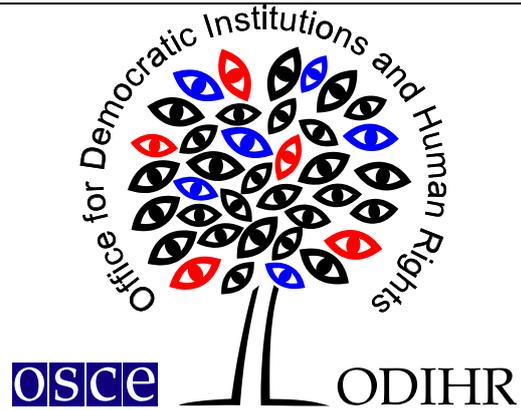


Warsaw, 12 July 2012

Opinion-Nr.: GEND-MDA/209/2012
(MWrz)

www.legislationline.org



OPINION

ON THE REVISED AMENDMENTS AND

ADDENDA ENHANCING GENDER EQUALITY IN

CERTAIN LEGAL ACTS OF THE REPUBLIC OF

MOLDOVA

Based on an unofficial English translation of the draft Amendments

TABLE OF CONTENTS

- I. INTRODUCTION**
- II. SCOPE OF THE REVIEW**
- III. EXECUTIVE SUMMARY**
- IV. ANALYSIS AND RECOMMENDATIONS**
 - 1. International Gender Equality Standards**
 - 2. Gender Equality-Related Legislation in Moldova**
 - 3. The Institutional Framework**
 - 3.1 Governmental Bodies*
 - 3.2 The Ombudsman on Gender Equality*
 - 4. Selected Gender Equality-Related Provisions and Topics of the Draft Amendments**
 - 4.1 Definitions*
 - 4.2 Liability for Gender-Based Discrimination*
 - 5. Training and Funding**

Annex 1: Draft Law on Amendment and Completion of Some Legislative Acts

I. INTRODUCTION

1. *On 20 June 2012, the OSCE Mission to Moldova received a letter from the Minister of Labour, Social Protection and Family (hereinafter “the Minister”) of the Republic of Moldova, which she had sent simultaneously to the UN Fund for Population, the International Labour Organization, the International Organization for Migration, the OSCE Mission to Moldova, the United Nations Development Programme, the Joint United Nations Programme on HIV/AIDS, the United Nations Entity for Gender Equality and the Empowerment of Women and the World Health Organization.*
2. *In this letter, the Minister requested comments on the draft Law for the Amendment and Completion of Certain Legislative Acts (hereinafter “the draft Amendments”). The laws changed by the draft Amendments include the Equal Opportunities Law, as well as the following other legislation: the Law on Government, the Law on Press, the Law on Civil Protection, the Law on Health Care, the Law on Education, the Law on the Penitentiary System, the Law on Ombudsmen, the Tax Code, the Electoral Code, the Law on Political Parties, the Law on Trade Unions, the Law on Labour Inspection, the Criminal Code, the Labour Code, the Law on Veterans, the Law on Official Statistics, the Broadcasting Code, the Law on Local Public Administration, the Law on the Status of the Information and Security Officer, the Contravention Code, the Law on Public Service and Status of the Public Servant, the Civil Procedure Code, the Law on Social Allowances for Temporary Work, Disability and Other Social Insurance Benefits, the Law on the Diplomatic Service, the Law on the Status of the Diplomatic Missions of the Republic of Moldova in other countries, the Law on State Social Insurance Pensions.*
3. *The draft Amendments are a revised version of draft amendments and addenda to largely the same set of legislation from 2010 (hereinafter “the 2010 draft Amendments”). OSCE/ODIHR had issued an Opinion on the 2010 draft Amendments on 14 March 2011 (hereinafter “OSCE/ODIHR’s 2011 Opinion).*
4. *On 20 June 2012, the OSCE Mission to Moldova forwarded an English translation of the Minister’s letter and the new draft Law to the OSCE/ODIHR.*
5. *This Opinion is provided in response to the Minister’s request of 20 June 2012, and is conducted by virtue of the OSCE/ODIHR’s mandate to promote gender equality and review related legislation established by the OSCE Action Plan for the Promotion of Gender Equality¹.*

II. SCOPE OF THE REVIEW

6. *The scope of the Opinion covers only the above-mentioned draft Amendments, submitted for review. Thus limited, the Opinion does not*

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

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

constitute a full and comprehensive review of all available framework legislation governing gender equality and gender mainstreaming in Moldova.

7. The Opinion raises key issues and indicates areas of concern. The ensuing recommendations are based on international gender equality standards and good practices, as found in the international agreements and commitments ratified and entered into by the Republic of Moldova. Additionally, the Opinion refers not only to international standards that are legally binding on the Republic of Moldova but also to those which the State is aspiring to.² The Opinion also reflects the contents of previous OSCE/ODIHR reviews³ on Moldovan draft legislation, as applicable.
8. This Opinion is based on an unofficial translation of the draft Amendments provided by the OSCE Mission to Moldova. Errors from translation may result.
9. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the draft Amendments or related legislation that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

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

3.1 Key Recommendations

- A. to outline the reporting process and lines of responsibility of various gender equality bodies within government structures mentioned in the draft Amendments to the Equal Opportunities Law; [par 37]
- B. to introduce to the draft Amendments concerning the introduction of a new Article 24¹ of the Equal Opportunities Law a hierarchy of appeals procedures and information-sharing system, to avoid duplication and contradictory decisions; [pars 43-44]
- C. to allow organizations with a legitimate interest to join court proceedings initiated by the Ombudsman or by individuals; [par 51]
- D. to specify the nature of individual liability and exemptions from liability under draft Amendments changing relevant provisions of the

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

³ See the OSCE/ODIHR Opinion on Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova, Opinion No. GEND – MOL/178/2011, issued on 14 March 2011. See also OSCE/ODIHR Opinion on draft Amendments to the Moldovan Criminal Code Related to Hate Crimes (Opinion No. HCRIM– MOL/156/2010, of 7 June 2010)

Equal Opportunities Law, as well as procedures and outcomes in cases of established liability; [pars 56-61]

- E. to remove Article 176 from the Criminal Code and incorporate it into administrative or civil legislation, or a comprehensive Anti-Discrimination Law; [par 63]
- F. to reintroduce the amendments to Articles 13 and 23 of the Equal Opportunities Law and provide adequate funding and training for all relevant stakeholders to ensure the proper implementation of the Law once passed; [pars 69-72]

3.2 Additional Recommendations

- G. to include the Labour Inspection in the list of authorities vested with duties in the field of ensuring equality for women and men under Article 15 of the Equal Opportunities Law , as amended by Article I of the draft Amendments; [par 26]
- H. to reintroduce the amendment to Article 18 of the Equal Opportunities Law regarding the proposals made by the Governmental Committee on Gender Equality, along with an indication as to the nature of such proposals; [pars 27-28]
- I. to clarify reporting procedures within government structures; [pars 31-32]
- J. to clarify the coordinating role of the Governmental Committee under Article 18 of the Equal Opportunities Law; [par 33]
- K. to elucidate which bodies are responsible for respectively developing and requesting reports on the nationwide situation with regard to equal opportunities for women and men (pars 34-35)
- L. to clarify the responsibility within the Government for preparing “national plans and programs” regarding equality for women and men, and which body shall be responsible for follow-up in this respect; [par 36]
- M. to change the definition of “gender audit” under Article 2 of the Equal Opportunities Law, as amended by Article I of the draft Amendments; [pars 40 and 55]
- N. to combine the promotion of gender equality under Articles 21 and 22 of the Law on Government with the requirement to plan and implement temporary affirmative action measures, where needed; [par 41]
- O. to vest the National Bureau of Statistics with the duty to publish the sex-disaggregated statistics; [par 45]
- P. to change the wording of Article VIII of the draft Amendments to amend Article 4 of the Law on Ombudsmen, to the effect that the Gender Equality Ombudsman is appointed directly by the Parliament, in the same way as the specialized Ombudsman for Children’s Rights; [par 47]
- Q. to clarify in Article I (amending parts of the Equal Opportunities Law) whether the Ombudsman shall file claims before court on behalf of

individuals or whether the Ombudsman may also file claims on his/her own behalf; [par 49] and

R. to add the definition of harassment to Article 2 of the Law on Equal Opportunities. [par 54]

IV. ANALYSIS AND RECOMMENDATIONS

1. International Gender Equality Standards

11. This Opinion analyzes the current draft Amendments against the backdrop of its compatibility with relevant international human rights standards and OSCE commitments.
12. General international equality standards can be found in Article 26 of the International Covenant on Civil and Political Rights⁴ (hereinafter “the ICCPR”), as well as Article 14 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter “ECHR”) and Protocol No. 12⁵ to the ECHR.
13. In addition to the abovementioned instruments, the UN Convention on the Elimination of All Forms of Discrimination Against Women⁶ (hereinafter “CEDAW”) for the first time adopted a definition of “discrimination against women”, which stressed that the effect of this type of discrimination is such as to impair or nullify the recognition, enjoyment or exercise by women of human rights in the political, economic, cultural, social, civil or other fields on the same footing as men⁷. States party to CEDAW are bound to work towards eliminating discrimination of women in all areas of life, including, *inter alia*, political participation, employment, education, healthcare and family structures.
14. The Council of Europe has issued numerous documents on topics related to gender equality, starting with resolution 855 (1986) on the equality between men and women⁸, which was followed by other resolutions and recommendations covering, *inter alia*, the equality of rights between men and

⁴ The United Nations International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966 and ratified by the Republic of Moldova on 26 January 1993.

⁵ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177) adopted on November 4, 2000, in Rome and entered into force on April 1, 2005. While the Republic of Moldova signed Protocol No. 12 on 4 November 2000, it has as of yet not ratified this Protocol.

⁶ Convention on the Elimination of All Forms of Discrimination against Women, adopted by resolution 34/180 of the General Assembly at its thirty-fourth session, 18 December 1979. The Republic of Moldova acceded to this Convention on 1 July 1994.

⁷ See Article 2 of the CEDAW: “[...] the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

⁸ Resolution 855(1986) of the Parliamentary Assembly on equality between men and women, adopted on 27 January 1986 at the 21st Sitting.

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

women⁹, progress in women's rights¹⁰, the situation of women in rural society¹¹, mechanisms for women's participation in decision-making¹², balanced participation of women and men in political and public decision-making¹³, women's representation in politics through the electoral system¹⁴, as well as combating discrimination on grounds of sexual orientation and gender identity.¹⁵

15. Under European Union law, two key directives (hereinafter "EU Gender Directives") reflect EU countries' commitment to protect equality between men and women. These are: Council Directive 2004/113/EC on the principle of equal treatment between men and women in the access to and supply of goods and services and Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation¹⁶. Both EU Gender Directives contain definitions of discrimination (direct and indirect), including sexual harassment and stipulate the equality of treatment in the above areas (goods and services and employment), while focusing on remedies and enforcement.
16. In addition to general OSCE commitments focusing on equal treatment¹⁷, in the Moscow Concluding Document¹⁸ OSCE participating States affirmed their goal to achieve equality of opportunity between men and women not only *de jure*, but also *de facto*, as well as the promotion of effective measures to that end. In the same Document, OSCE participating States recognized that "true

⁹ Recommendation 1229 (1994) of the Parliamentary Assembly on equality of rights between men and women, adopted on 24 January 1994 at the 1st Sitting.

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

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

¹² Resolution 1489 (2006) of the Parliamentary Assembly on mechanisms to ensure women's participation in decision-making, adopted on 17 March 2006.

¹³ Recommendation Rec (2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision-making, adopted by the Committee of Ministers on 12 March 2003 at the 831st Meeting of the Ministers' Deputies.

¹⁴ Resolution 1706 (2010) of the Parliamentary Assembly on increasing women's representation in politics through the electoral system, adopted on 27 January 2010, and Recommendation 1899 (2010) of the Parliamentary Assembly on increasing women's representation in politics through the electoral system, also adopted on 27 January 2010.

¹⁵ Recommendation CM/Rec(2010) of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted by the Committee of Ministers on 31 March 2010 at the 1081st Meeting of the Ministers' Deputies.

¹⁶ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; and Council Directive 2004/113/EC of 13 December 2004 on the principle of equal treatment between men and women in the access to and supply of goods and services.

¹⁷ The Concluding Document of Vienna – The Third Follow-Up Meeting, Vienna, 15 January 1989, Questions Relating to Security in Europe, Principles, par 13.8. ¹⁷ The Ministerial Council Decision 7/09 on Women's Participation in Political and Public of 2 December 2009 called upon all OSCE participating States to consider specific measures to achieve gender balance in all legislative, judicial and executive bodies and legislation to facilitate gender equality in political and public life, and especially in decision-making (pars 1 and 2).

¹⁸ The Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991.

and full equality between men and women is a fundamental aspect of a just and democratic society based on the rule of law”¹⁹. The OSCE Action Plan for the Promotion of Gender Equality of 2004, in its Chapter IV, also calls on OSCE participating States to develop policies and establish mechanisms to promote and strengthen gender equality, and to comply with the relevant international instruments that they have ratified or acceded to²⁰. In 2009 in Athens, the OSCE Ministerial Council called on OSCE participating States to, *inter alia*, consider specific measures to achieve gender balance in all public institutions and consider possible legislative measures to facilitate a more balanced participation of women and men in public life and in decision-making²¹.

2. Gender Equality-Related Legislation in the Republic of Moldova

17. The Constitution of the Republic of Moldova²² (hereinafter “the Constitution”) outlines, in its Article 16 par 2, that all citizens of Moldova shall be equal before the law and public authorities, regardless of, *inter alia*, their sex.²³
18. In 2006, the Parliament of Moldova adopted Law no. 5-XVI on Ensuring Equal Opportunities between Women and Men²⁴ (referred to throughout the entire document as “the Equal Opportunities Law”) which aimed at achieving equal rights for men and women in the political, economic, social, cultural, and other spheres of life and at preventing and eliminating all forms of discrimination based on sex. The Equal Opportunities Law stipulates equal opportunities for women and men in public office, the mass media, employment, education, and healthcare, and includes provisions on national mechanisms and public institutions responsible for promoting gender equality.
19. Furthermore, very recently, the Moldovan Parliament adopted a Law on Ensuring Equality,²⁵ aimed at preventing and combating discrimination in general and ensuring the equality of all persons on the territory of Moldova, in the political, economic, social and cultural spheres of life, without any distinction based on race, colour, nationality, ethnicity, language, religion or belief, sex, age, disability, opinion, political affiliation or any other similar criteria. Consistency between both laws should be ensured.

¹⁹ Ibid, par 40.

²⁰ OSCE Ministerial Council Decision MC DEC/14/04 on the 2004 OSCE Action Plan for the Promotion of Gender Equality of 7 December, 2004, Chapter 4, par 42.

²¹ OSCE Ministerial Council Decision MC DEC/7/09 on Women’s Participation in Political and Public Life of 2 December 2009.

²² The Constitution of the Republic of Moldova adopted on 29 July 1994 and entered into force on 27 August 1994.

²³ Based on Article 19 of the Constitution, this also applies to non-citizens, as this provision states that foreign citizens and stateless persons generally enjoy the same rights and duties as citizens of Moldova.

²⁴ Law no. 5-XVI on Ensuring Equal Opportunities between Women and Men adopted 9 February 2006, entered into force 24 March 2006.

²⁵ Law on Ensuring Equality (No. 121, adopted on 25 May 2012, published in the Official Gazette no. 103, on 29 May 2012). Prior to its adoption, drafts of this law were reviewed three times by OSCE/ODIHR, in OSCE/ODIHR’s Comments on the draft Law of the Republic of Moldova on Preventing and Combating Discrimination (No. NDISCR – MOL/117/2008), of 11 September 2008, and two Opinions on revised versions of this draft Law of 29 October 2010 (No. NDISCR – MOL/169/2010) and 13 October 2011 (No. NDISCR – MOL/193/2011).

20. The draft Amendments now aim to amend key legislation to make it more consistent with gender equality standards. In this context, it is welcomed that large parts of the draft Amendments aim at making the language of these laws more gender neutral or at clearly ensuring equal rights and opportunities for women and men.
21. The initiative to amend such a large number of key laws is an important first step to ensuring gender equality in various spheres of life and gender-sensitivity in the legislative framework of the Republic of Moldova. It helps implement the above-mentioned OSCE commitments to achieve equal opportunities for men and women not only *de jure*, but also *de facto* through effective measures²⁶. Both the enormous work effort that must have gone into identifying the legislation to be changed, and the working group's joint endeavors to prepare the draft Amendments are greatly commended in this context.
22. While most parts of the draft Amendments are well-written, and good attempts to foster gender equality in Moldovan legislation have been made, other parts are still in need of some improvement. It should be noted that solely in the interests of succinctness, this Opinion will focus mostly on the latter.

3. The Institutional Framework

3.1 Governmental Bodies

23. Article I of the draft Amendments seeks to amend provisions of the Equal Opportunities Law in order to introduce and establish a coherent institutional framework for ensuring equal opportunities for women and men. The authorities vested with duties in this field by the Equal Opportunities Law already include the Parliament (Article 16), the Government (Article 17), the Governmental Committee for Equality Between Women and Men (a consultative body; see Article 18), a specialized body within the Ministry of Labour, Social Protection and Family (Article 19), as well as central and local administration authorities (Articles 19 and 20, respectively).
24. The 2010 draft Amendments sought to amend Article 15 of the Equal Opportunities Law in order to expand the list of authorities mandated to address and promote gender equality. This list included the National Bureau of Statistics, the Ombudsman for Gender Equality and the Labour Inspectorate. In the new draft Amendments, the expansion of the list under Article 15 encompasses solely the Ombudsman, while excluding the Labour Inspectorate and the National Bureau of Statistics.
25. It is noted, however, that Article I of the draft Amendments introduces a new Article 19¹ to the Equal Opportunities Law. This Article stipulates the competences of the Labour Inspectorate with respect to performing a “gender audit”, as well as control over “the observance by the employer of the obligations to prevent and exclude cases of discrimination on grounds of sex and sexual harassment at work in enterprises, institutions and organizations, with any type of ownership and legal form of organization, to individuals who hire employees”.

²⁶ See par 40.4 of the Moscow Concluding Document.

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

26. This would imply that the draft Amendments seek to enhance the role of the Labour Inspectorate in combating gender discrimination and sexual harassment in the area of employment. It is therefore recommended, in the interest of coherence, to explicitly include the Labour Inspectorate in the list of authorities vested with duties to ensure equality between women and men under Article 15 of the Equal Opportunities Law.
27. The 2010 draft Amendments expanded the tasks of the Governmental Committee for Equality (as laid down in Article 18 of the Equal Opportunities Law) to include the submission of proposals on prevention and elimination of gender-based discrimination to the Government for examination and decision-making. OSCE/ODIHR, in its 2011 Opinion, recommended to clarify the nature of such proposals - particularly, whether these were policy proposals or amendments to legislation, or both.
28. It is noted that the current draft Amendments no longer introduce this task to Article 18 of the Equal Opportunities Law. In order to strengthen the role of the Governmental Committee for Equality, it is recommended to re-introduce this amendment, while clarifying the nature of such proposals.
29. Based on recommendations made in OSCE/ODIHR's 2011 Opinion, it is noted that that the information on the composition of the Governmental Committee for Equality should be mentioned in the Equal Opportunities Law. The Equal Opportunities Law should also provide greater clarity on how the Committee cooperates with other main gender equality-promoting bodies mentioned in this law, namely the specialized body of the Ministry of Labour, Social Protection and Family, and the Gender Coordinating Councils in central public administration authorities.
30. Article I of the draft Amendments foresees the creation of a Gender Coordinating Council within each central public administrative authority. It shall be made up of Gender Units and tasked to, *inter alia*, monitor the observance of gender equality legislation in the public authorities, approve reports and "check" cases of gender discrimination in the institution's area of activity (Article 19 pars 4 and 5 of the Equal Opportunities Law).
31. The duties of Gender Units are laid down in the newly added par 6 of Article 19 and include the "participation in the examination of petitions" on cases of gender-based discrimination, as well as the preparation of activity reports for submission to specialized bodies. However, it is not quite clear whom these Gender Units will report to – while Article 19 par 5 states that the Gender Coordinating Council of each central public administrative authority shall approve reports on gender equality, par 6 of this provision states that activity reports prepared by the Gender Units shall be submitted to specialized bodies. At the same time, it is noted that generally, the draft Amendments speak of only one specialized body created for gender equality matters within the Ministry of Labour, Social Protection and Family. This should be clarified in the Equal Opportunities Law.
32. It is presumed that activity reports shall be submitted to the respective Gender Coordination Council which then approves the reports (under the newly amended Article 19 par 5 (b)). These reports are then submitted by the central

- public authorities to the Ministry of Labour, Social Protection and Family (Article 19 par 3 (c) as amended by Article I of the draft Amendments).
33. In this context, it is noted that the duty to coordinate the activity of central and local public authorities belongs to the Governmental Committee for Equality between Women and Men (Article 18 (b) of the Equal Opportunities Law). On the other hand, the central public authorities (Article 19 par (c) as amended by Article I of the draft Amendments) and the local public authorities (Article 20 par 1 (d) as amended by Article I of the draft Amendments) both report to the Ministry of Labour. It is, thus, recommended to clarify which role the Governmental Committee for Equality *de facto* plays in coordinating the activities of the central and local level authorities in the report-writing process.
34. In the previous draft Amendments, Article XVIII amended Article 18 (e) of the Equal Opportunities Law, so that the Governmental Committee was responsible for "the preparation of Government reports on the nationwide situation in respect to equal opportunities for women and men". This amendment has now been removed. It is now not apparent which authority prepares the Government report to the Parliament (Article 17 par 2 (c) of the Equal Opportunities Law). Based on the report-writing procedures outlined above, this may well be the Ministry of Labour, but it should be clarified in the law.
35. Article I of the draft Amendments also changes the wording of Article 17 par 2 (c), so that the Governmental reports shall be submitted periodically, and "based on request". It is not entirely clear which authority is entitled to make such a request (most probably the Parliament, though this is not explicitly stated) and following which procedure.
36. Furthermore, Article 17 (b) of the Equal Opportunities Law speaks of the Government's competence to approve "national plans and programs" regarding equality for women and men. Article I of the draft Amendments amends Article 18 (d) so that the Governmental Committee for Equality is responsible for "analyzing the implementation of the national and local plans and programmes". However, no provision in the existing law or the draft Amendments specifies which authority is responsible for developing these plans and programmes. There is also no mention of any follow-up to such analysis, which may include publication of the analysis, or presentation of the analyses to the government and parliament. It is, therefore, recommended to elucidate which actors have the responsibility for the above-mentioned competences, and how the analyses of the Governmental Committee on implementation will be followed up.
37. In this context, it would be vital to reiterate the indication already contained in the OSCE/ODIHR 2011 Opinion that neither the Law on Government²⁷, nor the Equal Opportunities Law regulate the lines of responsibility and reporting within the government bodies tasked with promoting gender equality and preventing gender-based discrimination. This would be helpful to improve coordination, lines of communication and responsibility.²⁸ It should be borne

²⁷ Law on Government, no. 64-III, of 31 May 1990.

²⁸ In this context, see the CEDAW Committee's Concluding Comments for Moldova (2006) issued at its thirty-sixth session on 7-25 August 2006, where concerns were raised regarding the lack of authority/ decision-making power and resources of national mechanisms for women (par 13). The same

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

in mind that the successful functioning of national mechanisms to promote gender equality is best guaranteed if the responsibility for such mechanisms is at the highest possible level in government, falling under the responsibility of a Cabinet Minister, and is accompanied by sufficient resources (budget and professional capacity) and sufficient opportunities to influence development of all government policies.²⁹

38. As noted in par 25 *supra*, Article I of the draft Amendments introduces a new Article 19¹ to the Equal Opportunities Law, by virtue of which the Labour Inspectorate shall control the observance by the employer of the obligations to prevent and exclude cases of discrimination on grounds of sex and sexual harassment at work in enterprises, institutions and organizations and carry out “gender audits” in the field of labour (see also Article XII of the draft Amendments amending Article 4 par (1) (e¹) and Article 11³ par (1) (k) of the Law on Labour Inspection). The Labour Inspectorate may conduct such controlling visits on request or *ex officio*.
39. Article I of the draft Amendments also amends Article 2 of the Equal Opportunities Law in order to introduce the definition of such a “gender audit”. This definition reads as follows: a “gender audit is the analysis of consistency and efficiency of the inclusion of the interests of women and men in the practical activity of the organization, in its documents and policy, staff policy, at the decision-making, managerial level and budgetary allocations”.
40. It is noted here that the current formulation of the definition of “gender audit” is somewhat wide, in that it does not require a balance between the interests of women and men, nor does it mention adherence to the principle of equality. It is, therefore, advised to revise the definition of “gender audit” under Article 2 of the Equal Opportunities Law, to the effect that the Labour Inspectorate should ensure that interests of women and men are included equally in activities, materials and decisions of the respective organization. It is presumed that this “gender audit” follows the usual inspection procedure of the Labour Inspectorate.
41. Article II of the draft Amendments proposes to oblige government ministries, other central administration authorities, state inspectorates and government committees and councils to promote State personnel policy on the basis of the gender equality principle and at the same time to ensure protection against gender-based discrimination (Articles 21 and 22 of the Law on Government). As noted in the OSCE/ODIHR 2011 Opinion, such promotion of gender equality could be combined with the requirement to plan and implement temporary affirmative action measures within the meaning of Article 4 of CEDAW to enhance the percentage of women in government positions.³⁰ This recommendation is reiterated here.

Concluding Remarks also called for a comprehensive approach encompassing all policies and programmes aimed at achieving formal and substantive equality between women and men (par 11).

²⁹ See the Beijing Declaration and Platform for Action, adopted on 15 September 1995 at the 16th plenary meeting of the Fourth Conference of Women, par. 201.

³⁰ Examples for such affirmative action measures may include giving preference to qualified women when hiring government employees or engaging in special training programs for women to enhance their qualifications for such positions.

42. Under Article I of the draft Amendments, a new Article 24¹ is introduced to the Equal Opportunities Law outlining the examination of complaints of discrimination by individuals. Under this provision, any person may submit such complaints to public authorities, the ombudsman and courts. This would appear to imply that all three bodies may be approached simultaneously.
43. In order to reduce the burden for courts, which could otherwise be flooded with discrimination complaints, it should be made clear in this provision that courts should only be involved in cases involving damages, or where administrative remedies have been exhausted. The public administration, when faced with complaints of discrimination, should be given the opportunity to remedy such situations itself. Also, a certain hierarchy of appeals here would avoid contradictory decisions being issued on the same case by administrative authorities and courts at the same time.
44. While the Ombudsman may always be approached with complaints, the Equal Opportunities Law should require applicants to inform about pending cases before administrative authorities or courts, again to avoid duplication or proceedings and contradictory decisions of different bodies.
45. To support the actions of other government and public bodies, Article XVII of the draft Amendments introduces changes to the Law on Official Statistics³¹, based on which information shall be collected, processed, systematized, centralized, analysed and estimated separately based on gender. It is noted that neither Article XVII of the draft Amendments nor Article 22 of the existing Equal Opportunities Law on gender statistics stipulate the necessity of such sex-disaggregated statistics to be published. This should be specified in the draft Amendments.

3.2 The Ombudsman on Gender Equality

46. Article VIII of the draft Amendments introduces amendments to Article 11 of the Law on Ombudsmen. According to Article 4 of the Law on Ombudsmen³², the Parliament shall appoint four Ombudsmen (or parliamentary advocates) with equal rights, one of which shall be specialized in the protection of children's rights. Together with the Center's officials, these four Ombudsmen form the Human Rights Center of Moldova (hereinafter "the Human Rights Center") (Article 11 par 3 of the Law on Ombudsmen). Based on Article 11 par 3, the four Ombudsmen shall take a unanimous decision on the distribution of areas of activity amongst each other, which shall be approved by an order of the Human Rights Center. According to Article VIII of the draft Amendments, this provision would be enhanced by an additional sentence stating that gender equality shall be a separate area of the Ombudsmen's activities that shall be performed by one of them.
47. It is noted that while the specialized Ombudsman for Children's Rights appears to be appointed directly by the Parliament under Article 4 of the Law on Ombudsmen (presumably based on a candidate's specific background in this field), this is not the case with the Gender Equality Ombudsman. In order

³¹ Law on Official Statistics, no. 412-XV, of 9 December 2004.

³² Law on Parliamentary Advocates/Ombudsmen, no. 1349-XIII, of 17 October 1997, last amended in 2011.

to ensure that the best possible candidate is chosen to function as a representative of the gender equality body, it would be preferable to also have the specialized Ombudsman for Gender Equality appointed directly by the Parliament. As already recommended in OSCE/ODIHR's 2011 Opinion, The draft Amendments could reflect this by including a relevant amendment to Article 4 as well.

48. Article I of the draft Amendments foresees certain changes to the Equal Opportunities Law with regard to the Gender Equality Ombudsman. One of them is to provide this Ombudsman with the right to 'address the Court in defense of individuals subject to discrimination' (Article 21 par 1 (b) as amended by Article I of the draft Amendments).
49. This approach is much welcomed, but, as pointed out in OSCE/ODIHR's 2011 Opinion, it would benefit from some clarifications. Namely, it would be good to specify in the draft Amendments whether this means that the Ombudsman shall file claims on behalf of the discriminated person, or whether the Ombudsman may file such claims on his/her own behalf, as a measure to enforce the Equal Opportunities Law.
50. Further aspects should be highlighted with regard to the newly introduced duties of the Ombudsman. First of all, the new Article 21 par 1 (a) stipulates that the Ombudsman examines "appeals from individuals on any cases of discrimination".
51. According to EU Directive 2006/54/EC promoting equal opportunities for and treatment of women and men in the areas of employment and occupation, States shall ensure that "associations, organizations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his/her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive". In order to align the draft Amendments with international gender equality standards, it would be advisable to allow such organizations, including non-governmental organizations, to join proceedings initiated by the Ombudsman, or any other court or administrative proceedings related to gender discrimination.

4. Selected Gender Equality- Related Provisions and Topics of the Draft Amendments

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

4.1 Definitions

53. Article I of the draft Amendments introduces amendments to Article 2 of the Equal Opportunities Law in order to include definitions of such terms as the principle of equality, incitement to discrimination, victimization and gender audit. It also stipulates that sexual harassment is prohibited and punishable

under law. While these amendments constitute a positive step, certain aspects of this provision would benefit from improvement.

54. EU Directive 2006/54/EC promoting equal opportunities and treatment in the employment and occupational sector defines harassment as “unwanted conduct related to the sex of a person which occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment”. It is noted that while Article 2 of the existing Equal Opportunities Law defines sexual harassment, the more general definition of harassment is missing from the existing Law and the draft Amendments. Therefore, it is recommended to include the definition of harassment in Article 2 of the Equal Opportunities Law.
55. In this context, it should be reiterated that the definition of “gender audit” should also be amended, as described in par 40 *supra*.

4.2 Liability for Gender-Based Discrimination

56. The draft Amendments also contain specific provisions aimed at enhancing legislation pertaining to labour rights and trade unions. Article XIV focuses on amendments to the Labour Code³³, including to Article 329 of the Labour Code, to the effect that an employer shall be liable for material and moral damage caused by discriminating treatment or sexual harassment at the workplace, unless the Labour Code or other regulatory acts provide otherwise. In order to enhance clarity and foreseeability of the law in this case, it would be preferable if Article 329 would contain references to the provisions, or at least to the types of legislation outlining such exceptions in both the Labour Code and other legislation.
57. According to Article I of the draft Amendments, Article 10 of the Equal Opportunities Law shall be amended to the effect that employers shall provide for disciplinary sanctions for employees who committed acts of sexual harassment. As already recommended in OSCE/ODIHR’s 2011 Opinion, it would be helpful to include in the Equal Opportunities Law a reference to the law and procedure on which such disciplinary sanctions will be based, along with a reference to possible disciplinary sanctions in such cases. Such references will allow employees to know in advance what type of consequence sexual harassment may have.
58. It should also be repeated that in its 2006 Concluding Comments for Moldova, the CEDAW Committee had criticized a lack of proper legal remedies in the Equal Opportunities Law.³⁴ The draft Amendments do not include clear provisions which would spell out legal mechanisms for enforcing rights. The same is true for procedures related to discrimination complaints at the administrative level, along with their possible outcomes and the responsible bodies presiding over such procedures.
59. Some of the above-mentioned mechanisms may be found in other legal acts, e.g. disciplinary procedures and sanctions in the Labour Code and

³³ The Labour Code, no. 154-XV, of 28 March 2003.

³⁴ See the CEDAW Committee’s Concluding Comments for Moldova (2006) issued at its thirty-sixth session on 7-25 August 2006, pars 14 and 15.

amendments to the Contravention Code³⁵, criminal liability for sexual harassment in Article 173 of the Criminal Code³⁶ and redress for moral damage in civil legislation. However, the Equal Opportunities Law does not include references or specifications as to this point. It is thus recommended to include references to relevant liability procedures and sanctions in the Equal Opportunities Law.

60. The current Article 24 of the Equal Opportunities Law states that victims of gender-based discrimination are entitled to reparation of damage based on the conditions established by legislation (par 1) and that persons committing acts of gender discrimination shall bear liability established by law “for the breach of legislation in the field of equality between women and men” (par 2).
61. Article I of the draft Amendments introduces a new Article 24² to the Equal Opportunities Law, which specifies the types of damages that a discriminated person may obtain, following a court procedure in the manner “prescribed by the legislation”. Presumably this refers to civil damages procedures; in order to make this procedure clear and foreseeable for all users of the law, it would be advisable to include in Article 24² a reference to relevant legislation, or at least the type of legislation that these damages procedures will follow. In this context, it should be borne in mind that under EU Law, measures introduced to national legal systems to ensure compensation and reparation for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, must comprise ‘effective, proportionate and dissuasive’ sanctions³⁷.
62. Article XIII of the draft Amendments concerns Article 176 of the Criminal Code on “the violation of citizens’ equality rights”, which, next to officials in positions of responsibility, now also holds persons managing commercial, social or other non-government organizations criminally liable for violations of citizens’ rights and freedoms based on certain personal characteristics.
63. At this point, it should be noted that the OSCE/ODIHR, in its 2010 Opinion on draft Amendments to the Moldovan Criminal Code Related to Hate Crimes³⁸, had noted that due to its vague formulation and subject matter, Article 176 by its very nature was an anti-discrimination provision, and not a criminal provision. In this Opinion, OSCE/ODIHR had thus recommended that Article 176 be removed from the Criminal Code and incorporated into administrative or civil legislation, or comprehensive anti-discrimination legislation³⁹. The OSCE/ODIHR takes this opportunity to reiterate this recommendation.
64. Next to general liability for discrimination based on a person’s gender and sexual harassment, Articles I and III of the draft Amendments foresee changes to relevant provisions of the Equal Opportunities Law and the Law on Press⁴⁰ to ensure the prevention of the publication of materials and information that

³⁵ The Contravention Code, no. 218-XVI, of 24 October 2008.

³⁶ The Criminal Code, no. 985-XV of 18 April 2002 (republished in 2009).

³⁷ See Case 14/83 *von Colson and Kamann v Land Nordrhein-Westfalen* [1984] ECR 1891; see also Case 79/83 *Dorit Harz v Deutsche Tradax GmbH* [1984] ECR 1921.

³⁸ OSCE/ODIHR Opinion on draft Amendments to the Moldovan Criminal Code Related to Hate Crimes (Opinion Nr. HCRIM– MOL/156/2010 (AT)), of 7 June 2010.

³⁹ See OSCE/ODIHR Opinion on draft Amendments to the Moldovan Criminal Code Related to Hate Crimes, pars 17-22.

⁴⁰ Law on Press, no. 243-IXXX, of 26 October 1994.

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

“present the image of a gender in such a manner that it humiliates the dignity and/or contains an open or hidden incentive to promote in various areas one gender to the detriment of the other”. According to the above provisions of the draft Amendments, such publications should be “countered in accordance with the legislation”.

65. As already reiterated in the OSCE/ODIHR’s Opinion on draft Amendments to the Moldovan Criminal Code Related to Hate Crimes⁴¹ and OSCE/ODIHR’s 2011 Opinion, the limitation of a person’s freedom of speech is permissible in cases where it interferes with the basic rights and freedoms of others. However, such limitation of freedom of expression should not be too general or extensive, in particular when, as here, it explicitly covers media outlets; otherwise it risks going beyond the permissible limitations to the right to freedom of expression. Both Article 19 of the ICCPR and Article 10 of the ECHR stress the importance of freedom of expression, and both provisions list specific exceptional situations where this right may be curtailed.⁴² According to the case law of the ECtHR, the notion of freedom of expression is also applicable to information or ideas that “offend, shock or disturb”.⁴³ The exceptions listed in Article 10, par 2 of the ECHR must be narrowly interpreted and the necessity for restrictions must be convincingly established.⁴⁴
66. Particularly the press, due to the important function that it fulfills in a democratic society, has a relatively wide margin of appreciation in this respect, provided it reports about matters of public interest in good faith.⁴⁵ Although the press must not overstep certain bounds, journalistic freedom also covers “possible recourse to a degree of exaggeration, or even provocation”.⁴⁶
67. The additions to Article 8 of the Equal Opportunities Law and Article 4 of the Law on Press, as proposed by Articles I and III of the draft Amendments, speak of the prevention of the publication of materials and information that could humiliate the dignity of a person for being of a certain gender, or that contains a hidden incentive to promote one gender to the detriment of others. According to these same provisions, media outlets shall also be punished for such publications. Presumably, such publications could lead to the application

⁴¹ See OSCE/ODIHR Opinion on draft Amendments to the Moldovan Criminal Code Related to Hate Crimes, pars 31-33.

⁴² According to Article 19, par. 3 of the ICCPR: “The exercise of the rights provided for in paragraph 2 of this article [namely the right to freedom of expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.”

According to Article 10, par. 2 of the ECHR, “The exercise of these freedoms [i.e. the freedom of expression] [...] may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary, in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

⁴³ See the ECtHR judgment of *Bodrožić v. Serbia* of 23 June 2009, no. 32550/05, pars. 46 and 56. See also, amongst others, the judgment of *Vogt v. Germany* of 26 September 1995, Series A no. 323, pp. 25–26, par. 52.

⁴⁴ See the judgment of *Vogt v. Germany*, par. 52.

⁴⁵ See, in this context, the judgment of *Bodrožić v. Serbia*, par. 46.

⁴⁶ *Ibid.*, par. 47.

of Article 176 of the Criminal Code in its revised form, but this is not specified in the above provisions.

68. Given the important role that the media plays in perpetuating or breaking down stereotypes, e.g. with regard to different genders, it is generally stressed that while discriminating publications should be addressed, this should be done through other means, but not through sanctions that prohibit media freedoms. Examples for this would be proper training of employees working for media outlets, or public campaigns against the above-mentioned stereotypes. Only in cases where training and awareness-raising fail to prevent continuous and serious disregard for the equality of men and women in such publications should sanctions be contemplated. These should, however, be limited to administrative sanctions.

5. Training and Funding

69. In order to ensure that all parts of the draft Amendments are implemented properly in practice, it will be extremely important for the passing of these Amendments to go hand in hand with sufficient funding and training, which could be elaborated in strategies and national action plans for gender equality. Training will need to be provided to all institutions, organs and individuals with special obligations in terms of promoting gender equality and preventing gender discrimination, in particular if they could be held liable following certain changes in the law, such as employers and representatives of the media. The media should be instrumental in raising awareness of gender equality and should thus itself be made aware of its responsibilities in breaking down gender stereotypes, as opposed to perpetuating such prejudices.
70. It is noted that Article XVIII of the 2010 draft Amendments had proposed to amend Article 13 of the Equal Opportunities Law, to the effect that the Ministry of Education was held to ensure training, preparation and information for teaching staff with respect to equal opportunities for women and men. This is a good example for relevant training and awareness-raising, which could be re-introduced to the current draft Amendments, also for other sectors.
71. Such training will need to be funded properly, as will awareness-raising campaigns mentioned throughout the draft Amendments. The 2010 draft Amendments revised Article 23 of the Equal Opportunities Law so as to establish the National Fund for Equal Opportunities and OSCE/ODIHR recommended that this fund should receive sufficient revenues and that the management of this fund needed to be conducted with the greatest possible transparency.
72. However, all of the previous amendments to Article 23 have now been abolished. Given the pivotal role of funding in the process of the implementation of gender equality provisions, the eradication of the said amendments may constitute a step backwards. It is recommended to re-introduce the previous amendments to Article 23 in view of the recommendations made in the OSCE/ODIHR's 2011 Opinion.

[END OF TEXT]

Annex 1:

DRAFT



Republic of Moldova

PARLIAMENT

Law no. __ of ____ 2012

on amendment and completion of some legislative acts

The Parliament adopts this organic law.

Article I. – Law no. 5-XVI of 09 February 2006 on ensuring equal opportunities between women and men (Official Gazette of the Republic of Moldova no. 47-50, Article 200, 2006), with subsequent amendments, shall be amended and supplemented as follows:

1. In the name of the law and throughout the text, the syntagma „ensuring equal opportunities between women and men” shall be replaced with the syntagma „ensuring equal opportunities for women and men”.

2. Article 2:

After the definition „*complex approach to equality between women and men*”, the following definition: „the principle of equality between women and men - provides for equality of rights, opportunities and responsibilities in all spheres of life” shall be added;

After the definition of “indirect discrimination on the criterion of sex”, a new definition shall be added to read as follows: “*Incitement to discrimination on the criterion of sex/gender* – a form of discrimination, by which a person, abusing of the position of subordination of others, gives instructions, applies pressure and/or induces a behavior of a particular individual with a view to discrimination based on the criterion of sex”;

After the newly proposed definition of “incitement to discrimination based on the criterion of sex”, the following definition shall be added:
„*Victimization* – any action or inaction that results in adverse consequences following the lodging of complaints, filing an action in court in order to ensure the application of the provisions of this law; or providing information, including testimonies, which refer to the complaint or action lodged by another person”.

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

the definition of „sexual harassment” shall be supplemented with the following text: “Sexual harassment is prohibited and punishable under the law.”

After the definition of “*sexual harassment*”, the following new definition shall be added:

“*Sexism* – a form of discrimination on the criterion of sex expressed by policies, practices, attitudes and/or behaviors treating one of the genders as being inferior or less valuable or that makes use of stereotypes, with discriminatory effects on women or men”;

After the definition of “*gender unit*” the following two new definitions shall be added: “*Coordination Council in the area of gender is the structure of the institutional mechanism made of gender units within the structures with the abilities to develop, promote and monitor policies in the field of activity*”.

“*Gender audit* is the analysis of consistency and efficiency of the inclusion of the interests of women and men in the practical activity of the organization, in its documents and policy, staff policy, at the decision-making, managerial level and budgetary allocations.”

3. Article 6, paragraph (3) shall be supplemented with the following text: “ensuring a minimum participation quota of 40% of both genders.”

4. Article 7, paragraph 2, shall read as follows:

„(2) Parties and other socio-political organizations are obliged to contribute to ensuring equal rights and opportunities between women and men among its members, observing a minimum participation quota of 40% of both genders, in order to:

- a) ensure the representation in the governing bodies;
- b) ensure the representation on the lists of candidates.”

5. Article 8, paragraph (2) shall read as follows:

“(2) Publishing any materials and information presenting the image of a particular gender in the way of dignity humiliation and/or contains an open or hidden urge in various fields to promote a particular gender to the detriment of the other is inadmissible and must be countered in accordance with the legislation.”

6. Article 10:

paragraph (2) shall be supplemented with the following text:

„The employer will ensure the information of all employees with regard to the prohibition of discrimination and sexual harassment at the workplace in order to prevent them, including by displaying in visible places the respective provisions of the internal regulations of the units, as well as the responsibility for discrimination offences envisaged in the legislation.”

paragraph (3) sub-paragraph d), after the words “to undertake measures to prevent” shall be supplemented with the following text: “discrimination on the

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

criterion of sex and/or sexual harassment” and further, according to the text, and the syntagma against discrimination at the end of the paragraph shall be excluded.

paragraph 3 sub-paragraph f), after the words at the end of the sentence „based on the criterion of sex”, the text „and sexual harassment and to provide for disciplinary sanctions under the law, for the employees who have committed offences of this kind” shall be added.

7. Article 13:

paragraph (1) shall read as follows:

“(1) Public of private educational and training institutions” and all other providers of training and continuous professional training shall continue, being authorized according to the law, ensuring the implementation of the principle of equality between women and men.”

paragraph (2) the words “educational and training institutions” shall be substituted with words as follows: “The institutions referred to in paragraph (1)” and further according to the text.

After paragraph (2), the article shall be supplemented with new paragraphs, paragraphs 3 and 4 with the following content:

“(3) The Ministry of education and academia ensures the development and monitoring of the educational curriculum, content of the subjects, educational standards and resources, organization of the educational process in accordance with the principle of equality between women and men;”.

(4) The Ministry of Education and academia shall promote the balanced participation of women and men in the employment in teaching and scientific positions in the system of science and education.”

Paragraphs (3) and (4) shall become paragraphs (5) and (6).

After paragraph (6), a new paragraph (7) with the following content shall be inserted: “The sexual harassment in educational environment is prohibited and is punishable under the legislation.”

8. Article 15:

paragraph (1) shall be supplemented with a new sub-paragraph: “g) Ombudsman;”.

Sub-paragraph (e), the syntagma “gender units” shall be replaced by the syntagma: “The Gender Coordination Council consisting of gender units from the departments with abilities to draft and monitor sectoral policies”.

9. Article 16.

Paragraph (1), sub-paragraph c) shall be amended to read as follows:

„c) hearing annual and special reports of the Government and Centre for Human Rights on the situation in the field, according to the legislation. Based on the

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

hearings, the Parliament may adopt, as appropriate, decisions and motions, in accordance with the law, with reference to gender equality”.

10. Article 17, paragraph (2), sub-paragraph c), after the syntagma “submit periodically” is to be completed with the syntagma “and based on the request” and further according to the text.

11. Article 18 shall be supplemented with sub-paragraphs d) and e) with the following content:

- d) analyzing the implementation of the national and local plans and programmes, the use of financial investments in the field of gender;
- e) coordinating the development of the national reports to the relevant international treaties to which the Republic of Moldova is a party.

12. Article 19, paragraph (2) shall be supplemented with sub-paragraphs g) and h) with the following content:

- “g) Organization of the current activity and secretariate activity of the Governmental Commission on equal opportunities for women and men;
- h) within Ministry of Labor, Social Protection and Family, under the specialized body, a coordination council in the area of gender, consisting of gender units from within the departments empowered to draft and monitor sectoral policies is to be established;”.

Paragraph (3) shall read as follows: “The competence of the other central public authorities refers to the following:

- a) Ensuring the complex approach of equality between women and men and the implementation of international instruments in the field of their competence;
- b) ensuring compliance with the principle of equality between women and men in the staff policy, exclusion of any form of discrimination on the criterion of sex and sexual harassment;
- c) Submission to the Ministry of Labor, Social Protection and Family of the reports about the situation on ensuring equal opportunities in the sphere of activity and actions that have been or are to be undertaken in this regard;
- d) exercising other powers in this filed in accordance with the legislation.”

After paragraph (3), the article is to be completed with two new paragraphs (4) and (5)

“(4) Within the line central public administration authorities, the Gender Coordinating Council is functional. The Gender Coordinating Council is to be formed of gender units from the departments empowered with competences to draft, promote and monitor policies in the field of activity of the specialized central public authority.

(5) The Gender Coordinating Council has the following duties:

- a) monitoring the observance of the legislation in the field of equal opportunities for women and men within the specialized central public administration authorities;
- b) approval of the reports on achieving gender equality in its sector of activity;
- c) check the discrimination cases based on the criterion of sex and sexual harassment within the field of activity of the institution and submit proposals for removing the discriminatory conditions to the institution’s manager;

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

d) ensuring/contributing to building on the knowledge of public servants in the line areas on subjects related to the provision of equal opportunities for women and men.

This paragraph (4) becomes paragraph (6), shall read as follows:

“(6) Gender unit shall:

- a) submit proposals to integrate the principle of equal opportunities for men and women in sectoral policies and activity plans;
- b) identify, study and contribute to the settlement of gender problems in the field of activity,
 - participate in the examination of petitions on cases of discrimination based on the criterion of sex and sexual harassment at work;
- d) develop reports regarding the activity in the field of equality between women and men in order to be presented, in the manner prescribed, to the specialized bodies;
- e) exercise other powers in accordance with the law.”

After paragraph (6), a new paragraph (7) shall be inserted with the following content:
“(7) The responsibility for ensuring the implementation by the public authority of the established duties and for ensuring coordination of effective functioning of the Gender Coordinating Council belongs to the manager of the institution.”.

13. A new article - Article 19¹ shall be added and read as follows:

“Article 19¹. Competence of the Labor Inspection:

- (1) The Labor Inspection controls the observance by the employer of the obligations to prevent and exclude cases of discrimination on grounds of sex and sexual harassment at work in enterprises, institutions and organizations, with any type of ownership and legal form of organization, to individuals who hire employees.
- (2) The Labor Inspection shall exercise the gender audit in the field of labor, pointing out the impact of the policies and activities of the employers in the observance of the rights and opportunities of women and men.
- (3) The Labor Inspection shall exercise the control, in accordance with the law, upon request or ex officio”.

14. Article 20:

paragraph (1) shall be supplemented with a new sub-paragraph (d), while the current sub-paragraph (d) shall become sub-paragraph (e):

„d) submission, in the established manner, to the Ministry of Labor, Social Protection and Family of the information about the situation in the territory administered in relation to the implementation of the national policy in the field of gender equality”;

paragraph (2) shall read as follows:

„(2) Within the local public administration authorities of level II, within the Rayonal and Municipal Council Apparatus, TAU Gagauzia Council, the gender units shall operate. “;

paragraph (3), sub-paragraph c), the words „examine petitions” shall be replaced by the words “shall participate in the examination of petitions” and after the words “criterion of sex” the words “and sexual harassment” shall be added;

the article shall be supplemented with two new paragraphs (4) and (5) with the following content:

“(4) Within the local public administration authorities of level I, the gender unit’s functions are exercised by the Secretary of the City Hall.

(5) The responsibility for the implementation by the local public administration authority of the duties established by law and for ensuring the effective work of subordinated gender units belongs respectively to the Chairman of the Rayon and mayors.”

15. Article 21 shall read as follows:

“Article 21. The Ombudsman

(1) The Ombudsman contributes to ensuring equal opportunities for women and men through:

- a) the examination of appeals from individuals on any cases of discrimination based on the criterion of sex and sexual harassment;
- b) addressing the Court in defense of individuals subject to discrimination;
- c) elaboration of proposals on improving the legislation in order to implement the international instruments in the field of equal opportunities for women and men at the national level;
- d) information of the central and local public authorities with regard to the compliance with the legislation in the field of equal opportunities for women and men, the removal of discrimination conditions based on the criterion of sex;
- e) carrying out legal training actions and public awareness on issues of equality for women and men, including in collaboration with public bodies, non-governmental and international organizations.

(2) The Ombudsman shall exercise his/her powers in accordance with the provisions of the Law on parliamentary advocates/ombudsmen.

(3) Annual report of the Centre for Human Rights shall contain a chapter dedicated to the situation on equal opportunities for women and men in the Republic of Moldova”.

16. Chapter VI shall be completed with two new articles: Article 24¹ and Article 24² with the following content:

„ Article 24¹. Examination of the application:

(1) Any person has the right to written complaints in cases of discrimination based on the criterion of sex and sexual harassment to the public authorities, ombudsmen and courts.

(2) The deadline for submission of application is one year from committing the challenged actions.

(3) Public authorities, legal entities and individuals shall be obliged, upon request, to submit within 15 days, all information necessary for the examination of the application on discrimination.

(4) During the examination of an application, within the public authorities, the Gender Coordinating Council shall adopt a decision on the existence or absence of the discrimination fact based on the criterion of sex and sexual harassment.

(5) The decision of the competent body, by which the existence of discrimination is established, shall contain binding clauses for the person who committed the act of

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

discrimination regarding the removal, within a given period of time, of the discriminatory conditions. The document shall be presented to an official of the organization, institution that ensures the removal of discriminatory conditions and causes which have led to these within a period of 30 days. The full spectrum of measures aimed at the elimination of the discriminatory situation will influence the size of the compensation to be determined by the Court.

(6) Applications addressed to the ombudsmen specialized in the field of gender equality and Labor Inspection shall be examined in the manner provided for in the law”.

(7) Applications submitted to the courts are exempted of state duty.

„Article 24². Reparation of damage:

(1) The discriminated person benefits of the right to patrimonial damage reparation, including missed income and moral damage.

(2) The application on damage reparation shall be examined in court in the manner prescribed by the legislation. The person discriminated in the process has the right to receive State-guaranteed legal assistance, in accordance with the law.

(3) The task to prove the lack of direct or indirect discrimination intention belongs to the accused.

(4) The total moral damage shall be determined taking into account the period of discrimination, the consequences for the victim and his/her family members, the degree of guilt of the author of the damage, the actions aimed at the removal of a discrimination situation, and other criteria stipulated by the legislation.

(5) The damage reparation does not absolve the person guilty of the obligation to remove the discriminatory conditions”.

Article II – Law no. 64-XII of 31 May 1990 on Government (republished in the Official Gazette of the Republic of Moldova, 2002, no. 131-133, Article 1018), with subsequent amendments, shall be amended and supplemented as follows:

1. Article 2, paragraph (2), after the word “legality” the word “equality” shall be inserted.

2. Article 3, paragraph (1) shall be supplemented with paragraph 12¹) with the following content:

“12¹) provides for the integration into policies, strategies, programs, regulations and financial investments of the principle of equal opportunities for women and men;”.

3. Article 4, paragraph (2) shall be completed with “, observing a minimum participation share of 40% for both sexes”.

4. Article 11, paragraph 1 shall be supplemented with paragraph 2¹) with the following content:

“2¹) promote equal opportunities for men and women, approve and monitor the implementation of national plans and programmes in this area;”.

5. Article 21, paragraph (4):

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

the first sentence after the words “Ministries shall promote a state staffing policy” shall be completed with the words “based on the principle of equality between women and men,”.

6. Article 22, paragraph (5) shall be supplemented with a sentence with the following content:

“The personnel policy of the central and local public administration authorities, as well as of other competent authorities shall be based on the principle of equality between women and men”.

Article III. – Law on Press no. 243-XIII of 26 October 1994 (Official Gazette of the Republic of Moldova, 1995, no. 2, Article 12) with subsequent amendments shall be completed as follows:

1. Article 4 becomes paragraph (1). The article shall be completed with paragraphs (2) and (3) to read as follows:

“(2) Periodic publications and news agencies are required to use a language, in which the presence, equal status and roles of women and men are reflected to the same extent and treated as having the same value and dignity.

(3) The publication of any materials and information presenting the image of a certain sex in the manner of dignity humiliation and/or which contains an open or hidden urge to the promotion in various fields of a certain sex to the detriment of the other is inadmissible and must be countered in accordance with the legislation”.

Article IV. – Law no. 271-XIII of 09 November 1994 on civil protection (Official Gazette of the Republic of Moldova, 1994, no. 20, Article 231) with subsequent amendments shall be completed as follows:

1. Article 22:

paragraph (8), the syntagma “; - men aged from 18 to 60 years, women aged from 18 to 55 years old” shall be replaced with the syntagma “aged from 18 to 62” and the syntagma “and those who have children under 8 years old” shall be excluded.

Article V. – Law no. 411-XIII of 28 March 1995 on healthcare (Official Gazette of the Republic of Moldova, 1995, no. 34, Article 373), as amended subsequently, shall be amended as follows:

1. Article 2:

Sub-paragraph f) shall be completed at the end of the sentence with the following phrase: “, having in sight the gender dimension”.

2. Sub-paragraph h) shall be completed at the end of the sentence with the following syntagma: “observing the needs of men and women, persons with disabilities and elderly people”.

3. Article 51:

in paragraph (4), the word “mother” is replaced with “one of the parents”, and the word “exempted” will be displayed in the masculine form “exempted”.

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

in paragraph (5), the syntagma “the mother (father)” shall be replaced by the words “one of the parents”.

Article VI. – Law on education no. 547-XIII of 21 July 1995 (Official Gazette of the Republic of Moldova, 1995, no. 62-63, Article 692), with subsequent amendments, shall be amended and supplemented as follows:

1. Article 4, paragraph (2), after the word “principles”, the words “equality,” shall be inserted and further according to the text.

2. Article 41, paragraph (5), sub-paragraph e) shall read as follows:

“ e) ensure the development and monitoring of the educational curriculum, content of subjects, standards and educational resources, organization of the educational process in accordance with the principle of equality between women and men;”.

3. Article 53, paragraph (5) shall be supplemented with the sentence as follows: “The Ministry of Education promotes the balanced participation of women and men in the employment in teaching positions within the educational system.”

4. Article 56:

Paragraph (1), sub-paragraph a), after the syntagma “the moral principles of”, the word “equality” shall be added and further according to the text.

Paragraph (1) sub-paragraph b), at the end of the sentence, the syntagma “taking into account the gender dimension” shall be added.

Paragraph (1), sub-paragraph f), after the words “chauvinistic”, the word “discriminatory” shall be added.

Article VII. – Law no. 1036-XIII of 17 December 1996 on the penitentiary system (Official Gazette of the Republic of Moldova, 1997, no. 15, Article 154), with subsequent amendments and additions, is hereby amended as follows:

1. Article 9.(11), paragraph (1), sub-paragraph 14, the syntagma “better detention for women and minors” shall be replaced with the words “adapted to the specific needs for minors, pregnant women, breastfeeding women and puerperiums;”.

Article VIII. – Law no. 1349-XIII of 17 October 1997 on parliamentary advocates/ombudsmen (Official Gazette of the Republic of Moldova. 82-83, Article 671), with subsequent amendments, shall be amended and supplemented as follows:

1. Article 11, paragraph 2¹ shall be supplemented with the following sentence:

“Ensuring equal opportunities for men and women constitutes a distinct area of activity of ombudsmen to be exercised by one of them.”.

2. Article 34, paragraph 1, the last sentence shall be supplemented with the words “and a chapter dedicated to the situation on equal opportunities for women and men”.

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

Article IX. –Electoral Code no. 1381-XIII of 21 November 1997 (Official Gazette of the Republic of Moldova, 1997, no. 81, article 667), with subsequent amendments, shall be amended as follows:

1. Article 26:

paragraph (1), sub-paragraph (o) the end of the sentence shall be supplemented with the syntagma “statistical data being segregated by sex”.

paragraph (1) shall be supplemented with sub-paragraph h¹) that shall have the following content: “h¹) ensure monitoring of compliance with the principle of equality between women and men in the electoral campaign for elections at the national and local levels.”.

2. Article 44:

Paragraph (1) sub-paragraph a) the syntagma “(list of candidates);” shall read as “(list of candidates drawn up according to the requirements of Article 79 and Article 126 of this Code)”.

Paragraph (3), after the syntagma “carries out the registration” shall be supplemented with the syntagma “or shall refuse registration” and further according to the text.

Paragraph (6) after the syntagma “regarding registration” shall be supplemented with the syntagma “or refusal of registration” and further according to the text.

3. Article 79:

The text of the Article will become the text of paragraph (1);

Article shall be completed with paragraph (2) and (3) with the following content:
“(2) Lists of candidates shall be drawn up in accordance with the requirements of Article 17 paragraph (2) sub-paragraph b) of law no. 294-XVI of 21.12.2007 on political parties and Article 7 paragraph (2) sub-paragraph b) of the law on ensuring equal opportunities for women and men.”

„(3) Failure to comply with the conditions specified in paragraph (2) of this article shall entail the refusal to register the lists of candidates by the respective electoral body.”

4. Article 80 shall be supplemented with paragraph (3) with the following content:

(3) Amendment of the lists of candidates shall be carried out in compliance with the provisions of Article 7 paragraph (2) sub-paragraph b) of law no. 5-XVI of 9 February 2006 on ensuring equal opportunities for women and men.

5. Article 126 shall be supplemented with paragraph (1¹) to read as follows:

“(1¹) Lists of candidates shall be drawn and/or modified in compliance with the requirements of Article 7 paragraph (2) sub-paragraph b) of law no. 5-XVI of 9 February 2006 on ensuring equal opportunities for women and men. Failure to comply with these requirements entails the refusal to register the lists of candidates by the respective electoral body.”

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

Article X. – Law no. 294-XVI of 21.12.2007 on political parties (Official Gazette of the Republic of Moldova, 2008, no. 42-44, Article 667), with subsequent amendments and additions shall be supplemented as follows:

1. Article 8 paragraph (1) sub-paragraph d), after the words “surname, forename” with the word “sex,” and further according to the text.
2. Article 17, paragraph (2), sub-paragraph b), after the words “by forwarding candidates” the words “in accordance with the requirements of Article 7 paragraph (2) sub-paragraph b) of the law on ensuring equal opportunities for women and men shall be inserted.

Article XI. – The trade unions Law no. 1129-XIV of 7 July 2000 (Official Gazette of the Republic of Moldova, 2001, no. 130-132), with subsequent amendments, shall be amended as follows:

1. Article 16 paragraph (2) shall be supplemented with the syntagma “including based on the principle of equality between women and men”.

Article XII. – Law no.140-XV of 10 May 2001 on Labor Inspection (Official Gazette of the Republic of Moldova, 2001, no. 68-71, Article no. 505), with subsequent amendments, shall be amended as follows:

1. Article 4 paragraph (1) shall be supplemented with the following sub-paragraph e¹): e¹) carries out the gender audits in the field of employment. “
2. Article 11³, paragraph (1) shall be supplemented with sub-paragraph k) as follows:
“k) observance by the employer of the principle of equality between women and men.”.

Article XIII. – Criminal Code no. 985-XV of 18 April 2002 (in force as of 24.05.2009, republished), (Official Gazette, 2002, no. 128-129, Article 1012), with subsequent amendments and additions, shall be amended as follows:

1. Article 159 shall be supplemented with a new paragraph (2), this paragraph (2) shall become paragraph (3):

“(2) Interruption of pregnancy without the consent of the pregnant woman shall be punished with imprisonment for a period from 1 to 6 years with (or without) deprivation of the right to occupy certain positions or to exercise a certain activity for a period of up to 5 years”.

2. Article 176, paragraph 1, sub-paragraph a) shall be supplemented with the syntagma “or by a person who manages a commercial organization, non-governmental organization, or other non-state organization”.

Article XIV. – Labor Code no. 154-XV of 28 March 2003 (Official Gazette of the Republic of Moldova, 2003, no. 159-162, article 648), with subsequent amendments, shall be amended as follows:

1. Article 5, paragraph 1 shall be supplemented with sub-paragraphs e¹) and l¹) as follows:

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

“e¹) guaranteeing equal pay for equal work without discrimination based on the criterion of sex;”

„l¹) ensuring equal conditions for all employees without discrimination based on the criterion of sex for combining the obligations at work with those in the family”

2. Article 9 paragraph (1) shall be supplemented with sub-paragraphs c¹) and h¹) as follows:

“c¹) for an equal pay for equal work without discrimination based on the criterion of sex;”

„h¹) on equal terms, without discrimination based on the criterion of sex for combining the obligations at work with those in the family

3. A new article 124¹ shall be added and read as follows:

“ Article 124¹ Paternity Leave

(1) Employees, whose wife is on postnatal maternity leave, during this period, shall benefit of a mandatory leave, for a period of 30 calendar days.

(2) During the given leave, the employee shall benefit from the paternity allowances that can not be less than the average monthly salary for that period.

(3) The employer shall be obliged to encourage employees to benefit of paternity leave. “

4. Article 126 shall be excluded

5. Article 127, paragraph (2) shall be excluded

6. Article 329, paragraph (1), after the syntagma “fulfillment by him/her of the obligations at work” shall be supplemented with the syntagma “in the case of discriminatory treatment or sexual harassment of an employee at the workplace”, and further according to the text.

7. Article 374, paragraph (1) shall be supplemented with sub-paragraphs 1¹) and 6¹) with the following content:

„1¹) Monitoring the compliance by the employers with the obligations on preventing and eliminating cases of discrimination on the grounds of sex and sexual harassment in labour relations.”

6¹) ensuring the gender audit implementation in the field of labour.

8. Article 386 shall be supplemented with sub-paragraph (4¹) in the following wording:

“(4¹) In the detection of cases of discrimination on the criterion of sex and conditions that encourage them, cases of sexual harassment at the workplace, persecution cases for filing complaints against discrimination, trade unions are required to ask the heads of these units, competent public authorities to undertake the necessary measures in

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

order to eliminate them and punish the guilty persons in accordance with the legislation.”.

Article XV. – Law no. 190-XV of 8 May 2003 on Veterans (Official Gazette of the Republic of Moldova, 2003, no. 84-86, Article 392), with subsequent amendments and additions, shall be amended as follows:

1. Article 9, after the syntagma “a length of service” shall be supplemented with the syntagma “5 years more than the length of payment of contributions required to obtain the right to a pension for age limit, established in accordance with Article 42 of Law no. 156” and the syntagma “of at least 30 years for women and 35 for men” shall be excluded.
2. Article 16, paragraph 1, sub-paragraph c), after the syntagma “a length of service” shall be supplemented with the syntagma “10 years more than the length of payment of contributions necessary to obtain the right to a pension for age limit established in accordance with Article 42 of Law no. 156.” and the syntagma “at least 35 years for women and 40 years for men” shall be excluded and further according to the text.

Article XVI. – Code of civil procedure no. 225 of 30.05.2003 (Official Gazette,) with subsequent amendments and additions, shall be amended as follows:

1. Article 85, paragraph (1), sub-paragraph a) after the syntagma:
“ – for reintegration in service/work, claiming salary amounts and other claims related to labour relationships” shall be supplemented with the syntagma “reparation of the damage caused to the person subjected to discrimination on the criterion of sex in labour relationships.”.

“- reparation of the damage caused by body harm or other injury to health or death;” shall be supplemented with the syntagma “the reparation of the damage caused to the person subject to discrimination on the criterion of sex”.

2. Article 256, paragraph (1) shall be supplemented by sub-paragraph e) as follows:
“e) the injury caused to the person subject to discrimination on the criterion of sex”.

Article XVII. – Law no. 412-XV of 9 December 2004 on official statistics (Official Gazette of the Republic of Moldova, 2005, no.1-4, Article 8 of 07.01.2005), with subsequent amendments, shall be amended and supplemented as follows:

1. Article 4, paragraph (1), sub-paragraph a) shall read as follows: “current collection, processing, systematization, centralization, analysis, estimation of statistical information disaggregated based on the criterion of sex and its dissemination.”.
2. Article 9, paragraph (2) shall be supplemented with paragraph c¹):
“c¹) to ensure the collection, processing and generalization of statistical information disaggregated by sex;”
3. Article 10, paragraph (2) shall be supplemented with the following sub-paragraph a¹):

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

“*a*¹) to develop the methodology for collecting, processing and generalization of statistical information disaggregated by sex;”.

4. Article 19 shall be supplemented with paragraph (3) as follows:

“(3) Central and local public administration authorities, parties, other socio-political organizations, legal persons and natural persons engaged in the entrepreneurial activity shall submit the necessary information disaggregated by sex to the official statistics bodies.”.

Article XVIII. – Broadcasting Code no. 260-XVI of 27 July 2006 (Official Gazette of the Republic of Moldova, 2006, no.131-133, Article 679), with subsequent amendments and additions, shall be amended as follows:

1. Article 2 shall be supplemented with a new sub-paragraph m¹ as follows:

“m¹) *sexist advertising* – presentation (using words, sounds or images) intentional and/or unintentional, which promotes erroneous messages, discriminatory and/or degrading from the perspective of gender and reproduce sexist stereotypes, exploring the male and female sexuality, affecting the dignity and image of one of the genders.”.

2. Article 6, paragraph (1) shall be supplemented with a new sentence: “It is prohibited to use sexist language and violent and degrading images of women and men”.

3. Article 41, paragraph (1), sub-paragraph d, after the word “human” shall be supplemented with the following syntagma: “ensuring the respect for human rights, including the principle of equality between women and men” and further according to the text.

4. Article 41, paragraph (1), sub-paragraph e) shall be supplemented with the syntagma “ensuring the use of non-sexist language”.

5. Article 42, paragraph (1) shall be supplemented with a new sentence, which will be the second sentence, as follows:

“The Broadcasting Coordinating Council composition should ensure the balanced participation of women and men, ensuring a minimum share of 40 per cent representation of both sexes.”.

6. Article 45, paragraph (4), sub-paragraph c) shall be supplemented with the syntagma “, promoting the principle of equality between women and men in the personnel policy;”.

7. Article 52, paragraph (3) shall be supplemented with a new sentence as follows:

“In the personnel policy, they shall promote the principle of equality between women and men and shall exclude any form of discrimination based on sex criterion.”.

8. Article 56, paragraph (3), sub-paragraph c) shall be supplemented with a new sentence, which will be the second sentence, as follows:

“The composition of the Board of Observers should ensure the gender balance”. The syntagma “will be women, and at least 2 members” in the last sentence shall be excluded.

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

Article XIX. – Law no.436-XVI of 28 December 2006 on local public administration (Official Gazette of the Republic of Moldova, 2007, no. 32-35, Article 116), with subsequent amendments and additions, shall be amended as follows:

1. Article 14, paragraph (2) shall be supplemented with the following sub-paragraph o¹):
“o¹) ensure the integration and implementation of the principle of equality between women and men in policies, programmes, regulations and financial investments at the local level; approve programs and organize information campaigns in this field in accordance with the law; examine and decide on the reports and information of the mayors, information of the councilors regarding the situation in this field at the local level; develop partnerships with non-governmental and international organizations in the implementation of local policies in this field”.
2. Article 29, paragraph (1) shall be supplemented with the following sub-paragraph n¹):
“n¹) ensure the execution of decisions of the Local Council with a view to the implementation of policies to ensure equality between women and men in the locality, cooperate to that end with the state institutions and non-governmental and international organizations; coordinate the activity of the gender unit within the Mayor Hall; examine the complaints of persons considered victims of discrimination; contribute to education and public awareness with regard to the discrimination elimination”.
3. Article 39, paragraph (1) shall be supplemented with the following sub-paragraph c¹):
“c¹) ensure the execution of the gender unit’s obligations at the local level, ensuring the implementation of the principle of equality between women and men;”.
4. Article 43, paragraph (1) shall be supplemented with the following sub-paragraph s¹):
“s¹) ensure the integration of the principle of equality between women and men in policies, programmes, regulations and financial investments at the rayonal level; approve the programs and organize information campaigns in this area; appoint, under the law, the local gender unit, examine and adopt decisions on the reports about the situation in this field, develop partnerships with non-governmental and international organizations in order to prepare the policies in this field on the administered territory; examines the complaints of persons considered victims of discrimination; contribute to education and pulic awareness with regard to the elimination of discrimination”.
5. Article 51, paragraph (2) shall be supplemented with the following sub-paragraph c¹):
“c¹) ensure the fulfillment by the Rayon Chairman of the obligations with a view to the implementation of equal opportunities for women and men; ensure the hearing of the reports about the activity of the local gender units at the Rayonal Council meetings”.
6. Article 53, paragraph (1) shall be supplemented with the following paragraph p¹):
“p¹) ensure the execution of decisions of the Rayonal Council with a view to the implementation of equal opportunities for women and men in the locality, collaborate

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

with the state institutions and non-governmental and international organizations; coordinate and control the work of the gender unit within the Rayonal Council; organize hearing of the reports and information to this topic during the meetings of the Rayonal Council, propose solutions for improving the situation in the field; ensure the removal of discriminatory conditions and causes within 30 days; contribute to education and public awareness with regard to the elimination of discrimination”.

Article XX. – Law no.170-XVI of 19 July 2007 on the status of information and security officer (Official Gazette of the Republic of Moldova, 2007, no. 171-174, Article 667), with subsequent amendments and additions, shall be amended as follows:

1. Article 50:

in paragraph 1, sub-paragraph b), the last sentence, the syntagma “for women” shall be replaced with the words “information/liason officers” and further according to the text.

in paragraph 5, the word “Woman” is replaced with “Information Officer” and further according to the text.

Article XXI. - Law no. 162-XVI of 22 July 2005 on the status of the military (Official Gazette of the Republic of Moldova, 2005, no.129-131, Article 618), with subsequent amendments and additions, shall be amended as follows:

1. In article 32, paragraph (4), sub-paragraph j):

the words “to the military woman” and “woman military” shall be replaced with the word “to the military” and “military” respectively.

the syntagma “but shall not be included in the calendar duration of the military service” shall be excluded.

Article XXII. – Contravention Code no. 218-XVI of 24 October 2008 (Official Gazette of the Republic of Moldova, 2009, no. 3-6, Article 15), with subsequent amendments and additions, shall be amended as follows:

1. The Contravention Code shall be supplemented with Article 55¹ as follows:

„Article 55¹. Violation of legislation on providing equal opportunities for women and men

“(1) Committing discriminatory acts based on the criterion of sex, manifested through:

- a) announcement and organization of employment based on the requirements and criteria that set priorities or restrictions for one of the genders, except for the application of affirmative actions;
- b) requesting information about the marital status at employment;
- c) refusal to receive the application and employment records of persons of a certain gender;
- d) unjustified refusal to employ persons of a certain gender, as well as the refusal to employ women on grounds of pregnancy, breastfeeding or existence of a child or other family obligations;
- e) differentiated distribution on the grounds of sex, labour tasks, except for the application of affirmative actions;

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

- f) applying depending on the sex of different conditions of remuneration for the work of equal value;
- g) refusal to promote and admit in information and vocational programs, counseling programmes, training, continuous training and retraining, specialization on the grounds of sex;
- h) refusal to promote a person on the grounds of sex, at any hierarchical and professional level;
- i) modification or termination of individual labor contract on the grounds of sex, as well as unfounded dismissal of persons who uses parental child care leave and medical leave for child care;
- j) giving indications, use of pressure or inducing a behavior aimed at the discrimination on the criterion of sex;

shall be sanctioned with a fine from 40 to 80 conventional units applied to a physical person, with a fine from 80 to 150 conventional units applied to a person in a managerial position/official, with a fine from 100 to 180 conventional units applied to a legal person.

(2) Refusal to submit in written form, at the request of the person who is discriminated, the allegedly discriminatory decision motivation, as well as offering response violating the deadline laid down,

shall be sanctioned with a fine from 30 to 40 conventional units applied to the individuals, a fine from 45 to 50 conventional units applied in the case of a person in a managerial position.

(3) The persecution of a person for lodging a complaint against the discrimination based on the criterion of sex or in connection with sexual harassment,

shall be sanctioned with a fine from 40 to 50 conventional units applied to the natural persons, a fine from 50 to 80 conventional units applied to a person in a managerial position.

(4) Failure to comply with the legitimate requirements of the persons authorized to carry out inspections in the process of control and examination of applications on cases of discrimination based on the criterion of sex, manifested through refusal to submit or present information violating the period of the requested information, refusal to grant access to the documents and materials needed to execute the tasks, failure to comply with the recommendations and their prescriptions, preventing any other form of their activity,

shall be sanctioned with a fine from 30 to 50 conventional units applied to individuals, a fine from 40 to 60 conventional units applied to a person in a managerial position.”.

2. Article 89 shall read as follows:

Article 89. Purchase of sexual services

- (1) a person who buys occasional sexual services from another person, shall be sanctioned with a fine from 100 to 150 conventional units.
- (2) a person who provides premises and conditions for occasional sexual relations knowingly, thus supporting prostitution, shall be sanctioned with a fine from 50 to 100 conventional units.

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

4. Article 364, paragraph 6, after the word “imoral,” the word “sexist” shall be inserted and further according to the text.

5. Article 393:

Paragraph (1), sub-paragraph d) shall read as follows:

“d) the finding agent (specialized bodies referred to in article 400-423⁵)”.

6. shall be supplemented with the following Article 423⁵:

“Article 423⁵. Council for prevention and fight against discrimination

(1) Offences referred to in Article 55¹ are to be established by the Council for Prevention and Fight against Discrimination.

(2) Specialists with duties of a gender unit within specialized central public administration authorities and local public administration authorities have the right to establish offences and to conclude minutes regarding the committing of an offence according to the protection criteria.

(3) Reports/minutes on irregularities/offences shall be submitted for examination to the competent court”.

Article XXIII. – The law on public function and status of the civil servant no. 158-XVI of 04 July 2008 (Official Gazette of the Republic of Moldova, 2008, no. 230-232, article 840), with subsequent amendments and additions, shall be amended as follows:

1. Article 27:

Shall be supplemented with a new paragraph (3) as follows:

“Public authorities shall observe the principle of equality between women and men in the personnel policy and shall undertake measures to prevent any forms of discrimination based on the criterion of sex and sexual harassment”.

Article XXIV. – Law no. 100-XV of 26 April 2001 on civil status documents (Official Gazette of the Republic of Moldova, 2001, no. 97-99, article 765), with subsequent amendments and additions, shall be amended as follows:

1. Article 33: in paragraph (3), after the words “as provided by law, upon marriage” must be supplemented with the following words: “including the reciprocal information about the state of health”.

Article XXV. – Family Code no. 1316-XIV of 2 October 2000 (Official Gazette of the Republic of Moldova, 2001, no. 47-48, Article 210) with subsequent amendments and additions, shall be amended as follows:

1. Article 74, paragraph (1) shall be supplemented with the following sentence “Adult children who continue their studies in educational institutions (secondary, secondary specialized and higher educational institutions), shall benefit of a social allowance until completion of studies, without exceeding the age of 23 years old;

2. Article 13:

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

In paragraph (1), the word “binding” shall be excluded, and after the word “free of charge”, the following words: “with the informed consent of the person” shall be added;

In paragraph (2), the words “issuing a certificate confirming the passage of the investigation/control in question, which is to be submitted to the civil service bodies” shall be excluded;

In paragraph (3), the word “Government” shall be replaced with the words “Ministry of Health”.

Article XXVI. – Law no.289-XV of 22 July 2004 on social allowances for temporary work disability and other social insurance benefits (Official Gazette of the Republic of Moldova, 2004, no. 168-170, Article 773), with subsequent amendments and additions, shall be amended as follows:

1. Article 4 shall be supplemented with a new paragraph, which reads as follows:
 - (4) payment of the allowance for paternity leave is to be paid from the employer's financial resources.
2. Article 5, paragraph (1) shall be supplemented with sub-paragraph d¹) to read as follows: d¹) “paternity allowances; “
3. A new article 16¹ shall be added and shall read as follows:

“Article 16¹. Paternity Allowance

 - (1) Employees, who are entitled to paternity leave shall benefit of the paternity allowance.
 - (2) Paternity allowance shall be granted since the child's birth, for a period of 30 calendar days.
 - (4) The monthly amount of the paternity allowance is 100% of the calculation basis established in accordance with Article 7.“

Article XXVII. - Law no. 761 of 27.12.2001 on the diplomatic service (Official Gazette no. 20, article no. 80, published: 02.02.2002), with subsequent amendments and additions, shall be amended as follows:

1. Article 5, paragraph (2) shall be supplemented with the following new sentence: “The single system of diplomatic service is formed by ensuring the participation of women and men in an equitable proportion, by respecting the minimum participation share of 40% of both genders at all levels of the diplomatic service institutions.”

Article XXVIII – Law no.1133 of 04.08.1992 on the status of the diplomatic missions of the Republic of Moldova in other countries (Official Gazette no. 008, published on 17.04.1992), with subsequent amendments and additions, shall be amended as follows:

1. Article 8 shall be supplemented with the following new sentence:

OSCE/ODIHR Opinion on the Revised Amendments and Addenda Enhancing Gender Equality in Certain Legal Acts of the Republic of Moldova

“When appointing representatives of the country in international missions at all levels and in the work of international structures, the gender balance shall be observed, by complying with the minimum share of 40 percent of both sexes”.

Article XXIX. – Law on state social insurance pensions no.156 of 14.10.1998 (Official Gazette no.42-44, Article no. 247, published on 12.03.2004), with subsequent amendments and additions, shall be amended as follows:

1. Article 41 shall be supplemented with a new paragraph (1¹) as follows:

Starting from 1 January 2013, the retirement age for the right to a pension for age limit of 62 years old shall be established for men and women. In each subsequent year, the retirement age of women shall be increased by 6 months.

2. In Article 43, paragraph (1), the syntagma “Article 41, paragraph (1)” shall be replaced by the syntagma “Article 41, paragraph (1¹)”.

In paragraph (2), the syntagma “Article 41, paragraph (1)” shall be replaced with the syntagma “Article 41, paragraph (1¹)”.

3. Article 44, paragraph (2) shall read as follows:

“Starting from 1 January 2013, for civil servants, the retirement age is set at 62 years old for men and women”.

4. In Article 46, paragraph (1), the syntagma: “in Table no. 6” shall be replaced with the syntagma: “In article 44, paragraph (2)”.

In Article 46, paragraph (2¹), the syntagma “Article 41, paragraph (1)” shall be replaced with the syntagma “Article 41, paragraph (1¹)”.

5. Article 46¹, paragraph (2) shall read as follows:

“Starting from 1 January 2013, the retirement age for judges shall be of 62 years old for men and women”,

Paragraph (3) shall read as follows: “the contribution period shall be calculated in accordance with Article 42, paragraph (1¹)”.

6. Article 46², paragraph (2) shall read as follows:

“Starting from 1 January 2013, the retirement age for prosecutors shall be 62 years old for men and women”,

Paragraph (3) shall be reworded to read as follows: “the contribution period shall be calculated in accordance with Article 42, paragraph (1¹)”.