>
25. Articles 134<sup>14</sup> of the Criminal Code and 46<sup>2</sup> of the Contravention Code still contain a number of characteristics, such as “social origin,” “genetic features,” “political opinions,” “birth or ancestry” or “age” which are suitable in the context of anti-discrimination legislation but too vague and open to interpretation to serve as protected characteristics in the context of bias-motivated crime.<sup>17</sup>
26. It is positive that, in comparison to the earlier Draft Amendments, the Draft Amendments submitted for review do not contain “other opinion” as a protected characteristic. However, even though there are arguments for including it as a protected characteristic,<sup>18</sup> it would be preferable, as recommended, to delete political opinion from the list of protected characteristics altogether.<sup>19</sup>
27. Additionally, it is welcome that the Draft Amendments no longer refer to majority and minority groups. However, referring to “membership or non-membership to a group” does also not seem to add any new stable and clearly defined characteristic and, as such, seems unnecessary. Hate crime provisions seek to define general protected grounds rather than specific protected groups (which could be discriminatory). Introducing a reference to protected “groups” as opposed to “characteristics” is therefore inconsistent with the construction of Articles 134<sup>14</sup> of the Criminal Code and 46<sup>2</sup> of the Contravention Code and good practice in hate crime law drafting. Hence, the reference to “membership or non-membership to a group” seems unnecessary and it is recommended to be deleted.<sup>20</sup>

---

<sup>15</sup> See *op. cit.* footnote 1, pars 41-56 (2016 Opinion); see also *op. cit.* footnote 2, Recommendation B and par 46 (2010 Opinion).

<sup>16</sup> See further *ibid* par 41 (2016 Opinion) and eg OSCE/ODIHR Comments on Draft Amendments to Certain Provisions of the Criminal Code of the former Yugoslav Republic of Macedonia regarding Bias-Motivated Crimes pars 39-41, issued on 14 April 2016, available at <http://www.legislationline.org/documents/id/19902>.

<sup>17</sup> See also *ibid* pars 44, 47 (2016 Opinion); see also OSCE/ODIHR Opinion on the Draft Amendments to Certain Provisions of the Criminal Code of Poland, HCRIM– POL/277/2015, issued on 3 December 2015, par 44, available at <http://www.legislationline.org/documents/id/19893>; ; see also *op. cit.* footnote 6 page 38 (2009 ODIHR Practical Guide on Hate Crime Laws); OSCE/ODIHR Comments on Draft Amendments to Certain Provisions of the Criminal Code of the former Yugoslav Republic of Macedonia regarding Bias-Motivated Crimes [now North Macedonia] HCRIM-MKD/283/2016, issued on 14 April 2016, par 36, available at <http://www.legislationline.org/documents/id/19902>.

<sup>18</sup> See *ibid* footnote 59 (2016 Opinion) with reference to *Virabyan v. Armenia*, ECtHR judgment of 2 October 2012 (Application no. 40094/05), available at <http://hudoc.echr.coe.int/eng?i=001-113302> which states that State Authorities have a duty “to take all reasonable steps to unmask any political motive and to establish whether or not intolerance towards a dissenting political opinion may have played a role in [violent incidents]” while recognizing that “proving political motivation will often be extremely difficult in practice” and that the “State’s obligation to investigate possible political overtones to a violent act is an obligation to use best endeavours and not absolute”, pars 218-21.

<sup>19</sup> See *ibid* par 47 (2016 Opinion).

<sup>20</sup> *Ibid* par 50 (2016 Opinion).

28. **Partly repeating the recommendations in the 2016 Opinion, it is suggested to refrain from references to several criteria which are (i) vague, unclear or difficult to interpret, and/or (ii) not immutable or equally fundamental to a person’s sense of self and, hence, are not commonly accepted as protected characteristics in the context of bias-motivated crime. It is recommended to delete references to “social origin”, “property”, “genetic features”, political opinions, “membership or non-membership to a group, “birth or ancestry” “health condition” and “age” as protected characteristics while providing for a definition of “disability ” that would also encompass certain types of diseases, and thus protect persons living with HIV.**<sup>21</sup>

#### **4. Bias Motivation**

29. Draft Articles 134<sup>14</sup> of the Criminal Code and 46<sup>2</sup> of the Contravention Code define “reason of prejudice, contempt or hatred” as “the reasoning of the perpetrator due to his hostile attitude generated from reasons, whether real or perceived as real” based on one of the protected characteristics discussed above (see pars 21-28 *supra*).
30. The Opinion reiterates comments made in the 2016 Opinion, welcoming the amendments for moving away from “hatred” as the sole defining motive for bias-motivated crimes but **advising to delete any references to “hatred” and “hostility” altogether from Articles 134<sup>14</sup> of the Criminal Code and Article 46<sup>2</sup> of the Contravention Code unless robust guidance interpreting these terms can be provided.** The reasons for this are outlined in the 2016 Opinion<sup>22</sup> but cumulate in the fact that as “hate crimes” are criminal offences perpetrated with a bias motive, neither “hatred” nor “hostility” are required in the context of a bias-motivated crime.<sup>23</sup>
31. The definition in Articles 134<sup>14</sup> of the Criminal Code and 46<sup>2</sup> of the Contravention Code is unnecessarily convoluted which makes it hard to grasp. The word “reasoning” could also be interpreted as lending the motivation of the perpetrator undue legitimacy. **The language of the articles in question should be simplified. The definitions of Articles 134<sup>14</sup> and 46<sup>2</sup> should be entitled “motives of prejudice [contempt and hatred]” Other references to “reason [of prejudice...]”, “reasoning [of perpetrator]”, or “reasons” should be deleted and the motives should be described as the perpetrator’s action “due to”, “because of” or “on account of” [the listed protected characteristics]. The articles should be supplemented by a provision clarifying that not only persons, identified by the protected characteristic, but entities, property and persons associated with them, including those providing support, can be the targets of thus motivated crimes.** “

---

<sup>21</sup> Ibid par 48 and Key Recommendation A (2016 Opinion); note that State parties to the UN Convention on the Rights of Persons with Disabilities (hereinafter “the CRPD”) are required to ensure that national legislation complies with an understanding of disability that would protect persons living with HIV against stigma and discrimination; UN CRPD, adopted by General Assembly resolution 61/106 on 13 December 2006. Moldova ratified the CRPD on 21 September 2010; see further e.g., the UN OHCHR, World Health Organization and UNAIDS Policy Brief on Disability and HIV (April 2009), page 1, available at [http://www.who.int/disabilities/jc1632\\_policy\\_brief\\_disability\\_en.pdf](http://www.who.int/disabilities/jc1632_policy_brief_disability_en.pdf).

<sup>22</sup> Ibid pars 58-60 (2016 Opinion).

<sup>23</sup> See further *op. cit.* footnote 6, pages 17-18 (2009 ODIHR Practical Guide on Hate Crime Laws).

32. In this respect, it is important to understand what is meant when a crime is committed “because of” a certain protected characteristic. “Bias-motivated crime” exists when a perpetrator intentionally selects his or her target based on one or several protected characteristics, or where an otherwise ordinary offence is aggravated in the course of, immediately before or after its commission by demonstrations of hostility towards a protected characteristic, and where such selection or hostility is evidenced by written or spoken words, images, objects, actions, or other evidence of bias. The mere fact of a victim having a protected characteristic, on the other hand, in the absence of evidence of intentional targeting, does not suffice to establish a hate crime. In any event, in all cases where a crime has been committed, authorities need to take all reasonable measures to investigate whether the above-mentioned elements exist and whether or not the respective criminal act is a “hate crime”.
33. Therefore ODIHR reiterates its recommendation **to clarify in the Draft Amendments how a bias motive is established, while specifying that the fact that a victim presents certain protected characteristics, while relevant, should not be in itself be sufficient to conclude that a bias-motivated offence was committed.**
34. Bearing in mind that “hate crime” provisions may nevertheless not cover all potential cases committed against certain categories of persons who are considered to deserve special protection due to their situation or the specific challenges that they face, this does not mean that certain cases cannot be covered by other criminal provisions. For instance, certain criminal offences committed against juveniles, pregnant women, persons with disabilities or elderly persons can lead to enhanced penalties, but do not constitute “hate crimes”. The Criminal Code of the Republic of Moldova acknowledges this, for example, by prescribing enhanced penalties, separate from murder with bias motivation for the murder committed “knowingly against a minor or pregnant woman or taking advantage of the known or obvious helplessness state of the victim due to old age, illness, disability or other factor” (145 (2) (e) of the Criminal Code).

## **5. Intentional Actions aimed at Incitement to Hatred, Discrimination or Division**

35. Article 346 of the Criminal Code is planned to be amended as follows: “Deliberate actions, public urges, information dissemination or otherwise making available to the public, including by the media, in writing or through a computer system aimed at inciting hatred, violence or discrimination or to non-peaceful split, national, territorial, ethnic, racial or religious and to limit the rights or the establishment of advantages to persons based on race, color, ethnicity, national or social origin, citizenship, sex, gender, genetic features, language, religion or belief, political opinions or of any other similar nature, birth or ancestry, disability, health condition, age, sexual orientation, gender identity or any other similar criteria, shall be punished by a fine from 500 to 600 conventional units or by non-remunerated work for community from 180 to 240 hours, or imprisonment from 1 to 3 years”.
36. The wording of this Article in its English translation appears vague and requires substantial revision, as it fails to provide clear guidance with respect to the scope of its application. The first part of the article seems to prohibit “deliberate actions, public urges, information dissemination (...) aimed at inciting hatred, violence or discrimination or to non-peaceful split, national, territorial, ethnic, racial or religious”.

The second part seems to criminalize actions, which would “limit the rights or the establishment of advantages” on the basis of protected characteristics (race, color, ethnicity, etc.). This may result in criminal sanctions for merely disseminating information, which, for instance, could be considered discriminatory. Without any further definition or clarification what “discrimination” means in this context, this would constitute and unjustified interference in fundamental rights and freedoms.

37. Moreover, it is doubtful whether expressions such as the “limitation, direct or indirect, of rights” or “setting advantages, direct or indirect for persons” are sufficiently clear and foreseeable to be in line with Article 7 of the ECHR.<sup>24</sup> Thus, any action or decision of public or private actors granting advantage to certain groups bearing signs of one of the protected groups/characteristics would constitute a criminal offence punishable under the Article 346, thus resulting in a criminal prosecution for discriminatory actions (even in case of so called “positive” or “justified” discrimination). As it stands, the mere mention of the limitation of rights or provision of advantages, without specifying what kind of acts this would entail and which rights or advantages are being referred to, would appear to be too vague to satisfy such conditions. **It is recommended, as in the 2016 Opinion, to remove the references to limitations of rights and provisions of advantages altogether and to instead provide a clear definition of what is considered to be “discrimination” for the purpose of the Criminal Code.**<sup>25</sup>

## **5.1 Protected Characteristics in Cases of Incitement to Hatred, Discrimination or Division**

38. It is welcome that Draft Article 346 does not anymore contain deliberate actions “aimed at the humiliation of national honour and dignity” as a punishable offence. This has been recommended both by the 2010<sup>26</sup> and the 2016 Opinions<sup>27</sup>. This constitutes an important step in making the provision compliant with the right to freedom of expression as enshrined in Article 19 of the ICCPR<sup>28</sup> and Article 10 of the ECHR.<sup>29</sup> The deletion of the reference to vague notions of “humiliation of national honor and dignity” avoids the danger of unjustified interference with the right to freedom of expression and contributes to the fulfillment of the State’s positive obligations to create a favorable environment for participation in public debate which allows people to express their opinion free of fear.<sup>30</sup> It also is in line with jurisprudence of the European Court of Human Rights (ECtHR) according to which freedom of expression “is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or

---

<sup>24</sup> *Rohlena v. the Czech Republic* [GC], ECtHR judgement of 27 January 2015 (Application No. [59552/08](http://hudoc.echr.coe.int/eng?i=001-151051)), pars 78-79, available at <http://hudoc.echr.coe.int/eng?i=001-151051>.

<sup>25</sup> *Ibid* par 73.

<sup>26</sup> *Op. cit.* footnote 2, par 30 (2010 Opinion).

<sup>27</sup> *Op. cit.* footnote 1 pars 66-68 (2016 Opinion).

<sup>28</sup> UN International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the UN General Assembly by Resolution 2106 (XX) of 21 December 1965. The Republic of Moldova acceded to this Convention on 26 January 1993.

<sup>29</sup> The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “ECHR”), signed on 4 November 1950, entered into force on 3 September 1953. Moldova ratified the ECHR on 12 September 1997.

<sup>30</sup> See the case of *Dink v. Turkey*, ECtHR judgment of 14 September 2010 (Application nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09), par 137, available at <http://hudoc.echr.coe.int/eng?i=001-100383>.

any sector of the population.”<sup>31</sup> Finally, striking the reference to national honour and dignity will also enhance the clarity of the provision, which is particularly important for provisions containing criminal law sanctions, which have to adhere to the principle of *nulla poena/nullum crimen sine lege* guaranteed by Article 7 of the ECHR.<sup>32</sup>

39. Furthermore, the inclusion of “non-peaceful” division, as opposed to simply criminalizing the incitement of division on, amongst others, territorial grounds, is welcomed and in line with the recommendations of the 2016 Opinion, however, criminal responsibility should only be applicable in cases where incitement to violent or non-peaceful territorial division is likely to cause an imminent threat to peace and security.<sup>33</sup> Having said that, it would still be preferable to delete the reference to division altogether.<sup>34</sup>
40. At the same time, other previous ODIHR recommendations have not yet been implemented.
41. **While the new Draft includes a reference to “incitement to violence” as recommended in the 2016 Opinion,<sup>35</sup> the Draft Amendments do not specify the offences that such public calls refer to. This was recommended both in the 2010 Opinion<sup>36</sup> and the 2016 Opinion.<sup>37</sup> Additionally, it is recommended for the domestic legal framework to include robust definitions of key terms such as “hatred”, “discrimination”, “violence” and/or “hostility”.<sup>38</sup>**
42. The new Article 346 of the Criminal Code refers to the incitement of “hatred, violence or discrimination or to non-peaceful split” based on a list of relatively narrow grounds.

---

<sup>31</sup> *Handyside v. the United Kingdom*, ECtHR judgement of 7 December 1976 (Application no. 5493/72) par 49, available at <http://hudoc.echr.coe.int/eng?i=001-57499>.

<sup>32</sup> *Kokkinakis v. Greece*, ECtHR judgement of 25 May 1993 (Application no. 14307/88), pars 37-41, 52: *Del Río Prada v Spain* judgement of 21 October 2013 (Application no. [42750/09](http://hudoc.echr.coe.int/eng?i=001-127697)) pars 91-93, available at <http://hudoc.echr.coe.int/eng?i=001-127697>.

<sup>33</sup> Expression can only be punished as a threat to national security if the following three criteria are met cumulatively: (1) the expression is intended to incite imminent violence; and (2) it is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence; see UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 2016 Joint Declaration on Freedom of Expression and Countering Violent Extremism, 3 May 2016, par 2 (d) <<http://www.osce.org/fom/237966>>; and Principle 6 of the Johannesburg Principles on Freedom of Expression and National Security (1995), <<http://www.refworld.org/docid/4653fa1f2.html>>, adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg and endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression. See also the UN Secretary General, Report on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, A/63/337, 28 August 2008, par 62, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/337>; OSCE/ODIHR Preliminary Opinion on the Draft Amendments to the Legal Framework “On Countering Extremism and Terrorism” in the Republic of Kazakhstan, issued on 6 October 2016, par 21, available at <http://www.legislationline.org/documents/id/20060>; for a detailed discussion on the types of statements promote violence and proportionality of sanctions see *Stomakhin v Russia*, ECtHR judgement of 8 October 2018, (Application no. 52273/07), pars 88-134. available at <http://hudoc.echr.coe.int/eng?i=001-1827310>

<sup>34</sup> *Op.cit.* footnote 1, par 71 (2016 Opinion).

<sup>35</sup> *Ibid* pars 69-70, Key Recommendation D.

<sup>36</sup> *Op. cit.* footnote 2 par 37 (2010 Opinion).

<sup>37</sup> *Op. cit.* footnote 1 par 70 (2016 Opinion).

<sup>38</sup> *Ibid* Par 69-70, Key Recommendation D. (2016 Opinion).

This has been criticized in the 2016 Opinion.<sup>39</sup> **The 2016 Opinion outlines why it is recommended to include further protected characteristics with regard to the incitement to “hatred, violence or discrimination or non-peaceful split.” At a minimum, it should be considered to include “colour” as expressly mentioned in Article 4 CERD,<sup>40</sup> sexual orientation or gender identity,<sup>41</sup> religion or belief,<sup>42</sup> and disability<sup>43</sup> to the list. Ideally, to enhance consistency, accessibility and clarity of the Criminal Code, the drafters should include the same list of protected characteristics for the incitement of hatred, violence, discrimination or non-peaceful split as in other bias-motivated offences.**

## **5.2 Intentional Actions, Public Calls Aimed at Other Discriminatory Practices**

43. It is noted that the lawmakers chose to make Article 346 of the Criminal Code more concrete by deleting the reference to “direct or indirect” limitation of rights or setting advantages.<sup>44</sup> It is welcomed that this vague formulation is rendered slightly more concrete. **However, as stated under par 37 *supra* the provision is unlikely to meet the criteria of foreseeability and clarity required by Article 7 ECHR and the respective ECtHR case law. It is recommended to remove references to limitations of rights and provisions of advantages altogether and to instead provide a clear definition of what is considered to be “discrimination” for the purpose of the Criminal Code.**<sup>45</sup>
44. The new Article 346 of the Criminal Code like the 2016 Draft Amendments, includes “deliberate actions, public urges” to “limit the rights or the establishment of advantages to persons” [with the 2016 Amendments additionally referring to direct or indirect limitations and advantages] based on an open-ended list of characteristics. Unlike the 2016 Amendments, the new Article also includes “information dissemination or otherwise making available to the public, including by the media, in writing or through a computer system” aimed at limiting rights or establishing advantages. The formulation of Article 346 of the Criminal Code has already been criticized in the 2016 Opinion<sup>46</sup> and the inclusion “information dissemination” and rendering information available to the public in a very broadly worded manner makes the provision even more problematic, both in terms of legal certainty and specificity and permissible limits to freedom of expression. **It is recommended to refrain from such broad wording, which, as previously mentioned, could lead to arbitrary criminal investigations against persons for criticizing a certain political opinion or party, or for commenting on broader political issues such as social inequality and wealth**

---

<sup>39</sup> Ibid pars 77-80.

<sup>40</sup> Ibid par 78.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid par 79.

<sup>43</sup> Ibid.

<sup>44</sup> Whereas the draft assessed in 2016 prohibited actions and called aimed at “limitation, direct or indirect, of rights or at setting advantages, direct or indirect, for persons based on [protected characteristics]”, the current draft punishes actions, urges and information dissemination aimed “to limit the rights or the establishment of advantages to persons based [on protected characteristics]”.

<sup>45</sup> Ibid par 73.

<sup>46</sup> Ibid pars 81-82.

distribution or for criticizing specific persons more powerful or wealthier than themselves.<sup>47</sup>

45. **Additionally, the same arguments against overly extensive lists of characteristics outlined in pars 24-28 *supra* applies here and the same recommendation of narrowing down the list of characteristics and keeping only a short list of immutable characteristics that apply. The list in Article 346 is also open-ended, making it even broader. It is recommended, as has been done in the case of Articles 134<sup>14</sup> and 46<sup>2</sup> to remove the open-ended formulation in Article 346.**
46. **The Draft Amendments still do not contain exceptions or defences for good faith discussions or public debate on issues of public interest, be it of a religious, educational, scientific, political or other nature.<sup>48</sup> It is recommended to add such exceptions.**

## **6. Propaganda of Genocide or Crimes against Humanity**

47. A new Article 135<sup>2</sup> of the Criminal Code punishes “[p]ropaganda of genocide or of crimes against humanity, meaning spreading information or any of the public actions aimed at denial, gross minimization, approval or justification of crimes of genocide or of crime against humanity recognized as such by a final decision of the international court established by relevant international instruments and whose jurisdiction is recognized by the Republic of Moldova...”. As such, it complements Chapter I of the Special Part of the Criminal Code, entitled “Offences against Peace and Security of Mankind, War Crimes” and, in particular Article 135 on genocide and Article 135<sup>1</sup> on offences (crimes) against humanity.
48. Article 135<sup>2</sup> is problematic for several reasons. First, it is too vague to adhere to the principles of legal certainty, clarity and foreseeability. “Spreading information...aimed at [...] justification” of any act of genocide or crimes against humanity recognized by “the international court established by relevant international instruments and whose jurisdiction is recognized by the Republic of Moldova” can encompass a multitude of different actions, which are difficult to foresee or follow. Existence of such an open-ended and unclear provision in the criminal legislation creates risk of its overbroad application and abuse. There seems to be no robust definition of what the law means by “spreading information” and whether or not it requires an element of publicly disseminating the information (or whether, e.g. the sharing of information within a private group of persons would also fall under this provision).
49. An individual must know from the wording of the relevant provision and, if need be, after asking for legal advice and with the assistance of the courts’ interpretation, what acts are punishable by means of criminal law and what penalty will be imposed for these acts.<sup>49</sup> Even if it is assumed that “a final decision of the international court established by relevant international instruments and whose jurisdiction is recognized by the Republic of Moldova” refers to any international criminal court or tribunal

---

<sup>47</sup> *Op cit.* footnote 1 par 82 (2016 Opinion); *op. cit.* fn 2 pars35-36 (2010 Opinion).

<sup>48</sup> See *op. cit.* footnote 1 par 76 (2016 Opinion).

<sup>49</sup> See e.g. *Cantoni v France* ECHR judgement of 11 November 1996 (Application no. 17862/91), par 29, available at <http://hudoc.echr.coe.int/eng?i=001-58068>.

***OSCE/ODIHR Opinion on the Draft Law “Hate Crimes and Holocaust Denial – Amending and Supplementing Certain Acts” of the Republic of Moldova***

established by international instruments whose competence is recognized by Moldova, this would also cover a significant number of situations and countries.

50. Additionally, the provision does not contain the caveat that the actions in question must be committed in a manner likely to incite violence or hatred against a group of persons sharing protected characteristics<sup>50</sup> or in a manner able to disturb public peace.<sup>51</sup>
51. The ECtHR and the European Commission of Human Rights have dealt in a number of cases with national laws on Holocaust denial and other statement relating to crimes committed by Nazi Germany. It either dismissed the complaints as incompatible *ratione materiae* pursuant to Article 17 ECHR, according to which activities which are incompatible with the values of the Convention are excluded from its protection or argued that the interference with an applicant’s right to freedom of expression was necessary in a democratic society and hence no undue interference in a person’s human rights or fundamental freedoms.<sup>52</sup>
52. In other cases, the ECtHR has ruled that the penalization of statements denying certain historic events was an undue restriction of Article 10 of the ECHR. The Court has listed factors which should be considered when determining if interferences with Article 10 ECHR were necessary in a democratic society: the manner in which the impugned statements were phrased and the way in which they could be construed, the specific interest or right affected by the statements, the possible impact of the statements made, and the time that has elapsed since the relevant historical events have taken place.<sup>53</sup>
53. **It is recommended to take measures to render Article 135<sup>2</sup> more concrete, clearly defining and limiting punishable actions to easily identifiable offences and taking into account the above-outlined guidance. At a minimum, the Draft Amendment should focus on statements rendered in a manner that is likely to incite violence.**
54. Draft Article 135<sup>2</sup> contains a par 2 which excludes such statements made or distributed within scientific research. This is an important exception in order not to stifle public debate and guarantee independent academic inquiry.<sup>54</sup> **However, the Draft Amendments should also make sure not to restrict free artistic expression and education.**<sup>55</sup> At the same time, that the ECtHR has stated, in the context of Holocaust

---

<sup>50</sup> Eg Article 20 par 2 ICCPR; Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

<sup>51</sup> Eg Article 130 par 3 of the German Criminal Code.

<sup>52</sup> *Garaudy v. France* ECtHR decision of 24 June 2003 (Application no. 65831/01), available at <http://hudoc.echr.coe.int/eng?i=001-44357>; , *Witzsch v. Germany* (no. 2), Decision of 13 December 2005 (Application no. 7485/03) available at <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-72786&filename=001-72786.pdf&TID=ozrxydcxik>; see also Venice Commission – OSCE/ODIHR Joint Interim Opinion on the Law of Ukraine “On the condemnation of the communist and national socialist (Nazi) regimes, and prohibition of propaganda of their symbols” (21 December 2015) par 92, available at [http://www.legislationline.org/documents/id/19884\\_pars\\_45-46](http://www.legislationline.org/documents/id/19884_pars_45-46); for ECtHR jurisprudence on hate speech and Article 17 see further *M’Bala M’Bala v. France*, judgement of 20 October 2015 (Application no. [25239/13](http://www.legislationline.org/documents/id/19884_pars_45-46)) , available at <http://hudoc.echr.coe.int/eng?i=001-158752>

<sup>53</sup> *E.g. Perinçek v. Switzerland* , judgement of 15 October 2015 (Application no. 27510/08), par 215 et seq, available at <http://hudoc.echr.coe.int/eng?i=001-158235>.

<sup>54</sup> See Venice Commission – OSCE/ODIHR Joint Interim Opinion on the Law of Ukraine “On the condemnation of the communist and national socialist (Nazi) regimes, and prohibition of propaganda of their symbols” (21 December 2015) par 92, available at <http://www.legislationline.org/documents/id/19884>.

<sup>55</sup> See also *ibid*, par 89.

denial, that denying the existence of clearly established historical events did not constitute scientific or historical research.<sup>56</sup>

## **7. Final Comments**

55. Legislative measures tackling bias-motivated crime are most effective when lawmakers are aware of and have assessed the historic and social context in their respective country, and legislation is then tailored to afford special protection to those groups which are most frequently victims of bias-motivated crimes. Furthermore, effective “hate crime” legislation should also continuously be monitored after it has been adopted to see if and how the law is implemented.
56. This Opinion also reiterates that the success and effectiveness of any legislation, and, in particular, legislation related to bias-motivated crime, depends on political will to implement and needs to be accompanied by other measures to ensure the public is informed on the concept on bias-motivated crimes and judges, prosecutors and law enforcement agencies understand it in all its intricacies. Educational measures and adequate training on this concept and on tolerance and non-discrimination are crucial. Guidance, either within in Criminal Code or outside in the form of guidelines or other tools, on how to identify bias motivation, should be developed.
57. Successful investigations into potential bias-motivated crimes will also depend to a large extent on society’s degree of confidence and trust in law enforcement agencies and the criminal justice system. If institutions are seen as biased or corrupt, individuals, particularly persons from marginalized groups, are less likely to report such crimes. Enhancing trust in the criminal justice system also necessitates the system and its actors to be representative of the community, also in terms of gender-balance and diversity.<sup>57</sup>
58. Additionally, it is also recommended to disaggregate official data on bias motivations in and victims of crimes by ethnicity, gender, religion etc., and to supplement such data with crime victimization surveys, which may help provide insights into why individuals might be hesitant to report bias-motivated crime and learn of their experience with law enforcement agencies.<sup>58</sup> The collection of reliable statistical and other data on bias-motivated crimes, including on forms of violent manifestations of racism, xenophobia, discrimination, and anti-Semitism is part of applicable OSCE commitments.<sup>59</sup>
59. Finally, recommendations at the international level highlight the need for direct and meaningful participation of all criminal justice agencies, civil society, in particular marginalized and minority groups, and other stakeholders throughout the process of

---

<sup>56</sup> *Garaudy v. France* ECtHR decision of 24 June 2003 (Application no. 65831/01), available at <http://hudoc.echr.coe.int/eng?i=001-44357>;

<sup>57</sup> *Op. cit.*, footnote 6, page 12 (2009 ODIHR Practical Guide of Hate Crime Laws).

<sup>58</sup> European Union Agency for Fundamental Rights (FRA), Report on Making hate crime visible in the European Union: acknowledging victims’ rights, 2012 (hereinafter “2012 EU FRA Report on Making Hate Crime Visible”), page 11, available at [http://fra.europa.eu/sites/default/files/fra-2012\\_hate-crime.pdf](http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf).

<sup>59</sup> *Op. cit.* footnote 3 (OSCE Ministerial Council Decision No. 4/03) and par. 14 (c) of the OSCE Ministerial Council Decision No. 13/06 on Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding, taken at the Brussels Ministerial Council Meeting on 5 December 2006, available at <http://www.osce.org/mc/23114?download=true>.

***OSCE/ODIHR Opinion on the Draft Law “Hate Crimes and Holocaust Denial – Amending and Supplementing Certain Acts” of the Republic of Moldova***

amending legislation on preventing and combating bias-motivated crimes.<sup>60</sup> Consequently, policy and law makers in the Moldova should ensure that all stakeholders and interested parties are fully consulted and informed, and that they are able to submit their views throughout the amendment process. Public discussion and an open and inclusive debate will increase an overall understanding of the various factors involved, enhance confidence in and ownership of the adopted legislation, and ultimately improve implementation.

*[END OF TEXT]*

---

<sup>60</sup> *Op. cit.* footnote 6, pages 13-14 (2009 ODIHR Practical Guide of Hate Crime Laws).

**ANNEX 1:**

**Draft**

**LAW**

**„Hate Crimes and Holocaust denial – amending and supplementing certain acts”**

**Parliament adopts this organic law.**

**Art. I.** - Criminal Code of the Republic of Moldova no. 985-XV from April 18<sup>th</sup>, 2002 (republished in the Official Monitor of the Republic of Moldova, 2009, no. 72-74, art. 195), as amended, is amended and supplemented as follows:

1. At the Article 77 paragraph (1) letter d) the words “social, ethnic, racial or religious hatred” is replaced by “prejudice, contempt or hatred”.

2. It is completed with the art, 134<sup>14</sup>, with the following content:

**“Article 134<sup>14</sup>.** Reasons of prejudice, contempt or hatred

By reason of prejudice, contempt or hatred it is understood the reasoning of the perpetrator due to his hostile attitude generated from reasons, whether real or perceived as real, such as race related, color, ethnicity, national or social origin, nationality, sex, gender, property, genetic features, language, religion or belief, political opinions, membership or non-membership to a group, birth or ancestry, disability, health condition, age, sexual orientation, gender identity, or towards persons who provide support to persons who can be individualized by such a criterion or associated with them”.

3. At the Article 135<sup>1</sup> paragraph (1) letter e), the words "form of sexual violence" are replaced by "violent action of a sexual nature".

4. It is completed with the art, 135<sup>2</sup>, with the following content:

**“Article 135<sup>2</sup>.** Propaganda of genocide or of crimes against humanity

(1) Propaganda of genocide or of crimes against humanity, meaning spreading information or any of the public actions aimed at denial, gross minimization, approval or justification of crimes of genocide or of crime against humanity recognized as such by a final decision of the international court established by relevant international instruments and whose jurisdiction is recognized by the Republic of Moldova,

shall be punished a fine in amount from 500 to 1000 conventional units or imprisonment from 1 to 3 years, applied to individuals, the legal entity shall be punished by a fine from 2,000 to 5,000 conventional units with the deprivation of the right to exercise a certain activity for a period of 1-5 years or with its liquidation.”.

(2) It is not considered propaganda of genocide or of crime against humanity the fact committed within the scientific research.

5. At the Article 145 paragraph (2) letter l) the words “social, ethnic, racial or religious hatred” is replaced by “prejudice, contempt or hatred”.

***OSCE/ODIHR Opinion on the Draft Law “Hate Crimes and Holocaust Denial – Amending and Supplementing Certain Acts” of the Republic of Moldova***

6. At the Article 151 paragraph (2) letter i) the words “social, ethnic, racial or religious hatred” is replaced by “prejudice, contempt or hatred”.

7. At the Article 152 paragraph (2) letter j) the words “social, ethnic, racial or religious hatred” is replaced by “prejudice, contempt or hatred”.

8. At the Article 155:

the single paragraph becomes paragraph (1);

at paragraph (1) after the words ”or health” is completed with words ”committed also through an computer system”

is completed with paragraph (2) with the following content:

“(2) The same act committed for reasons of prejudice, contempt or hatred, including by computer system

shall be punished by a fine from 650 to 850 conventional units or by non-remunerated work for community from 200 to 240 hours, or by imprisonment from 2 to 4 years.”.

9. Article 158 paragraph (3) is completed with the letter g) with the following content:

“g) for reasons of prejudice, contempt or hatred.”.

10. Article 160 paragraph (3) is completed with the letter d) with the following content:

“d) were committed for reasons of prejudice, contempt or hatred.”.

11. At the Article 162 is completed with paragraph (1<sup>1</sup>) with the following content:

“(1<sup>1</sup>) The same act committed for reasons of prejudice, contempt or hatred

shall be punished with a fine from 600 to 900 conventional units or by non-remunerated work for community from 150 to 240 hours.”;

12. At the Article 163 is completed with paragraph (1<sup>1</sup>) with the following content:

“(1<sup>1</sup>) The same act committed for reasons of prejudice, contempt or hatred

shall be punished with a fine from 500 to 650 conventional units or by non-remunerated work for community from 200 to 240 hours, or imprisonment 1 to 3 years.”.

13. The Article 164 paragraph (2) is completed with the letter h) with the following content:

“h) for reasons of prejudice, contempt or hatred.”.

14. The Article 165 paragraph (2) is completed with the letter h) with the following content:

“h) for reasons of prejudice, contempt or hatred.”.

15. The Article 166 paragraph (2) is completed with the letter d<sup>1</sup>) with the following content:

“d<sup>1</sup>) for reasons of prejudice, contempt or hatred”.

16. At the Article 166<sup>1</sup> the paragraphs (2) shall be completed with the letter h), with the following content:

“h) committed for reasons of prejudice, contempt or hatred.”.

17. The Article 171 paragraph (2) is completed with the letter g) with the following content:

“g) committed for reasons of prejudice, contempt or hatred.”.

18. The Article 172 paragraph (2) is completed with the letter h) with the following content:

“h) committed for reasons of prejudice, contempt or hatred.”.

19. At the Article 173:

the single paragraph becomes paragraph (1);

is completed with paragraph (2) with the following content:

“(2) The same act committed for reasons of prejudice, contempt or hatred, shall be punished with a fine in amount from 750 to 1000 conventional units or by non-remunerated work for community from 200 to 240 hours, or with imprisonment for up to 4 years.”.

20. The Article 184 paragraph (2) is completed with the letter b<sup>1</sup>) with the following content:

“b<sup>1</sup>) committed for reasons of prejudice, contempt or hatred.”.

21. The Article 187 paragraph (2) is completed with the letter g) with the following content:

“g) for reasons of prejudice, contempt or hatred.”.

22. The Article 188 paragraph (2) is completed with the letter g) with the following content:

“g) for reasons of prejudice, contempt or hatred.”.

23. At the Article 193:

the single paragraph becomes paragraph (1);

is completed with paragraph (2) with the following content:

“(2) The same act committed for reasons of prejudice, contempt or hatred, shall be punished with a fine in amount from 1000 to 1500 conventional units or by non-remunerated work for community from 200 to 240 hours, or with imprisonment from 1 to 3 years.”.

24. At the Article 197 paragraph (2) letter b) the words “social, ethnic, racial or religious hatred” is replaced by “prejudice, contempt or hatred”.

25. The Article 206 paragraph (2) is completed with the letter g) with the following content:

“g) for reasons of prejudice, contempt or hatred.”.

26. At the Article 222 paragraph (2) letter b) the words “social, ethnic, racial or religious hatred” is replaced by “prejudice, contempt or hatred”.

27. The Article 282 is completed with the paragraph (1<sup>1</sup>) with the following content:

“(1<sup>1</sup>) The same act committed for reasons of prejudice, contempt or hatred shall be punished with imprisonment from 6 to 9 years.”.

28. The Article 287 paragraph (2) is completed with the letter d) with the following content:

“d) for reasons of prejudice, contempt or hatred.”.

29. The Article 346 will have the following content:

“**Article 346.** Intentional actions aimed at

incitement to hatred, discrimination or division

Deliberate actions, public urges, information dissemination or otherwise making available to the public, including by the media, in writing or through a computer system aimed at inciting hatred, violence or discrimination or to non-peaceful split, national, territorial, ethnic, racial or religious and to limit the rights or the establishment of advantages to persons based on race, color, ethnicity, national or social origin, citizenship, sex, gender, genetic features, language, religion or belief, political opinions or of any other similar nature, birth or ancestry, disability, health condition, age, sexual orientation, gender identity or any other similar criteria, shall be punished by a fine from 500 to 600 conventional units or by non-remunerated work for community from 180 to 240 hours, or imprisonment from 1 to 3 years”.

**Art. II.** The Contravention Code of the Republic of Moldova no. 218-XVI of October 24, 2008 (Official Monitor of the Republic of Moldova, 2009, no.3-6, art.15), with the further amendments, is modified as follows:

1. Article 43 paragraph (1) is completed with letter h) with the following content: „h) commission of a contravention by reasons of prejudice, contempt or hatred.”.

2. chapter V<sup>1</sup> is completed with the following content:

**„Chapter V<sup>1</sup>  
MEANING OF SOME TERMS  
OR EXPRESSIONS IN THIS CODE**

**Article 46<sup>1</sup>.**General dispositions

When the contravention law uses a term or an expression from those defined in this chapter, their meaning is according to the following provisions.

**Article 46<sup>2</sup>.**Reasons of prejudice, contempt or hatred

By reasons of prejudice, contempt or hatred there is understood the reasoning of the offender determined by his hostile attitude generated by the reasons, either real or perceived as being real, related race, color, ethnic, national or social origin, citizenship, sex, gender, wealth, genetic features, language, religion or beliefs, political opinions, group member or not, birth or lineage, disability, health condition, age, sexual orientation, gender identity, towards the victim or towards the persons who provide support to persons who can be individualized by such a criterion or associate to them.”.

3. Article 69:

at paragraph (1) after the words ”in public” is completed with words ”committed also through an computer system”;

at paragraph (2) after the words ”mass-media” is completed with words ”in writing or through a computer system”

is completed with paragraph (3) with the following content:

***OSCE/ODIHR Opinion on the Draft Law “Hate Crimes and Holocaust Denial – Amending and Supplementing Certain Acts” of the Republic of Moldova***

„(3) Action provided by the paragraph (1) or (2) committed by reasons of prejudice, contempt or hatred,  
shall be sanctioned by a fine of 18 to 30 conventional units or by unpaid community work for 20 to 60 hours.”.

4. In the article 70:

the single paragraph becomes paragraph (1);

it is completed with paragraph (2) with the following content:

„(2) Action provided by paragraph (1) committed by reasons of prejudice, contempt or hatred shall be sanctioned by a fine of 72 to 90 conventional units applied to the natural person or by unpaid community work for 30 to 60 hours, or arrest up to 15 days, with a fine of 180 to 240 conventional units applied to responsible persons with the deprivation of the right to hold certain positions or the right to carry out certain activities for a period of 6 months to one year.”.

5. In the article 75, the single paragraph becomes paragraph (1);

it is completed with paragraph (2) with the following content:

„(2) Action provided by paragraph (1) committed by reasons prejudice, contempt or hatred  
shall be sanctioned with a fine of 48 to 72 contravention units.”.

6. Article 78 is completed with paragraph (3) with the following content:

„(3) Actions provided by paragraph (1) or (2) committed by reasons of prejudice, contempt or hatred

shall be sanctioned with a fine of 60 to 90 conventional units or by unpaid community work for 40 to 60 hours, or arrest up to 15 days.”.

7. Article 104:

the single paragraph becomes paragraph (1);

it is completed with paragraph (2) with the following content:

„(2) Action provided by paragraph (1) committed by reasons of prejudice, contempt or hatred  
shall be sanctioned with a fine of 48 to 72 conventional units or by unpaid community work for 30 to 60 hours.”.

8. Article 354:

the single paragraph becomes paragraph (1);

it is completed with paragraph (2) with the following content:

„(2) Action provided by paragraph (1) committed by reasons of prejudice, contempt or hatred

shall be sanctioned with a fine of 48 to 72 conventional units or by unpaid community work for 30 to 60 hours.”.

**The President of the Parliament**