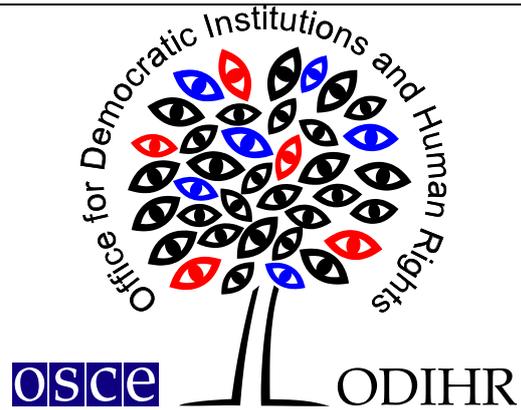


Warsaw, 29 October 2010

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OPINION

ON THE DRAFT

LAW ON PREVENTING AND COMBATING

DISCRIMINATION

OF THE REPUBLIC OF MOLDOVA

Based on an unofficial English translation of the draft Law

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Annex 1: Draft Law on Preventing and Combating Discrimination

1. INTRODUCTION

1. *In October 2007, the Minister of Justice of the Republic of Moldova (hereinafter “the Minister of Justice”) established an Anti-Discrimination Working Group. The Working Group prepared a draft Law on Preventing and Combating Discrimination, in June 2008 (hereinafter “the 2008 draft Law”). In September 2008, the OSCE/ODIHR provided Comments on the 2008 draft Law (hereinafter “the 2008 Comments”). The draft Law on Preventing and Combating Discrimination has subsequently undergone numerous revisions.*
2. *On 2 April 2010, the Minister of Justice sent an official letter to the ODIHR Director, in which he asked for ODIHR expertise on draft amendments to hate crime legislation in the Republic of Moldova and indicated that subsequently, he would be interested in an ODIHR evaluation of the most recent version of the draft of the Law on Preventing and Combating Discrimination (hereinafter “the draft Law”).*
3. *On 8 August 2010, the Deputy Minister of Justice sent a letter to the Head of the OSCE Mission to Moldova requesting the review of the draft Law. This letter included a link to the draft Law and the related Information Note on the Ministry of Justice’s website. The OSCE Mission to Moldova forwarded this request to OSCE/ODIHR, along with an English translation of the draft Law.*
4. *This Opinion is provided in response to the above request.*

2. SCOPE OF REVIEW

5. The scope of the Opinion covers only the above-mentioned draft Law, submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of all available framework legislation governing anti-discrimination in Moldova.
6. The Opinion raises key issues and provides indications of areas of concern. The ensuing recommendations are based on international standards and best practices on anti-discrimination, 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.¹ The Opinion also reflects the contents of previous OSCE/ODIHR Comments on the 2008 draft Law², as applicable.
7. This Opinion is based on an unofficial translation of the draft Law provided by the OSCE Mission to Moldova. Errors from translation may result.
8. 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

¹ Although Moldova is not a member of the EU, it aspires to meet the standards set by the EU in the field of anti-discrimination. The EU/Moldova Action Plan refers to the need to implement legislation on anti-discrimination and national minorities in line with EU standards, and also to fully execute judgments of the ECtHR. It also 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>.

² OSCE/ODIHR Comments on the draft Law of the Republic of Moldova on Preventing and Combating Discrimination, Opinion No. NDISCR-MK/117/2008 (TND), of 11 September 2008.

comments to the draft Law or related legislation that the OSCE/ODIHR may make in the future.

3. EXECUTIVE SUMMARY

9. The OSCE/ODIHR welcomes Moldovan legislation on anti-discrimination. Nevertheless, in order to ensure the full compliance of the said legislation with international standards, it is recommended as follows:

3.1 Key Recommendations

- A. to identify in the draft Law which areas of public and private law it should cover; [par 14]
- B. to specify the selection process for members of the Council for the Prevention and Combating of Discrimination (hereinafter “the Council”), and ensure that this process involves consultations with relevant stakeholders; [par 57]
- C. to ensure the financial independence of the Council and provide it with adequate staff and funding; [par 58]
- D. to provide the Council with the additional power to:
 - 1) issue binding decisions in complaints proceedings; [par 71]
 - 2) initiate proceedings before the Constitutional Court; [par 61]
 - 3) issue reports on relevant issues related to discrimination; [par 68]
 - 4) issue an annual report on discrimination in Moldova and its actions; [par pars 61 and 68]
- E. to specify in the draft Law which types of violations of its provisions should lead to which sanctions; [par 72]
- F. to clearly state in the draft Law which court or other procedure governs discrimination claims; [par 75]

3.2 Additional Recommendations

- G. to include references to the Equal Opportunities Law in the draft Law and clarify the relationship between both laws; [par 15]
- H. to amend Article 1 by:
 - 1) clarifying the meaning of nationality; [par 18]
 - 2) merging the terms “religion” and “religious conviction” and including non-religious belief in the list of protected characteristics; [19]
 - 3) including “colour” as a protected characteristic; [par 20]

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- I. to delete references to disadvantaged persons in Articles 1 and 2; [par 21]
- J. to amend Article 1 so that it displays a clear and limited list of protected groups with immutable characteristics; [par 27]
- K. to amend Article 2 by:
 - 1) deleting references to “rights and freedoms”; [par 28]
 - 2) including protection for persons discrimination due to assumed characteristics or by association; [par 31]
 - 3) expanding the definition of instigation to discrimination in Article 2 (e) to include other relevant factors; [par 33]
 - 4) amending the definition of “disability” in Article 2 (i) to match the definition found in the UN Convention on the Rights of People with Disabilities; [par 34]
- L. to review the draft Law and specify in all relevant provisions whether they refer to direct or indirect discrimination or to both; [par 29]
- M. to review the draft Law and Equal Opportunities Law to ensure that terminology is defined and used the same way in both laws; [par 30]
- N. to include in Articles 2 and 6 a ban on racial segregation; [par 32]
- O. to include objectively justified differences of treatment (now under Article 7 par 3) in the definition of indirect discrimination under Article 2; [par 35]
- P. to review Article 4 and whether grave forms of discrimination should lead to enhanced sanctions; [par 37]
- Q. to revise Article 7 par 1 to clarify the nature of permissible affirmative action; [par 41]
- R. to amend Article 8 by:
 - 1) including the discriminatory termination of employment in the list of employer’s actions considered to be discriminatory; [par 43]
 - 2) including in par 2 a ban on the establishment of favorable work schedules for certain persons; [par 44]
 - 3) differentiating between individual actions and generally discriminatory rules and practices; [par 45]
 - 4) including references to the permissibility of difference in treatment based on genuine occupational requirements; [par 46]
 - 5) including reasonable accommodation for disabled persons; [par 47]
- S. to incorporate in Article 10 references to the prohibition of discrimination in access to justice, political participation, and housing, as well as the need for public offices to provide disability access; [par 48]

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- T. to amend Article 11 by:
 - 1) also ensuring access to training and training processes, and to training institutions; [49]
 - 2) specifying the “effective legislation” that Article 11 par 2 refers to; [par 49]
- U. to review Chapter 3 and ensure that obligations and tasks of public bodies under the draft Law are outlined in greater detail; [par 51]
- V. to include in the draft Law the obligation for anti-discrimination bodies to cooperate and coordinate their activities; [par 53]
- W. to clarify the role of the Parliamentary Advocates with regard to discrimination issues and complaints and their relationship with the Council; [par 54]
- X. to specify in Article 13 reasons for which members of the Council may be recalled and the required parliamentary quorum to do so; [par 59]
- Y. to provide recalled members of the Council with the opportunity to respond to accusations related to the implementation of their mandate; [par 59]
- Z. to include the initiation and prioritization of conciliation procedures in Article 14; [par 60]
- AA. to specify the decision-making process of the Council; [par 62]
- BB. to extend the group of persons having the right to bring complaints before the Council; [par 63]
- CC. to clarify and strengthen the Council’s right to initiate proceedings on its own initiative; [par 64]
- DD. to amend Article 16 by:
 - 1) obliging the Council to provide written and reasoned decisions on the dismissal of a complaint; [par 65]
 - 2) specifying that the dismissal of a complaint due to the complainant’s failure to provide sufficient information should be preceded by explicit requests for information on the side of the Council; [par 65]
- EE. to amend Article 17 by:
 - 1) ensuring that respondent persons and offices are obliged to cooperate with the Council and specifying consequences for non-compliance; [par 66]
 - 2) including a time limit within which the Council undertakes to respond to a complaint and initiate proceedings; [par 67]
 - 3) ensuring that the complainant is informed regularly of the progress of his/her complaint; [par 67]
- FF. to amend Article 23 by:

- 1) ensuring all bodies receiving and processing complaints, including the Council, are held to maintain confidentiality of the identity and personal details of victims of discrimination at all times; [par 69]
 - 2) permitting media reports if they do not reveal victims' identities; [par 78]
 - 3) specifying which "special confidence rules" Article 23 is referring to; [par 78]
- GG. to include in the draft Law proceedings whereby victims of discrimination may receive compensation for damages and, if necessary, legal aid; [par 76]
- HH. to delete Article 22 or specify in it that public offices or companies may also be liable under the draft Law; [par 77]
- II. to amend Article 24 by:
- 1) referring to direct and indirect discrimination; [par 80]
 - 2) deleting the requirement to prove moral and material damages; [par 80] and
- permitting the use of statistical evidence in proceedings.[par 80]

4. ANALYSIS AND RECOMMENDATIONS

4.1 International Definitions and Standards Related to Anti-Discrimination Legislation

10. This Opinion analyzes the current draft Law from the viewpoint of its compatibility with relevant international human rights standards and OSCE commitments. International anti-discrimination standards are extensive; they can be found in generic human rights instruments such as the International Covenant on Civil and Political Rights³ (hereinafter "the ICCPR") (Article 26) and the European Convention on Human Rights and Fundamental Freedoms⁴ (hereinafter "the ECHR" or "the Convention") (Article 14, in combination with other articles of the Convention protecting individual rights and freedoms). Other more specific anti-discrimination conventions are also relevant in this context, such as the UN Convention on the Elimination of All Forms of Racial Discrimination⁵ (hereinafter "the CERD"), the UN Convention on the Elimination of All Forms of Discrimination Against

³ 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.

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

⁵ The International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly of the United Nations in resolution 2106 (XX) of 21 December 1965 and signed on 7 March 1966. The Republic of Moldova acceded to this Convention on 26 January 1993.

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Women⁶, and the UN Convention on the Rights of Persons with Disabilities (hereinafter “the CRPD”).⁷

11. Both Article 26 of the ICCPR and Article 14 of the ECHR protect individuals from discrimination based on an extensive and non-exhaustive range of grounds.⁸ The UN Human Rights Committee has defined discrimination as implying “any distinction, exclusion, restriction or preference” based on the grounds enumerated in Article 26, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of all persons, on an equal footing, of all rights and freedoms.⁹ The overall concept behind the anti-discrimination provisions in both the ICCPR and the ECHR is to prevent any difference in treatment of persons in a relevantly similar or analogous situation that is not based on “objective and reasonable” grounds.¹⁰
12. Under European Union law, numerous directives have reflected EU countries’ commitment to protecting equal treatment of all persons, in particular the “Employment Equality Directive” (Council Directive 2000/78/EC)¹¹, as well as directives specifically protecting equal treatment of men and women¹² and equal treatment irrespective of ethnic or racial origin¹³ (Council Directive 2000/43/EC, hereinafter also referred to as “the Racial Equality Directive”). The EU directives include clear and specific definitions of direct and indirect discrimination, as well as remedy and enforcement provisions and requirements for anti-discrimination/equality bodies. These bodies focus on the promotion of equal treatment and on the protection from discrimination.

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 Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. The Republic of Moldova ratified this Convention on 21 September 2010.

⁸ Article 26 states that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status”. Similarly, Article 14 foresees that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

⁹ See the UN Human Rights Committee’s General Comment No. 18 on Non-Discrimination, adopted at its thirty-seventh session on 10 November 1989, par 7. See similar definitions of specific forms of discrimination in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

¹⁰ See the UN Human Rights Committee’s General Comment No. 18, par. 13, and its admissibility decision in the case of *Balani v. Spain*, Communication No. 1021/2001, of 28 March 2003, par 4.3. See also, instead of others, the recent ECHR judgment in the case of *Carson and Others v. the United Kingdom*, no. 42184/05, of 16 March 2010, par 61.

¹¹ See the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, hereinafter “the Employment Equality Directive” or “Council Directive 2000/78/EC”.

¹² 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.

¹³ See Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial and ethnic origin.

13. Of the various OSCE Commitments focusing on equal treatment, the Vienna Document is perhaps one of the most specific in stressing that all OSCE participating States commit to ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁴

4.2. Key Terms and Principles in the draft Law

14. The scope of the draft Law is set out in Article 1 and states that it applies in areas of “politics, economics, social, culture, and other areas of life”. This definition is very broad, meaning that the draft Law could apply to any situation. Broad and vague terms such as ‘social’ or ‘culture’ could further imply this draft Law’s applicability to private relationships, which could potentially interfere with certain individuals’ right to private life under Article 8 of the ECHR. Therefore, at the outset, it is recommended to identify in the draft Law the areas of public and private life that should be regulated by such a law combating discrimination. The EU Racial Equality Directive indicates that such legislation should apply to all persons, in both the private and public sector, including to public bodies in relation to the following areas: employment vocational training; education; labour and trade organizations; social services (healthcare and social security); housing and the supply of services and goods.¹⁵
15. Additionally, it is noted that next to the draft Law, the Moldovan Law on Equal Opportunities specifically combats gender discrimination. In order to avoid confusion and overlaps, it is advised to include references to the Equal Opportunities Law in the draft Law (and *vice versa*). Such references need to be precise and clear, meaning they need to name the exact provision and law that they are referring to.¹⁶

¹⁴ The Concluding Document of Vienna – The Third Follow-Up Meeting, Vienna, 15 January 1989, Questions Relating to Security in Europe, Principles, par 13.8. ¹⁴ The Ministerial Council Decision 4/03 on Tolerance and Non-Discrimination of 2 December 2003 reaffirmed the Ministerial Council’s concern about discrimination in all participating States and the Permanent Council Decision no. 621 of 29 July 2004 on Tolerance and the Fights against Racism, Xenophobia and Discrimination committed participating States to consider enacting, or strengthening, as appropriate, legislation prohibiting discrimination.

¹⁵ See Article 3 of Council Directive 2000/43/EC. See also General Policy Recommendation No. 7 of the Council of Europe’s European Commission against Racism and Intolerance (hereinafter “ECRI”) on National Legislation to Combat Racism and Racial Discrimination, adopted on 13 December 2002, Explanatory Memorandum pars 17-26. The Memorandum to the Minister of Justice of Moldova by the UN Country Team, Moldova, on the draft Law to Prevent and Combat Discrimination of 10 September 2010 (hereinafter “the UN Memorandum on the draft Law”) also outlines numerous areas that should be covered by the draft Law in its Section 2.

¹⁶ In this context, see the OSCE/ODIHR Assessment of the Legislative Process in the Republic of Moldova, Legis Paper-Nr.: 167/2010 (LH/YA), of 15 September 2010, Section 4.19: “Incorporating by reference provisions of other legislation is not an ideal drafting technique, but can be justified in some circumstances. It is not ideal because it obliges the user of the legislation to refer to one or more pieces of other legislation to determine the law. From the perspective of the drafter referential drafting may be a convenience, but it may well also lead to the indiscipline of not carefully checking that parallel or related legislative provisions are consistent with what is being drafted. However, where the incorporation of other provisions is not by precise reference but by vague generalisation it has to be regarded as poor drafting, whether or not it is technically effective. In that case, it makes it extremely

16. The relationship between the Law on Equal Opportunities and the draft Law also needs to be specified in both laws. In particular, it is necessary to specify which law applies in which situations and how the different bodies established in both pieces of legislation inter-act (see also par 53 *infra*).¹⁷

4.2.1. Individual Protected Characteristics

17. Further, Article 1 provides for equal treatment irrespective of certain protected characteristics: “race, nationality, ethnic origin, language, religion, religious conviction, sex, age, health condition, disability, sexual orientation, opinion, political affiliation, wealth, social origin, belonging to a group of disadvantaged persons, as well as any other criteria”.
18. While particularly the inclusion of disability and sexual orientation in this provision is very much welcomed, a number of the terms listed in Article 1 would benefit from a degree of clarification. For example, the meaning of nationality should be clarified, in particular the draft Law should specify whether nationality refers to citizenship, as under certain international law agreements¹⁸, or to ethnicity or ethnic origin, as appears to be the practice in Moldova.¹⁹ It is recommended to amend the draft Law accordingly.
19. Article 1 protects both religion and religious conviction, but does not refer to non-religious belief. While the distinction between religion and religious belief is not clear, it should be borne in mind that international agreements such as the ICCPR (Article 18) and the ECHR (Article 9) protect both religion and belief. This demonstrates that on an international level, deeply held conscientious beliefs that are fundamental about the human condition and the world, such as atheism and agnosticism, are entitled to the same protection as religious beliefs.²⁰ It is thus recommended to clarify Article 1 by merging the terms “religion” and “religious conviction” and including (non-religious) belief in the list of protected characteristics.
20. Moreover, it is recommended to include, for the sake of completeness, the term “colour” in the list of protected characteristics, in order to make Article 1 consistent with both the ICCPR and the ECHR.²¹
21. Finally, it is noted that the protected characteristic of “belonging to a group of disadvantaged persons” is quite vague. The definition of disadvantaged person in Article 2 as a “socially vulnerable person, who is in a situation that prevents

difficult for the user, even the legally qualified user, to determine the law. Often incorporation by vague descriptive reference is a result of pressures of time, inadequate mechanisms for identifying related legislation or simply limited human resources.”

¹⁷ See OSCE/ODIHR Comments on the draft Law of the Republic of Moldova on Preventing and Combating Discrimination of 2008, A. Definitions.

¹⁸ See, e.g., Article 2 (a) of the Council of Europe’s Convention on Nationality, adopted on 6 November 1997, stating that “nationality” means the legal bond between a person and a State and does not indicate the person's ethnic origin”.

¹⁹ In the Romanian language, the term “*naționalitate*” refers more to ethnicity or ethnic origin than to citizenship.

²⁰ See the OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion and Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in consultation with the European Commission for Democracy through Law (Venice Commission), 2004, p. 8.

²¹ See Article 26 of the ICCPR and Article 14 of the ECHR.

his/her normal economic, social or other activity” is equally unspecific. When drafting anti-discrimination legislation, it is important to focus on specific breaches of the right to equal treatment typically experienced by certain groups because of their fundamental characteristics. From Articles 1 and 2, it is not possible to determine who would qualify as a “socially vulnerable person”, nor what would constitute a situation preventing normal economic, social or other activity. Such terminology represents sociological concepts that are difficult to restrict to a legal definition.²² As such, it may be subject to broad and diverse interpretation, thus limiting the likelihood that the characteristic of “belonging to a group of disadvantaged persons” can be given meaningful protection in practice. It is recommended to delete the references to disadvantaged persons in Articles 1 and 2, to avoid difficulties and inconsistencies in applying the law.

4.2.2. Limiting the List of Protected Characteristics

22. Additionally, the remaining list of protected characteristics is very wide and appears to try to protect all potentially vulnerable groups in all possible situations. While Article 26 ICCPR and Article 14 of the ECHR are similarly wide in scope, it is questionable whether such an approach is practicable in domestic legislation. As already mentioned in the 2008 Comments, an excessively wide legal scope may lead to an inconsistent application of the law.²³ It is advisable to begin with comprehensive legislation that has a narrow focus of victim groups, rather than having a law with a broad scope that has little chance of being applied.²⁴
23. In its case law, the European Court of Human Rights (hereinafter “the ECtHR”) has highlighted several characteristics of persons or groups that are afforded significant protection against discrimination. Those groups include nationality,²⁵ race/ethnicity,²⁶ gender,²⁷ religion²⁸ and sexual orientation.²⁹ These groups all have “immutable characteristics”,³⁰ meaning characteristics that are deeply personal and unchangeable and are thus considered to be in need of special protection.
24. With fundamental characteristics such as race or gender, there would be few, if any, objectively reasonable grounds to discriminate, for instance, in

²² OSCE/ODIHR Comments on the draft Law of the Republic of Moldova on Preventing and Combating Discrimination of 11 September 2008, II, A.

²³ Ibid.

²⁴ Ibid.

²⁵ See ECtHR judgment of *Gaygusz v. Austria*, 16 September 1996, application no. 17371/90.

²⁶ See *Nachova v. Bulgaria*, GC judgment of 6 July 2005, application nos. 43577/98, 43579/98.

²⁷ See ECtHR judgment of *Abdulaziz, Cabales, and Balkandalis v. United Kingdom*, 28 May 1995, application nos. 9214/80, 9473/81, 9474/81. See also the more recent case of *Opuz v. Turkey*, application no. 33401/02, of 9 June 2009, where the Court found for the first time that gender-based violence constituted discrimination under the ECHR (par 200).

²⁸ See e.g., ECtHR judgment of *Hoffmann v. Austria*, application no. 12875/87, judgment of 23 June 1993.

²⁹ See e.g., ECtHR judgment of *S.L. v. Austria*, 9 January 2003, application no. 45330/99. See also the recent judgment of *Alekseyev v. Russia* of 21 October 2010, application nos. 4916/07, 25924/08 and 14599/09.

³⁰ J. Atsu Amegashie: A Positive Theory of Immutable Characteristics and Discrimination, University of Guelph, Ontario, publication of 4 March 2009, p. 3.

employment, housing or education. With regard to other characteristics listed in Article 1, it may be necessary to differentiate between the types of discrimination faced by different groups, e.g. age groups or persons with disabilities,³¹ and appropriate measures to address them.³²

25. On the other hand, the categories of opinion, political view, wealth, social origin or ‘any other criteria’ are very difficult to identify as grounds for discrimination, and there may be more objectively legitimate reasons for a difference in treatment. For example, in the area of housing, it is questionable whether it is unjustifiable to not lease an apartment to a family who objectively does not possess the purchasing power to make a certain rent payment each month. On the other end of the spectrum, would it be unjustifiable to exclude families with significant income from a housing development designed for low-income residents?
26. In Article 1, the list of characteristics is left open ended (“based on any other criteria”). Such open-ended lists may prevent those applying the law and those seeking protection by the law from having a clear understanding of which characteristics or situations will be covered. Again, this may have negative consequences for the proper and consistent implementation of the law.³³
27. Therefore, reiterating what was already recommended in the 2008 Comments, it is advised to include in Article 1 of the draft Law a clear and limited list of groups with immutable characteristics and to protect certain groups, such as age groups and persons with disabilities, in separate provisions containing measures tailored to the specific needs of these groups.

4.2.3. Basic Terms and Definitions

28. Article 2 of the draft Law contains a list of basic terms and their definitions. Discrimination is defined as “any distinction, exclusion, restriction or preference in respect of the rights and freedoms of a person”. This definition may be too limited, since not all cases of discrimination will necessarily infringe a person’s rights or freedoms.³⁴ It is therefore recommended to delete the reference to rights and freedoms from Article 2.
29. It is welcomed that the definitions of direct and indirect discrimination contained in this provision largely correspond to the definitions found, e.g. in the EU Employment Equality Directive and the EU Racial Equality Directive. However, while the differentiation is made in Article 2, this is not the case throughout the draft Law. Instead, the draft Law merely speaks of “discriminatory” actions or discrimination (see, e.g., Articles 8-11), but throughout does not specify whether this refers to direct or indirect discrimination or to both. This is particularly important in the field of employment (see also par 45 *infra*), or when discussing sanctions for

³¹ OSCE/ODIHR Comments on the draft Law of the Republic of Moldova on Preventing and Combating Discrimination of 11 September 2008, II, A.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*, III, with examples: For example, a person may be barred from entering a nightclub due to his/her ethnicity or colour, but this will not constitute a violation of his/her rights or freedoms, since entering a nightclub does not affect his/her human rights.

discriminating behaviour (par 72 *infra*). It is recommended to review the draft Law and clarify in all relevant provisions whether they refer to direct or indirect discrimination or to both.

30. Further, it is noted that the definitions of certain terms found in Article 2 do not correspond to definitions of the same terms in the Law of the Republic of Moldova on Ensuring Equal Opportunities for Women and Men (hereinafter “the Equal Opportunities Law”).³⁵ For example, indirect discrimination under the present draft Law is “any apparently neutral provision, action, criterion or practice, which has the effect of placing a person at a disadvantage in comparison with another person.” In Article 2 of the Equal Opportunities Law, the definition of “indirect discrimination on the criterion of sex” lacks the reference to an apparently neutral provision, speaking instead of “any action, rule, criterion or practice, identical for women or men”. It is recommended to review both the draft Law and the Equal Opportunities Law to ensure that all terminology is defined and used in the same way in both laws³⁶, in order to prevent cases of sexual or gender discrimination to be treated differently than other cases of discrimination³⁷.
31. The definitions of ‘discrimination’, ‘direct discrimination’ and ‘indirect discrimination’ currently found in Article 2 do not include protection for persons who are discriminated by virtue of assumed characteristics (meaning where a person is wrongly believed to belong to a particular group) or by association (meaning because they associate with persons from a different, protected group). These are important grounds of discrimination and it is recommended that the above definitions should group such cases.³⁸
32. It is further recommended to include in both Article 2 and in Article 6 of the draft Law (prohibition of discrimination) a ban on racial segregation, which would make the draft Law compliant with the International Covenant on the Elimination of All Forms of Racial Discrimination.³⁹
33. Article 2 (e) is welcomed in that it defines the instigation to discrimination. At the same time it is noted that such instigation is not followed by any specific sanctions or consequences in the other chapters of the draft Law. Furthermore,

³⁵ Law on Ensuring Equal Opportunities for Women and Men, No. 5/XVI of 9 February 2006, Official Monitor of the Republic of Moldova, No. 47-50/200 of 24 March 2006.

³⁶ In this context, see also the definitions of “discrimination”, which are close, but not the same in both legislation (the definition in Article 2 of the Equal Opportunities Law states that discrimination on the criterion of sex shall be aimed at or followed by a limitation or impediment of recognition, exercise, and/or implementation of fundamental human rights and freedoms, while Article 2 of the draft Law merely speaks of discriminatory actions “in respect of the rights and freedoms of a person”).

³⁷ See similar recommendations in the OSCE/ODIHR Comments on the draft Law of the Republic of Moldova on Preventing and Combating Discrimination of 11 September 2008, II, A.

³⁸ See the ECJ decision in the case C-303/06 of *Coleman v. Attridge Law and Steve Law*, in which the ECJ reiterated the ban on discrimination by association.

³⁹ See General Policy Recommendation No. 7 of the Council of Europe’s European Commission against Racism and Intolerance (hereinafter “ECRI”) on National Legislation to Combat Racism and Racial Discrimination, adopted on 13 December 2002, III, 6, stating that general legal principles and the definition of discrimination should cover, inter alia, “segregation”. In par. 16 of the Explanatory Memorandum thereto, segregation is defined as “an act by which a (natural or legal) person separates other persons on the basis of one of the enumerated grounds [in the Convention] without an objective and reasonable justification. See also the Memorandum to the Minister of Justice of Moldova by the UN Country Team, Moldova on the draft Law to Prevent and Combat Discrimination of 10 September 2010, Section 2.

the definition itself appears to be quite narrow as it only covers cases where a person abuses another's "subordinate position" to exert pressure on the other.⁴⁰ It may be worthwhile to consider that instigation to discrimination may also occur in cases where there is no hierarchical relationship between two people, but where other factors induce a person to act according to the instigator's wishes, e.g. a business relationship or convincing, but untrue negative allegations about the victim. It is recommended to debate this issue and expand the definition of instigation to discrimination accordingly in Article 2 (e).

34. Article 2 i) defines disability as an "inborn or acquired limited physical or mental capability, causing substantial negative effects on one's capacity to perform certain activities and placing one at a disadvantage as compared to persons possessing full capabilities". Given the Republic of Moldova's recent ratification of the UN Convention on the Rights of Persons with Disabilities⁴¹, it is recommended to amend the definition in Article 2 i) to cover not only physical or mental disabilities, but also intellectual and sensory impairments, as found in Article 1 of the Convention on Disabilities. Further, Article 1 of this Convention stresses the long-term nature of such impairments⁴², and focuses on the fact that these prevent disabled individuals from fully and effectively participating in society on an equal basis with others, which is more specific than merely mentioning the fact that these persons are "disadvantaged" in comparison to other persons.⁴³
35. Article 7 of the draft Law describes situations where difference in treatment does not amount to discrimination. While pars 1 and 2 of this provision speak of affirmative action (see further discussion on this topic in pars 38-41 *infra*), par 3 of Article 7 states that the limitation of a certain right is not discrimination if it is objectively justified by a legitimate purpose, and the means for achieving the purpose were proportionate, adequate and necessary. In this context, it is recommended to specify also in Article 2 that indirect discrimination will only occur if the difference in treatment is not based on objectively justifiable reasons, i.e. if it cannot be determined that the means for achieving a legitimate aim were proportionate, adequate and necessary.⁴⁴

4.2.4 Grave Forms of Discrimination

36. Article 4 highlights certain acts which are deemed to be more serious types of discrimination. These include, e.g., the support of discrimination through mass

⁴⁰ OSCE/ODIHR Comments on the draft Law of the Republic of Moldova on Preventing and Combating Discrimination of 11 September 2008, II, A.

⁴¹ See footnote 7 *supra*.

⁴² In this context, see the *Chacón Navas v Euresit Colectividades SA*, Case C-13/05, judgment of 11 July 2006, pars 43-45: "the concept of disability must be understood as referring to a limitation that results in particular from physical, mental or psychological impairments and which hinders the participation of a person in professional life [...] In order for the limitation to fall within the concept of "disability", it must therefore be probable that it will last for a long time."

⁴³ Article 1 of the Convention on Disabilities states, in full: "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".

⁴⁴ See Article 2 par 2 (b) of the Racial Equality Directive and Article 2 par 2 (b) of the Employment Equality Directive.

media (Article 4 (c)), posting discriminatory messages or symbols in public places (Article 4 (d)), discrimination on the grounds of two or more criteria (Article 4 (e)), or discrimination committed by two or more persons (Article 4 (f)). However, the draft Law does not indicate the purpose of this Article; it does not imply enhanced sanctions for these types of discrimination, and Article 4 is not referred to anywhere else in the draft Law. Therefore, this provision seems to have little, if any, legal effect.

37. For this reason, it is recommended to review this provision and its intended legal effect, in particular whether grave forms of discrimination should meet with enhanced sanctions or other special consequences. At the same time, Articles 4 (c) and (d) should be reviewed to ensure these provisions' compliance with each individual's freedom of expression under Article 10 of the ECHR. It should be clear which forms of discrimination in the media or in public places would be so serious as to go beyond the protected freedom of expression by constituting grave forms of discrimination.

4.2.5 Affirmative Action to Combat Discrimination

38. Article 2 g) defines affirmative action measures which aim at expediting effective equality between people and shall not constitute discrimination. Article 7 par 1 is more specific in that affirmative measures shall be in favor of a person, group of persons or community, and shall aim at ensuring their natural development and the effective enjoyment of equal opportunities. Such measures shall apply until equality and social inclusion are achieved (Article 7 par 2).
39. In this context, it is noted that using affirmative action to promote full and effective equality can be an important tool to combat entrenched societal patterns of discrimination. This usually involves specific strategies targeting specific groups who face systematic discrimination.⁴⁵ However, such measures should have their limits and should not turn into a form of "positive discrimination" by automatically providing certain benefits or privileges to groups who suffer from systematic discrimination. Rather, affirmative action denotes a duty upon the State not only to remedy acts of discrimination but to take affirmative steps to eradicate patterns of institutionalized discrimination.⁴⁶ Affirmative action should only be undertaken in cases where it has an objective legal aim and is proportionate and necessary to reach this aim.
40. The current formulation in Article 7 par 1 is vague and open to various interpretations. While this provision appears to be designed to prevent or compensate for discrimination experienced by certain groups, the phrase "public measures in favor of" seems to suggest some form of preferential

⁴⁵ See UN Human Rights Committee's General Comment No. 18 on Discrimination, adopted by the Committee at its 948th meeting, on 9 November 1989, par 10: "In a State where the general conditions of a certain part of the population prevent or impair the enjoyment of human rights, the State should take specific action to correct these conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination in fact, it is a case of legitimate differentiation under the Covenant."

⁴⁶ See Cohen, B. "Positive Obligations: Shifting Burdens in Order to Achieve Equality" *Roma Rights Quarterly*, Number 1, 2005.

treatment, possibly even automatic preferential treatment. Also, it is not clear how the competent authorities will determine that “equality and social inclusion” of disadvantaged groups has been achieved.

41. It is therefore recommended to revise Article 7 par 1; this provision should clarify that affirmative measures will not be taken automatically, but as considered necessary to enhance equal treatment of certain groups or communities that are at that moment, and following careful research and review, considered under-privileged in certain sectors.

4.3. Special Provisions

42. While Chapter II on Special Provisions (Articles 8-11) enumerates the prohibition of discrimination in employment, public access to goods and services, and education, it could still benefit from certain clarifications.
43. Article 8 prohibits discrimination in the field of labour. While par 1 of Article 8 includes a general prohibition of discrimination, par 2 provides examples of which type of employer’s actions shall be considered discriminatory. It is noted that this provision does not address the unlawful termination of employment based on discrimination. While Article 9 par 3 (b) does mention this issue by stating that employers shall use the same evaluation criteria for dismissing staff members, it would, for completion’s sake, be beneficial to include it in Article 8 par 2 as well. It is recommended to amend Article 8 par 2 accordingly.
44. Further, next to the differentiated distribution of labour tasks (Article 8 par 2 (e)), it is recommended to also forbid in the draft Law the establishment of favourable work schedules for certain persons, except as provided by legislation based on objective and reasonable grounds (see Article 11 par 1 (c) of the Equal Opportunities Law).
45. In particular in the field of labour, the draft Law should differentiate between the prohibition of direct discrimination on the one hand and indirect discrimination on the other. Article 8 should specify that not only individual actions or behaviour, but also general rules or practices that indirectly discriminate certain groups for no justifiable reason shall be prohibited. It is advised to expand Article 8 accordingly. This provision should also be reviewed for its compliance with relevant provisions of the Labour Code of Moldova.⁴⁷
46. In addition to the generally permissible difference in treatment described in Article 7 of the draft Law, it is recommended to include in Article 8 references to the permissibility of difference in treatment based on a genuine and determining occupational requirement.⁴⁸ This means that in cases where employers can prove that a certain characteristic, e.g. a specific ethnic origin

⁴⁷ Labour Code of the Republic of Moldova, No. 154-XV, of 28 March 2003.

⁴⁸ See Article 4 of the Racial Equality Directive and Article 4 of the Employment Equality Directive.

or religious affiliation, is a genuine and decisive requirement for a certain occupation, such difference in treatment will not constitute discrimination.⁴⁹

47. At the same time, both the Employment Equality Directive and the Convention on the Rights of Disabled Persons (hereinafter “the CRDP”) provide for a reasonable accommodation for disabled persons in the employment sector.⁵⁰ This involves taking appropriate measures to provide disabled persons with access to, participation in, or advancement in employment or training, provided such measures do not impose a disproportionate burden on the employer. Especially given the Republic of Moldova’s recent ratification of the CRDP, it is recommended to include such reasonable accommodation in the draft Law.
48. Article 10 prohibits discrimination in the access to goods and services available to the public and lists examples of such services. The “services provided by public authorities” (Article 10 a)) should include access to the administration of justice⁵¹ and political participation through the rights to vote and hold political office.⁵² Additionally, Article 10 should also include a direct reference to the prohibition on discrimination in the area of access to housing.⁵³ In order to ensure the draft Law’s compliance with the CRDP, it is recommended to include, in particular in the provisions on employment and goods and services, the obligation for public offices to provide disability access to disabled persons, as laid out in Article 9 of the CRDP.
49. Article 11 deals with the prohibition of discrimination in education. In order to enhance the effectiveness of this provision, it is recommended to expand its scope throughout by ensuring equal access not only to education, but also to training and training processes.⁵⁴ Article 11 should also include specific references to disabled persons, as found in Article 24 of the CRDP. In Article 11 par. 2, it is recommended to specify that education/training institutions cannot establish admission principles based on restrictions that are themselves based on direct or indirect discrimination. For the moment, Article 11 par 2 only speaks of “certain restrictions”. Also, it is recommended to specify in Article 11 par 2 which “effective legislation” it refers to as a basis for restrictive admission procedures.

4.4. The Institutional Framework for Preventing and Combating Discrimination

⁴⁹ For example, when issuing a vacancy for a model for women’s clothes, the employer could argue that being female is a genuine occupational requirement for the position. The same could apply in cases where religious schools are hiring teachers.

⁵⁰ See Article 5 of the Employment Equality Directive and Articles 5 par 3 and 27 par 1 (i) of the CRDP. See also the Memorandum to the Minister of Justice of Moldova by the UN Country Team, Moldova on the draft Law to Prevent and Combat Discrimination of 10 September 2010, Section 2.

⁵¹ Prohibitions against unequal access to justice are found in Articles 5(a)-(b) of the UN Convention on the Elimination of All Forms of Racial Discrimination (hereinafter “CERD”) and in Articles 6 and 13, in conjunction with Article 14, of the European Convention on Human Rights and Fundamental Freedoms (ECHR).

⁵² Prohibitions against unequal access to political participation are found in Article 5(c) of the CERD and in Article 14 of the ECHR in conjunction with Article 3 of Protocol No. 1 to the Convention.

⁵³ See Article 3 (h) of the EU Directive 2000/43/EC, see also Article 5 (e) (iii) of the CERD.

⁵⁴ See Article 13 of the Equal Opportunities Law, which specifically speaks of “education and/or training”, and Article 5 (e) (v) of the CERD.

50. Under Chapter III, the draft Law lists institutions that are tasked to fight discrimination, as well as their competences and procedures. Chapter IV of the draft Law specifies the liability for discriminatory acts and certain related procedural matters.
51. It is noted that, as opposed to the Equal Opportunities Law, Chapter III does not mention any specific obligations of selected government or other public bodies. While the Equal Opportunities Law contains special obligations for parliament, government, the Ministry of Health and Social Protection and other administrative authorities, the draft Law remains very vague on this point. It merely indicates in Article 19 that “central and local public administration authorities” shall, *inter alia*, examine complaints and coordinate and conduct certain activities. However, the nature of these central and local public administrative authorities is not specified.⁵⁵ In order to ensure the proper and coordinated functioning of state action against discrimination, the draft Law should be made more specific in this respect. It is recommended to review Chapter III and ensure that obligations and tasks of public bodies will be outlined in greater detail, as in the Equal Opportunities Law.

4.4.1 Anti-Discrimination Bodies

52. According to Article 12 of the draft Law, three types of bodies are vested with duties in the field of preventing and combating discrimination, namely the Council for the Prevention and Combating of Discrimination (hereinafter “the Council”), authorities of central and local public administration and public associations. At least two of these bodies (the Council and public administration authorities) are competent to receive discrimination complaints, while all three bodies share a number of competences in the field of preventing and combating discrimination.
53. In such situations, it is essential that these bodies cooperate and coordinate, as needed. All three bodies should keep each other informed of their activities, to avoid duplication of work and addressing of complaints. Therefore, it is recommended to include in the draft Law the obligation for all bodies to cooperate and to coordinate their activities. It would also be good to specify how the above bodies will coordinate with the Governmental Committee for Equality between Women and Men, established by Article 18 of the Equal Opportunities Law.
54. In this context, it is noted that the draft Law does not mention the Parliamentary Advocates, who according to Article 1 of the Law on Parliamentary Advocates are mandated to guarantee and ensure human rights.⁵⁶ Given that freedom from all forms of discrimination is specifically listed in human rights instruments such as the ICCPR (Article 26) and the ECHR (Article 14), the mandate of the Parliamentary Advocates would appear to also cover complaints against discrimination by public authorities. It is thus

⁵⁵ OSCE/ODIHR Comments on the draft Law of the Republic of Moldova on Preventing and Combating Discrimination of 11 September 2008, III.

⁵⁶ Law on Parliamentary Advocates, no. 1349, adopted on 17 October 1997, Official Gazette No. 82-82 of 11 December 1997, last amended on 12 June 2008.

vital to clarify the relationship between the Parliamentary Advocates as a general human rights protection mechanism and the Council as a specific anti-discrimination body. Ideally, the legal basis for the Parliamentary Advocates should specify that anti-discrimination complaints should be forwarded to the Council as the more specialized body. At the same time, both bodies should collaborate with regard to cases involving alleged discrimination and multiple other human rights issues. It is recommended to clarify this matter in both the draft Law and the Law on the Parliamentary Advocates.

4.4.2 The Council for Prevention and Combating of Discrimination

55. For the effective implementation of anti-discrimination legislation, victims should have access to effective remedies and for this purpose, a clear procedure should be in place. The draft Law has created the Council as a collective body to ensure protection against discrimination and equality of opportunity and treatment for all persons considering themselves to be victims of discrimination (Article 13 par 1 of the draft Law). Also according to Article 13 par 1, the Council shall function impartially and independently from other public authorities.
56. This corresponds to the basic necessary elements of effective human rights institutions listed in the United Nations Principles relating to the status of national institutions⁵⁷ (hereinafter “the Paris Principles”). These elements include ensuring independence of the human rights body, in particular financial independence, as well as the human rights institution’s involvement in all matters pertaining to human rights. The latter element also extends to individual human rights complaints.
57. In this context, it is noted that Article 13, while referring to the Council’s independence and impartiality, does not define how this is ensured. Article 13 par 2 specifies that the Council shall consist of 5 members appointed by the Parliament, but does not mention how these members are selected, what their minimum qualifications shall be and whether there are any criteria in place to ensure gender balance and ethnic diversity of Council members.⁵⁸ In order to ensure real independence and at the same time acceptance of the Council by all parts of the population, it is recommended to specify the selection process for members of the Council in the draft Law and ensure that it involves consultations with various government and non-governmental organs, including those promoting gender equality and ethnic diversity.⁵⁹ Once appointed, in order to further safeguard independence of their posts, Council members should be granted an appropriate level of immunity in carrying out their responsibilities. .

⁵⁷ Defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by Human Rights Commission Resolution 1992/54, 1992 and General Assembly Resolution 48/134, 1993.

⁵⁸ In this context, see the also the Memorandum to the Minister of Justice of Moldova by the UN Country Team, Moldova on the draft Law to Prevent and Combat Discrimination of 10 September 2010, Section 1, which includes a list of general criteria for mandate-holders in the Special Procedures of the United Nations Human Rights Council.

⁵⁹ See the Paris Principles, Composition and guarantees of independence and pluralism, par 1.

58. Moreover, the Council needs receive adequate funding to ensure its proper functioning. In order to ensure real independence from any other public authority, as required by Article 13 par 1, the Council should not be under the financial control of any other public authority or institution.⁶⁰ Also, the independence of Council members could be better ensured if they were properly remunerated for their work. It is recommended to specify these points in the draft Law, possibly in Article 27 on financing, and to provide the Council with sufficient funds and staff to ensure its independence and effectiveness.
59. Furthermore, Article 13 par 3 is quite vague as to the circumstances under which Council members may be recalled by Parliament, merely stating that, *inter alia*, this may occur “where there arise circumstances excluding further exercise of mandate”. Consequently, the Parliament has near to unlimited power to recall any member of the Council, which may clearly impinge on the impartiality and independence of Council members. It is thus recommended to specify precisely the reasons for which a member of Council could be recalled, and the requisite quorum. In the interests of transparency, it would also be advisable to, in addition to ordinary legal recourse, provide the respective member of the Council with the possibility to respond to accusations related to his/her ability to hold office in a public hearing before Parliament.
60. As to the tasks of the Council, it is noted that its numerous duties outlined in Article 14 do not include conciliation procedures. The Council’s duty to contribute to the amicable settlement of disputes is merely mentioned briefly in Article 17 par 4 in relation to the examination of a complaint. In the EU Equality Directives and the Paris Principles, conciliation procedures are mentioned specifically and appear to be given the same weight as judicial or administrative procedures.⁶¹ In order to reflect the importance of the conciliatory settlement of disputes in this field, it is recommended to include the initiation and prioritization of conciliation procedures in the duties of the Council under Article 14.
61. Further, while Article 14 b) speaks of the Council’s duty to keep records of compliance of effective legislation with non-discrimination standards, this duty will only have practical effect if non-compliance with such standards is raised. Ideally, this would happen either through the initiation of proceedings before the Constitutional Court, or through mention in an annual report submitted by the Council to the Parliament. It is recommended to include both possibilities, but at least the option of inclusion in an annual report in the draft Law.

4.4.3 The Complaints Procedure before the Council

62. Articles 15 – 18 of the draft Law outline proceedings before the Council. In this context, it would be beneficial for the draft Law to specify the decision-

⁶⁰ See the Paris Principles, Composition and guarantees of independence and pluralism, par. 2.

⁶¹ See Article 7 par 1 of the Racial Equality Directive and the Paris Principles, Additional principles concerning the status of commissions with quasi-jurisdictional competence, (a), see also OSCE/ODIHR Comments on the draft Law of the Republic of Moldova on Preventing and Combating Discrimination of 11 September 2008, II, B.

making procedure of the Council. The draft Law currently does not reveal how many members of the Council shall form a decision-making quorum, in other words how many members of the Council need to be present in order for the Council to take any decision. Also, it should be clear whether decisions need to be taken unanimously or whether a majority decision is sufficient. It is recommended to discuss such matters and include them in the draft Law; more detailed aspects of the procedure and decision-making process could then be included in specific rules of procedure drafted by the Council to regulate its work flow.

63. Article 15 also states that complaints shall only be filed by persons who consider themselves to be victims of discrimination, but does not mention third-party interventions of civil rights groups or representatives of individuals. The Equality Directives of the EU, on the other hand, require EU Member States to ensure that associations, organizations or other legal entities having a legitimate interest in ensuring that these Directives are complied with, may engage, on behalf or in support of the complainant, and with or without his/her approval, in judicial or administrative proceedings provided for the enforcement of obligations under the Equality Directives.⁶² This approach can also be found in the Paris Principles.⁶³ While Article 20 of the draft Law permits public associations to address relevant bodies to sanction persons guilty of discriminatory actions, this does not specifically refer to the complaints mechanism before the Council. It is recommended to extend the group of persons having the right to bring complaints before the Council under Article 15 accordingly.
64. Article 15 also allows the Council to initiate proceedings at its own initiative. While this is considered a very important and positive addition to the draft Law, it is noted that Articles 15-18 do not include any specifics with regard to such proceedings, e.g. in which cases proceedings will be initiated, and how the presumed victim of discrimination shall be involved in proceedings. It is essential that the Council be permitted to initiate proceedings in cases of presumed anti-discriminatory acts or treatment, regardless of the victims' consent to such proceedings. At the same time, the confidentiality of personal information related to the victims will need to be maintained, especially in situations where the latter has refused to file a complaint.
65. Article 16 provides a list of reasons based on which a complaint may be dismissed. In the interests of transparency, it is recommended to include here the obligation for the Council to provide a written and reasoned justification to the complainant outlining why the complaint has been dismissed. This will, of course, not be necessary in cases where the complaint does not include any identification data of the complainant (Article 16 a)). Further, a dismissal for the complainant's failure to provide sufficient or additional information shall

⁶² See Article 9 par 2 of the Employment Equality Directive and Article 7 par 2 of the Racial Equality Directive. See also the Paris Principles (additional principles concerning the status of commissions with quasi-jurisdictional competence), stating that aside from individuals, "their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations" may bring cases before national human rights institutions.

⁶³ Paris Principles, Additional principles concerning the status of commissions with quasi-jurisdictional competence.

only be permitted if such lack of cooperation is preceded by explicit requests for information on the side of the Council.

66. According to Article 17, the Council is entitled to request relevant data and information from persons who are presumed to have committed discriminatory acts. This provision, and the obligation to cooperate with the Council, would be greatly strengthened if Article 17 would also include an obligation for all respondent persons and offices to cooperate with requests for information from the Council. Furthermore, it should include information on consequences that a failure to respond to a request from the Council or a failure to comply with the Council's notice under Article 17 par 3 would have.⁶⁴ It is recommended to enhance Article 17 accordingly.
67. Further, in order to enhance the expeditious handling of complaints of discrimination on the one hand, and transparency of proceedings on the other, it is recommended to include in Article 17 a time limit within which the Council undertakes to respond to the complainant and initiate proceedings. Also in the interests of transparency, it is advised to ensure in the draft Law that the complainant will be informed regularly of relevant information relating to his/her complaint, and that he/she will also receive a copy of the notice sent to the respondent company or office.
68. In order to comply fully with the Paris Principles, it is further recommended that the Council be obliged to issue reports on relevant issues related to the fight against discrimination.⁶⁵ It should also be held to issue an annual report on its work, and on relevant discrimination issues raised during the period of one year. As far as possible, these reports and also the notices issued by the Council under Article 17 should be public.⁶⁶ In any case, the Parliament should receive them; ideally, the submission of the annual report should always be followed by a discussion on discrimination-related issues in Moldova and the Council's work.
69. At the same time, such transparency should not inhibit the maintenance of absolute confidentiality in all stages of proceedings, both before the Council and before other bodies mentioned in this chapter. Given the sensitivity of discrimination complaints procedures, it is paramount that such confidentiality be maintained by all bodies receiving and responding to complaints of discriminatory acts. Confidentiality should be maintained until the victims state otherwise, as opposed to Article 23 par 2 of the draft Law, which requires a prior request from the victim. It is recommended to amend this principle in Article 23 and include it in the provisions on proceedings before the Council.

4.5. Sanctions and Enforcement Mechanisms

4.5.1 Effective, Proportionate and Dissuasive Sanctions

⁶⁴ OSCE/ODIHR Comments on the draft Law of the Republic of Moldova on Preventing and Combating Discrimination of 11 September 2008, II, B.

⁶⁵ Paris Principles, Competences and responsibilities, 3 (a).

⁶⁶ In this context, see also the Memorandum to the Minister of Justice of Moldova by the UN Country Team, Moldova on the draft Law to Prevent and Combat Discrimination of 10 September 2010, Section 1.

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70. The EU Equality Directives⁶⁷ and the Council of Europe's European Commission Against Racism⁶⁸ require the established enforcement bodies to, at a minimum; have effective, proportionate and dissuasive sanctioning powers. In the draft Law, however, the powers of the Council are limited in this regard and the complaints procedure for the victim is not very specific.
71. Article 5 of the draft Law on the "means to eliminate discrimination" provides for special, including affirmative, measures, mediation and punishment. It is not clear how this framework shall be given effect in practice. The powers provided to the Council under Article 18 are limited to addressing courts or competent administrative bodies with a view to initiating judicial or administrative proceedings. At the same time, the Council itself appears to have no powers to compel actions or impose sanctions. In contrast, the judicial and administrative remedies for discrimination discussed in the EU Equality Directives shall "enforce" the obligations under the directives⁶⁹, which would imply that not only courts, but perhaps also anti-discrimination bodies such as the Council should have the power to issue binding decisions. It is thus recommended that in order to give the greatest effect to the draft Law, the Council be granted such powers, at the very least with regard to the complaints that it receives under Article 14 (f) of the draft Law.⁷⁰ Because litigation before courts is time-consuming and expensive, expanding Article 18 to include binding decisions on complaints could provide an alternate and effective first instance remedy, with the court system serving as an appellate review body. In any case, this should not prevent any individual from initiating court proceedings immediately.
72. In this case, it is further recommended to specify in the draft Law which types of violations (indirect or direct discrimination, or harassment or other conduct described in the draft Law) should lead to which types of sanction.⁷¹ Next to these types of discrimination, the ban on victimization (Article 2 (f) in combination with Article 6 of the draft Law) will also only be effectually realized if it is combined with an appropriate and clear sanction, possibly including an injunction order to stop retaliatory acts and/or compensate victims.⁷²
73. Following some clarifications, grave forms of discrimination could lead to aggravated sanctions. These should however generally be limited to fines, since the procedure before the Council should not develop into a quasi-criminal procedure. In this context, it should be reiterated that sanctions and fines should always be considered, by both courts and administrative bodies, as *ultima ratio*, only to be applied if conciliation procedures have been

⁶⁷ See Article 15 of Council Directive 2000/43/EC and Article 27 of Council Directive 2000/78/EC.

⁶⁸ European Commission Against Racism, General Policy Recommendation No. 2 on "Specialised Bodies to combat Racism, Xenophobia, Antisemitism and Intolerance at National Level", adopted 13 June 1997, CRI(97)36, <http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n2/Rec02en.pdf>.

⁶⁹ See Article 9 par 1 of the Employment Equality Directive and Article 7 par 1 of the Racial Equality Directive.

⁷⁰ OSCE/ODIHR Comments on the draft Law of the Republic of Moldova on Preventing and Combating Discrimination of 11 September 2008, II, B.

⁷¹ Ibid, II, C.

⁷² ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, Explanatory Memorandum, par. 57.

attempted, or, given the circumstances of the case, would not be considered effective.

4.5.2 Applicable Legal Rules and Procedures

74. The legal mechanisms for enforcement are dealt with in Article 21, which states that discriminatory actions are subject to “disciplinary, civil, administrative and criminal liability”. However, no further detail is provided on which discriminatory acts could lead to which sanctions and which courts or other decision-making bodies have jurisdiction in such matters (see pars 72-73 *supra*). Where legislation imposes penalties, individuals must be able to reasonably foresee what behaviour will or will not lead to a particular sanction in order not to fall short of the requirements of legal certainty. In this context, it is noted that the recent ODIHR Opinion on draft Amendments to the Moldovan Criminal Code Related to Hate Crimes stated that anti-discrimination provisions are of a civil and not of a criminal nature and should thus be removed from the Criminal Code.⁷³
75. It is recommended that the draft Law clearly states which court or other procedure governs which claim of discrimination. This can be accomplished either by including detailed procedures for pursuing claims in the draft Law, or by a direct reference to the applicable legal provisions in other legislation.
76. In this context, it is recommended to foresee in the draft Law proceedings whereby victims of discrimination may, if they are able to provide information on the extent of their material and non-material damages, receive compensation or damages, including, if possible, restitution of rights which have been lost.⁷⁴ Where necessary, victims of discrimination should also be provided with legal aid.⁷⁵
77. Article 22 speaks of the individualization of discriminatory acts. It should be noted that this individualization of direct or indirect discriminatory behaviour is too limited, as it does not take into consideration cases where such behaviour emanates from office rules or policies which cannot be attributed to an individual person. For this reason, it is recommended to delete Article 22, or to specify that public offices or companies may also be liable under the draft Law.
78. According to Article 23, victims have the right to protection. This includes the confidentiality of victims’ private life and identity. It is recommended to add here that reports of the media on specific discrimination cases are permitted if they do not reveal the identity of the victims concerned, or if said victims have agreed to the use of their names or information related to their identity or private life. Further, it is recommended to specify in the draft Law which “special confidentiality rules provided by law” Article 23 is referring to.

⁷³ OSCE/ODIHR Opinion on draft Amendments to the Moldovan Criminal Code Related to Hate Crimes, Opinion No. HCRIM–MOL/156/2010 (AT), of 7 June 2010, par 22.

⁷⁴ See the ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, Explanatory Memorandum, par. 31.

⁷⁵ See the ECRI General Policy Recommendation No. 2 on Specialised Bodies to Combat Racism, Xenophobia, Antisemitism and Intolerance at National Level, Appendix, Chapter C (d).

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79. Based on international standards on the burden of proof, persons considering that they have been discriminated against do not need to prove that discrimination actually took place. Instead, it is considered sufficient for them to establish facts from which it may be presumed that there has been direct or indirect discrimination. It is then up to the responding party to prove that there has been no discrimination.⁷⁶
80. This principle has been included in the draft Law under Article 24. For the sake of clarity, this provision should refer to direct and indirect discrimination. The requirement of obliging complainants to prove the moral and material damages caused by the alleged discriminatory act is also problematic. Such damages may be difficult to prove in practice, so that the shift of the burden of proof outlined in Article 24 will have little practical effect. In order to ensure a real shift of the burden of proof, it is recommended to delete this requirement from the wording of Article 24. Furthermore, Article 25 should also permit the use of statistical evidence to prove that discrimination has occurred.⁷⁷

[END OF TEXT]

⁷⁶ See Article 8 of the Racial Equality Directive and Article 10 of the Employment Equality Directive.

⁷⁷ See the ECHR Grand Chamber judgment in the case of *D.H. and Others v. the Czech Republic*, application no. 57325/00, of 13 November 2007, par. 188; see also OSCE/ODIHR Comments on the draft Law of the Republic of Moldova on Preventing and Combating Discrimination of 11 September 2008, II, C.

Annex 1:

Draft

**LAW
on Preventing and Combating Discrimination**

The Parliament passes the following organic Law.

**Chapter I
General Provisions**

Article 1. Scope of Law

This Law aims to ensure the enjoyment of all persons in the territory of the Republic of Moldova to equal rights and equal treatment in political, economic, social and cultural and other spheres of life, irrespective of their race, nationality, ethnic origin, language, religion, religious conviction, sex, age, health condition, disability, sexual orientation, opinion, political affiliation, wealth, social origin, belonging to a group of disadvantaged persons, as well as any other criterion.

Article 2. Basic Terms

Under this Law, the below mentioned terms have the following meanings:

- a) *Discrimination* – any distinction, exclusion, restriction or preference in respect of the rights and freedoms of a person, as well as supporting a discriminatory conduct on any criterion listed in this Law.
- b) *Direct Discrimination* – any treatment of a person, which is based on one of the criteria listed by this Law and which is less favorable than someone else is, was or will be treated in a similar situation.
- c) *Indirect Discrimination* – any apparently neutral provision, action, criterion or practice, which has the effect of placing a person at a disadvantage in comparison with another person.
- d) *Harassment* – any unwanted conduct which results in the creation of an intimidating, hostile, degrading, humiliating or offensive environment with the purpose or effect of violating a person’s dignity.
- e) *Instigation to Discrimination* – any conduct, by which a person, abusing another’s subordinate position, exerts pressure or has a certain conduct aimed at discriminating against a third person.
- f) *Victimization* – any action or inaction resulting in adverse consequences in response to the filing of a complaint, to the initiation of legal proceedings aimed at enforcing the provisions of this Law or to the provision of information, including testimonial evidence, pertaining to a complaint or legal proceedings initiated by another person.

- g) *Affirmative Action* – targeted temporary measures aimed at speeding up the achievement of effective equality, intended to eliminate and to prevent discrimination or disadvantages resulting from extant attitudes, conduct and structures. Affirmative action shall not constitute discrimination.
- h) *Disadvantaged Person* – a socially vulnerable person, who is in a situation that prevents its normal economic, social and other activity.
- i) *Disability* – inborn or acquired limited physical or mental capability, causing negative effects on one's capacity to perform certain activities and placing one at a disadvantage as compared to persons possessing full capabilities.

Article 3. Subjects in the sphere of Discrimination

Subjects in the field of discrimination are individuals and legal entities from the public and private spheres.

Article 4. Grave Forms of Discrimination

Grave forms of discrimination are:

- a) promoting or practicing discrimination by the public administration authorities;
- b) instigation to discrimination, committed by a person in a position of authority in relation to the person subject to instigation;
- c) supporting discrimination through mass-media;
- d) posting discriminatory messages or symbols in public places;
- e) discriminating persons on the grounds of two or more criteria;
- f) discrimination committed by two or more persons.

Article 5. Means to Eliminate Discrimination

Discrimination can be eliminated through the following means:

- a) prevention of any discriminatory acts, by establishing special measures, including affirmative measures, to protect persons, who are at a disadvantage in relation to other persons;
- b) Mediation by amiable settlement of disputes arisen in response to discriminatory acts;
- c) Punishment of discriminatory conduct.

Article 6. Prohibition of Discrimination

Direct or indirect discrimination, harassment, victimization and instigation to discrimination are prohibited. Promoting a policy or carrying out actions that infringe upon the equality in rights shall be eliminated by the competent public authorities, in accordance with the law.

Article 7. Situations that do not amount to discrimination

- 1) Affirmative measures taken by public authorities in favor of a person, a group of persons or a community, and aimed at ensuring their natural development and the effective enjoyment of their equality of opportunity and treatment in relation to other persons, groups of persons or communities, shall not amount to discrimination under this law.
- 2) Affirmative measures shall apply until achieving equality and social inclusion of persons and groups of persons, who are placed at a disadvantage in relation to other persons.
- 3) The situation when the limitation of a certain right is objectively justified by a legitimate purpose, and the means for achieving that purpose are proportional, adequate and necessary, shall not amount to discrimination.

Chapter II Special Provisions

Article 8. Prohibition of Discrimination in the Field of Labor

- 1) Any distinction, exclusion, restriction or preference, based on criteria set out by this Law and which have the effect of limiting or undermining the equality of opportunity or treatment upon one's employment, working activity and professional training, shall be prohibited.
- 2) The following employer's actions shall be considered discriminatory:
 - a) Placing employment advertisements with requirements and criteria that favor certain persons;
 - b) Groundless refusal to hire;
 - c) Groundless refusal to admit certain persons to programs for enhancement of professional skills;
 - d) Unequal remuneration for work of the same type or for the same amount of work ;
 - e) Differentiated distribution of labor tasks, resulting in a less favorable status;
 - f) Victimization;
 - g) Harassment based on any criterion.
- 3) The refusal to employ, to admit to professional training programs or to promote a person shall be deemed ungrounded if:
 - a) Submittal of documents additional to those established by law is requested or additional criteria are introduced;
 - b) it is alleged that the person does not fit conditions, which have nothing in common with the professional skills required for exercising the relevant profession or the compliance with any other illegal conditions with similar consequences is required.
- 1) Provided that the objective pursued is legitimate, distinctions, exclusions, restrictions or preferences with respect to a particular job shall not constitute discrimination, in case when the particular nature of the concerned activities or of the conditions in which they are carried out require certain professional skills.

Article 9. Cooperation in Ensuring the Observance of Nondiscrimination in Labor Relations

- 1) The employer shall cooperate with employees for the establishment of internal labor rules effective at preventing and excluding cases of discrimination at work.
- 2) Procedures required to ensure the observance of equality of opportunity and treatment at the workplace shall be displayed in places accessible to all employees.
- 3) With a view to prevent and combat discrimination, the employer shall:
 - a) ensure the equality of opportunity and treatment of all persons upon employment according to their profession, upon further professional training and upon promotion.
 - b) use the same evaluation criteria for the purpose of establishing quality of work, sanctioning and dismissal;
 - c) ensure equal remuneration for work of equal value;
 - d) take measures to prevent harassment at the workplace based on any criterion and persecution for submitting discrimination-related complaints to the authorized body;
 - e) include in the entity's internal regulation provisions prohibiting discrimination.

Article 10. Prohibition of Discrimination in respect of Access to Goods and Services Available to the Public

Except for cases provided by law, any form of discrimination is prohibited in respect of access of persons to:

- a) Services rendered by public authorities;
- b) Medical assistance and other health services;
- c) Social protection services;
- d) Banking and financial services;
- e) Transportation services;
- f) Cultural and entertainment services;
- g) Other services and assets available to the public.

Article 11. Prohibition of Discrimination in Education

- 1) Educational institutions shall ensure the observance of the principle of nondiscrimination:
 - a) by providing access to educational institutions of any form or level;
 - b) in the educational process, including upon evaluation of acquired knowledge;
 - c) in scientific-didactic activities;
 - d) through the development of didactic materials and curricula;
 - e) by informing and training teaching staff to apply methods and means to prevent discriminatory actions and to inform competent authorities;
 - f) by implementing educational programs for children and parents in order to prevent and combat discrimination, together with other competent authorities and noncommercial organizations working in the respective field.
- 2) Educational institutions cannot establish principles of admission based on certain restrictions, except for cases provided by effective legislation.

- 3) The refusal of educational institutions to admit a person, whose qualifications do not correspond to the required level of admission, shall not amount to a limitation of the right to education.

Chapter III

Institutional Framework for Preventing and Combating Discrimination

Article 12. Subject Vested with Duties to Prevent and Combat Discrimination

The following shall be vested with duties in the field of preventing and combating discrimination:

- a) the Council for the Prevention and Combating of Discrimination;
- b) authorities of the central and local public administration;
- c) public associations.

Article 13. Council for Prevention and Combating of Discrimination

- 1) The Council for Prevention and Combating of Discrimination (hereinafter – the Council) is a collective body, with the status of public legal entity, established with a view to ensuring protection against discrimination, as well as to ensuring equality of opportunity and treatment to all the persons, who consider themselves victims of discrimination. The Council shall function impartially and independently from other public authorities.
- 2) The Council shall consist of 5 members appointed by the Parliament for a term of 5 years.
- 3) Membership in the Council shall cease upon expiry of mandate, upon request or in case of decease. A Council member may be revoked by the body that appointed him/her, where there arise circumstances excluding further exercise of mandate or where the Council submits a request in this respect, approved by the vote of two thirds of the members, in case of nonobservance or undue observance of duties. The new member of the Council shall exercise the functions of the revoked member until the expiry of the latter's mandate.
- 4) The chairman of the Council shall be elected by secret vote from among the members of the Council, for the duration of the mandate, and may be revoked at the request of one third of the members. The decision to revoke the Council chairman shall be adopted by secret vote of two thirds of the members.
- 5) The regulation of the Council's activity shall be adopted by the Parliament.

Article 14. Council's Duties

The Council shall have the following duties:

- a) To ensure the development, promotion and coordination of the discrimination protection policy;
- b) To keep record of compliance of effective legislation with nondiscrimination standards;
- c) To initiate proposals for amendment of effective legislation in the field of prevention and combating of discrimination;
- d) To perform conformity of draft normative acts with legislation in the field of prevention and combating of discrimination;
- e) To monitor the implementation of legislation in the field;

- f) To examine complaints of persons considering themselves to be victims of discrimination;
- g) To collect information on the scope, state and tendencies of discrimination at national level;
- h) To forward to the public authorities general proposals concerning prevention and combating of discrimination, as well as concerning improvements in behavior in respect of persons falling under the incidence of this law;
- i) To contribute to awareness-raising and to acknowledgement by society in view of eliminating all forms of discrimination, based on democratic values;
- j) To cooperate with international bodies with duties in the field of prevention and combating of discrimination;
- k) To exercise other duties established by its activity regulation.

Article 15. Procedure of Filing Complaints to the Council

- 1) The ascertaining of the existence or inexistence of an act of discrimination shall be initiated by the Council at its own initiative or upon request.
- 2) The complaint of the person who considers himself/herself to be a victim of discrimination shall be submitted to the Council. The complaint shall include a description of the violation of the right, the moment when the violation occurred, facts and evidence supporting the complaint, the name and address of the person filing the complaint.
- 3) The filing of the complaint to the Council shall not prevent the person, who considers himself/herself to be a victim of discrimination, from addressing a judicial court..

Article 16. Dismissal of Complaint

The Council shall dismiss the complaint if:

- a) it does not specify the identification data of the person, who filed it;
- b) it does not specify the necessary information and the person who filed it does not provide additional information;
- c) it is a repeated complaint, which is not supported by new evidence.

Article 17. Examination of Complaint

- 1) Upon receiving the complaint for examination, the Council shall be entitled to request relevant data and information from the persons, who are presumed to have committed discriminatory acts. All the necessary data, information and documents on discriminatory actions or conduct that the complaint refers to, shall be provided to the Council.
- 2) Upon examining the complaint, the Council shall present to the party, against whom the complaint was filed,
- 3) a notice providing recommendations on elimination of discriminatory actions, and shall inform about this the person who filed the complaint. The Council shall be notified within 15 days of the measures undertaken.

- 4) The Council members shall contribute to the amiable settlement of disputes arisen as a consequence of committing discriminatory acts, by reconciling the parties and finding a mutually acceptable solution.

Article 18. Measures Taken by the Council

Based on the results of examination of complaint, the Council is also entitled:

- a) to address a judicial court with a request for the protection of the interests of the person, who considers himself/herself to be a victim of discrimination.
- b) to submit a request to the competent bodies for the initiation of disciplinary, administrative or criminal proceedings against the person, who has committed discriminatory acts.

Article 19.

Competence of Public Administration Authorities

To prevent discriminatory acts, central and local public administration authorities shall perform the following duties within the scope of their competence:

- a) examine complaints of persons, who consider themselves to be victims of discrimination;
- b) coordinate the activity of decentralized and deconcentrated structures, carried out in this sphere;
- c) contribute to the education and raising of public awareness regarding the prohibition of discrimination in certain fields;
- d) perform other duties in compliance with the legislation in the field.

Article 20. Activity of Public Associations in the field of Preventing and Combating Discrimination

- 1) In order to prevent and combat discrimination, public associations working in the field may cooperate with public administration authorities and with other competent bodies.
- 2) Public associations are entitled:
 - a) to file actions in judicial courts for the protection of victims of discrimination;
 - b) to address relevant bodies with a view to sanctioning of persons guilty of committing discriminatory actions;
 - c) to provide consultative assistance to victims of discrimination;
 - d) to monitor the implementation of the provisions of effective legislation by local and central public administration authorities;
 - e) to provide and publish information in the field of nondiscrimination;
 - f) to submit to the public administration authorities proposals for the amendment of legislation in the field of prevention and combating of discrimination.

Chapter IV

Liability for Discriminatory Actions

Article 21. Liability for Discriminatory Actions

Discriminatory acts shall be subject to disciplinary, civil, administrative and criminal liability, in accordance with effective legislation.

Article 22. Individualization of Discriminatory Act

The individualization of the discriminatory act shall be performed taking into account the level of social danger of the committed act, the circumstances in which the act was committed, the means and methods by which the act was committed, the purpose pursued, the consequences, the perpetrator's personality, as well as other circumstances of the committed act.

Article 23. Victim's Right to Protection

- 1) Any person, who considers himself/herself a victim of discrimination, is entitled to file an action with a judicial court and to request:
 - a) acknowledgement of the violation of his/her rights;
 - b) prohibition of continuous violation of his/her rights;
 - c) reinstatement into the situation that preceded the violation of his/her rights;
 - d) reparation of the material and moral damage caused;
 - e) nullification of the deed that led to discrimination.
- 2) Upon the victim's request, dissemination of information on the victim's private life and identity shall be prohibited. Recording, keeping and using private information regarding the victim of discrimination shall take place in compliance with the special confidentiality rules provided by law.

Article 24. Burden of Proof

- 1) The person, who files an action in a judicial court, shall prove:
 - a) Facts, which presumably led to discrimination;
 - b) moral and material damage caused.
- 2) The defendant shall bear the obligation to prove that the respective acts are not discriminatory, except for acts leading to criminal liability.

Article 25. Statutory Limitation Term

The limitation term for the filing of an action under this Law shall be one year as of the date the committal of the respective act or as of the date, since the person could have become aware about the committing of the act.

Article 26. State Fee

The person filing an action in a judicial court concerning cases of on discrimination shall be exempted from the payment of the state fee.

Article 27. Financing

- 1) Public authorities tasked with the implementation of this Law shall be financed from, and within the limits of, approved annual allotments of financial means from the state budget and the budgets of administrative-territorial units.
- 2) Activities for the prevention and combating of discrimination may be also funded from other sources, which are not prohibited by law.

Chapter V. Final Provisions

Article 28

- 1) This Law shall take effect as of January 1, 2012.
- 2) Within 6 months as of the date when this Law becomes effective, the Government, , shall:
 - a) submit to the Parliament proposals for the adjustment of effective legislation in compliance with this Law;
 - b) adopt normative acts necessary for the execution of this Law.

Chairman of the Parliament